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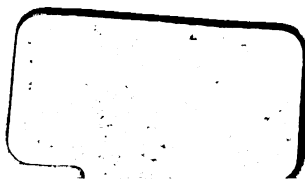
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THE
LAW JOURNAL REPORTS

FOR
THE YEAR 1868:

CASES RELATING TO
THE POOR LAW, THE CRIMINAL LAW,
AND OTHER SUBJECTS

CHIEFLY CONNECTED WITH
The Duties and Office of Magistrates,

PRINCIPALLY DECIDED IN THE
COURTS OF QUEEN'S BENCH, COMMON PLEAS, AND EXCHEQUER,
AND THE
COURT FOR CROWN CASES RESERVED,
FROM
MICHAELMAS TERM, 1867, TO TRINITY TERM, 1868,
BOTH INCLUSIVE.

REPORTED

In the Court of Queen's Bench,
By **ROBERT SAWYER, Esq. AND ARTHUR PAUL STONE, Esq.**
BARRISTERS-AT-LAW.

In the Court of Common Pleas,
By **WILLIAM PATERSON, Esq. AND GILMORE EVANS, Esq.**
BARRISTERS-AT-LAW.

In the Court of Exchequer,
By **HUGH COWIE, Esq. AND LUMLEY SMITH, Esq.** BARRISTERS-AT-LAW.

In the Court for Crown Cases Reserved,
By **THOMAS SIRRELL PRITCHARD, Esq.,** BARRISTER-AT-LAW.

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REPORTS OF CASES

CHIEFLY CONNECTED WITH

THE DUTIES AND OFFICE OF MAGISTRATES

AND THE ADMINISTRATION OF THE CRIMINAL LAW.

VOL. XXXVII. (NEW SERIES), COMMENCING WITH

MICHAELMAS TERM, 31 VICTORIÆ.

[CROWN CASE RESERVED.]

1867. }
Nov. 16. } THE QUEEN v. JARVIS.*

*Evidence—Confession, Admissibility of—
Inducement or Threat.*

One of a firm who employed the prisoner, having called him up into the private counting-house of the firm, in the presence of another of the firm and two officers of police, said, "I think it is right that I should tell you that, besides being in the presence of my brother and myself, you are in the presence of two officers of the police; and I should advise you that to any question that may be put to you you will answer truthfully, so that if you have committed a fault you may not add to it by stating what is untrue;" and having shewn a letter to him, which he denied to have written, added, "Take care; we know more than you think we know." The prisoner thereupon made a confession:—Held, that these words did not import an inducement or threat; and that evidence of the confession was admissible.

The following CASE was reserved by the Recorder of London:

At a session of the Central Criminal Court, held on the 8th of July, 1867,

and following days, Frank Jarvis, Richard Bulkley and Wilford Bulkley were tried before me on an indictment for feloniously stealing 138 yards of silk and other property of William Leaf and others, the masters of Jarvis. There was a second count in the indictment for feloniously receiving the same goods. William Laidler Leaf was examined, and said, "The prisoner Jarvis was in my employ. On the 13th of May we called him up when the officers were there into our private counting-house. I said to him, 'Jarvis, I think it is right that I should tell you that, besides being in the presence of my brother and myself, you are in the presence of two officers of the police; and I should advise you that to any question that may be put to you you will answer truthfully, so that if you have committed a fault you may not add to it by stating what is untrue.' I produced a letter to him, which he said he had not written, and I then said, 'Take care, Jarvis; we know more than you think we know.' I do not believe I said to him, 'You had better tell the truth.'" Counsel for the prisoner Jarvis objected to any statement of his made after the above was said being received in evidence, and referred to *The Queen v. Williams* (1), *The Queen v. Warringham* (2), *The Queen v.*

* Coram Kelly, C.B., Willes, J., Bramwell, B., Byles, J. and Lush, J.

NEW SERIES, 37.—MAG. CAS.

(1) 2 Den. C.C. 433.

(2) Ibid. C.C. 447.

Garner (3), *The Queen v. Sheperd* (4) and *The Queen v. Muller* (5). Counsel for the prosecution referred to *The Queen v. Baldry* (6), *The Queen v. Sleeman* (7) and *The Queen v. Parker* (8). I decided that the statement was admissible.

The jury found Jarvis guilty, adding, that they so found upon his own confession, but they thought that confession prompted by the inquiries put to him. They acquitted the other two. At the request of counsel for Jarvis, I reserved for the Court for the Consideration of Crown Cases Reserved the question, whether I ought to have admitted the statements of the prisoner in evidence against him. If I ought not to have done so, the conviction should be reversed. The prisoner is in custody awaiting judgment.

Coleridge (*Straight* with him); for the prisoner.—The confession of the prisoner was wrongly admitted in evidence against him. Any confession to be admissible must be made freely and voluntarily. And, further, the prosecution must take upon itself the onus of shewing that it was free and voluntary, and cannot throw the burden on the prisoner to shew that it was not so. The test is, was there any inducement or threat of a temporal nature as distinguished from that of a religious or spiritual kind? It is the effect produced on the mind of the recipient that is to be regarded, and not the intention of the person holding it out. If the words therefore are fairly capable of conveying to the mind of the hearer the idea of an inducement or threat, the confession induced by them is inadmissible; and it is submitted such was the effect of the words here. In *The Queen v. Baldry* (6) the authorities are exhausted. We must look at the surrounding circumstances under which the confession is made. In this case the prisoner is a servant-lad; the prosecutor is his employer, a man of position. The place is his master's private counting-house. He is questioned in the presence of more than one of his masters; he is ostentatiously informed that two police officers are also present;

he is then advised to do in effect what he had better do, viz., to answer truthfully, which is really another form of saying he had better tell the truth, which latter expression would make the confession inadmissible upon the authority of *The Queen v. Garner* (8). Then there is the incident of the letter and its denial, followed by the words "Take care." If these circumstances had any influence, either of hope or fear, on the prisoner's mind at the time, the law cannot measure the extent of that influence. In *The Queen v. Baldry* (6) a simple caution was used, which could not be construed reasonably by the prisoner into an inducement or threat; but Pollock, C.B. in that case says; p. 442, "But where the admonition to speak the truth has been coupled with any expression importing that it would be better for him to do so, it has been held that the confession was not receivable," and cites *The Queen v. Garner* (3). Again, if the words were ambiguous, and such as might have been considered by the prisoner as an inducement or threat, the evidence ought not to have been given—*The Queen v. Williams* (9); *The Queen v. Sheperd* (4). It is for the prosecution to satisfy the Court that the confession was free and voluntary; and if the Recorder has left it in doubt on the case whether that were so done, it is submitted that the conviction should be quashed—*The Queen v. Warringham* (3). In *The Queen v. Parker* (8) the facts were so different that that case has no bearing. Then, here the jury have found that the confession was prompted by the inquiries made.

Giffard (*Grain* with him), in support of the conviction, were not called upon.

KELLY, C.B.—I have always felt that we ought to approach with caution the rule of law that no man is bound to criminate himself, so I watch with care any infringement of that rule of law; but we must, on the other hand, for the sake of public justice, take care that our consideration for prisoners should not interfere with the rules of evidence and decisions. The question is, do the words before us in substance and fairly considered import a threat of evil, or hold out a hope of benefit to the accused

(9) MSS. 3 Russ. on Crimes, 4th edit. by Greaves, p. 377, note.

(3) 1 Den. C.C. 329.

(4) 7 Car. & P. 579.

(5) 8 Cox, 507.

(6) 2 Den. C.C. 430.

(7) Dears. 249.

(8) 1 Leigh & C. 42.

in case he should state the truth? I think that the first words used, viz., "I think it is right that I should tell you," &c. operate rather as a warning than a threat or promise, and were rather calculated to put the prisoner on his guard. Then the prosecutor adds, "You are in the presence of two officers of the police," &c., and "I should advise you that to any question that may be put to you you will answer truthfully," &c. In the first place, this appears to me to be advice given by a master to a servant, and when he adds, "So that if you have committed a fault you may not add to it by stating what is untrue," he appears to me to be giving further advice on moral grounds. It is neither a threat that evil shall befall him, nor is it an inducement or holding out of advantage. These words, without straining them, amount only to this: we put certain questions to you, and I advise you to answer truly that you may not add a fault to an offence committed; if any has been. Then the last words appear to me to be only a caution beyond the words already used. He refers back to reasons already given. As to the words "You had better," referred to in the argument, there are many cases in which those words have occurred, and they seem to have acquired a sort of technical meaning, that they held out an inducement or threat within the rule that excludes confessions under such circumstances. It is sufficient to say, that those words have not been used on this occasion; and that the words used appear to me to import advice given on moral grounds, and not to infringe upon the rule of law prohibiting a threat or inducement in these cases.

WILLES, J.—I agree; but if it had appeared that the prisoner could have supposed the words meant "you had better," I think the case would have been different.

The other JUDGES concurred:

Conviction affirmed.

Attorneys—Humphreys & Morgan, for the prosecution; Wontner & Son, for the prisoner.

[CROWN CASE RESERVED.]

1867. }
Nov. 16, 23. } THE QUEEN v. ELWORTHY.*

Perjury—Secondary Evidence of Written Document without Notice to Produce—Indictment not Notice.

Upon an indictment for perjury in falsely swearing on a former trial that there was no draft of a statutory declaration, the materiality of the existence of such draft turned upon its contents and the fact of certain alterations having been made in it. Parol evidence was admitted, not only of the fact of the existence of the draft, but of its contents and of alterations made in it which were not in the declaration itself, without any notice to produce the draft having been given to the prisoner:—Held, that such parol evidence of the draft and its contents was inadmissible, and that the nature of the indictment was not such as of itself to operate as a notice to produce, and the conviction upon such indictment was quashed.

The following CASE was reserved by Willes, J.—

Elworthy was tried for perjury before me at the Old Bailey. The perjury was alleged to have been committed at the trial of Thomas Cannon, for making a false statutory declaration. The assignment of perjury relied upon at the trial was in a statement made by Elworthy that there was no draft of that statutory declaration. It appeared that Elworthy was one of a firm of attorneys who were employed to lend money for a client. They were applied to by Cannon for a loan, which they agreed, on behalf of their client, to make, upon the security of some property belonging to Mrs. Cannon, and also of a newspaper in which Mr. Cannon was interested. Elworthy's firm required of Cannon as a condition of the loan a statutory declaration, which he made, and which stated amongst other things that he was the registered proprietor of the newspaper unincumbered. This declaration he made and signed, and it being untrue he was indicted for making a false declaration.

Upon the trial of that indictment, Elworthy was called as a witness against Cannon, and upon his cross-examina-

* Coram Kelly, C.B., Willes, J., Bramwell, B., Byles, J. and Lush, J.

tion, with a view to excuse or palliate the falsehood of the statutory declaration, it was sought on behalf of Cannon to prove that there was a draft of the statutory declaration; that Cannon had seen it and corrected it, and that the statutory declaration which he in fact made had been improperly drawn, not shewing the corrections so made in the draft, and had been incautiously adopted by Cannon upon Elworthy assuring him it was all right. Upon that cross-examination Elworthy denied that there had been a draft of the statutory declaration, and he explained a passage in his depositions in which a draft was referred to as a mistake for a draft of the assignment by way of security for the loan, in which there were corrections.

At the trial of Elworthy before me, it was alleged for the prosecution that his statement at the trial of Cannon, that there was not such a draft of the statutory declaration was false, and that in making such statement he had committed perjury. No notice to produce had been given, nor was there any *subpoena duces tecum* to the prisoner's partner to produce the alleged draft, and the prisoner's counsel objected that secondary evidence could not be given thereof. I allowed the case to proceed and secondary evidence to be given, subject to the opinion of this Court as to the propriety of that course.

The prosecution thereupon gave the evidence of Mr. and Mrs. Cannon, that there was a draft, and that it had originally been in the form of the statutory declaration, and had been altered in the alleged particulars by Cannon to the knowledge of Elworthy. The materiality of the existence of a draft turned upon its form and the fact of its having been so altered. The prisoner was convicted, and as I doubt the propriety of receiving secondary evidence under the above circumstances, I request the opinion of the Court upon that point, whether the conviction was right.

The prisoner was admitted to bail.

Carter, for the prisoner, was not called upon.

Bealey, in support of the conviction.—The oral evidence was admissible, inasmuch as it was the fact only of the existence of the draft that was in question; and as to the statement in the case that the materiality of the draft turned upon its form, it

is submitted that the question of its form was only important to identify the instrument, and parol evidence is admissible to identify a written document—*Taylor on Evidence*, 4th edit. pp. 379, 397.

[WILLES, J. read his notes of the evidence given by Cannon on the trial, in which he described the alterations made in the draft; and his Lordship added, that from the beginning to the end the question in the case must be taken to have been, whether there was a draft in existence such as contained those alterations.]

It is useless to give a person notice to produce a document the existence of which he has denied. Next, where the matter of the action or indictment is of such a nature as to give the defendant notice that he will be called upon to produce the document, it is unnecessary to give him notice—1 *Taylor on Evidence*, 4th edit. par. 422, p. 432, *Aickle's case* (1), *Layer's case* (2), *Le Merchand's case* (3) and *How v. Hall* (4), and it is submitted that is the case here.

[WILLES, J.—The indictment rang the changes. It must be taken to have contained enough to shew that the contents of the draft were material. KELLY, C.B.—Where the nature of the action or indictment is such that the defendant must know that he is charged with the possession of the instrument, and is called upon to produce it, notice is not necessary, and such is the case in the action of trover or an indictment for stealing; but where the matter is collateral, is it not necessary to give notice? BRAMWELL, B.—This indictment does not necessarily give notice to the defendant that he was charged with the possession of the document, and called upon to produce it.]

In *Colling v. Treweek* (5) the copy of an attorney's bill not signed by the attorney, the original of which, duly signed, had been delivered to the defendant, was held to be rightly admitted in evidence on the trial of an undefended action, brought on the bill after the expiration of a month after delivery without notice to produce, the original having been given to the defendant.

Cur. adv. vult.

- (1) 2 East, P.C. 969; a.c. 1 L. C.C. 294.
- (2) 6 State Trials.
- (3) Cited in a note to *Aickle's case*.
- (4) 14 East, 274.
- (5) 6 B. & C. 394.

The case was argued on Nov. 16; and on Nov. 23 the following judgments were given:

KELLY, C.B.—This was an indictment for perjury. The perjury assigned was a statement made by the prisoner that there was no draft of a statutory declaration which was referred to on the trial of one Cannon. The point reserved for this Court is, whether a conviction founded, to a certain extent, upon secondary evidence of the form of, and alterations in that draft received without notice to the prisoner to produce the original draft, was right. We are of opinion that notice to produce the original was necessary to entitle the prosecution to give such secondary evidence.

There had been an indictment for making a false statutory declaration, and the now prisoner, who was a witness on the trial of that indictment, swore that there was no draft of that statutory declaration. It afterwards became material to ascertain the contents of the draft. It became material, because it was alleged that there was a draft, and that its contents were such and such, and that the other party required a change in the language, and that that change had been incorporated in the draft. The exact contents of the draft, therefore, became essential to the prosecution on the present indictment, because upon its contents depended the materiality or immateriality of the evidence on the former trial. The prosecution then gave evidence of the existence of the draft, that it came into the prisoner's hands and had not passed from him. Parol evidence of its contents was thereupon admitted, and the question raised is, whether, in order to give parol evidence of the contents of that document, notice to produce it ought to have been given. There is no doubt that, according to the general rule of evidence, such notice must have been given; but it is contended that this case falls within those cases which have established an exception to the rule, and made the secondary evidence here admissible without notice to produce the original. For example, it is said that in trover for a deed or other written document, parol evidence might be given of the contents of the document without notice to the defendant to produce it; but the defendant there has notice by the nature of the

action itself and the description of the document in the declaration, without further notice that he is called upon to produce the document. He can therefore do so if he thinks fit. We do not, however, think that that case is applicable here. In *The Queen v. Aickles* (1) the prosecution was for larceny of a bill of exchange, and it was held to be unnecessary to give the prisoner notice to produce the bill before giving evidence of its contents. The reason is said to be given in an *obiter dictum* of Heath, J.—“If the bill had been in the custody of the prisoner, there would have been no necessity to prove that it was not in existence; but parol testimony might undoubtedly in such case have been given of its contents.” But Eyre, B. appears to give the chief reason in *Le Merchant's case* (8), in a note to *Aickles's case* (1), who says the copies of the letter were admitted, “not on the idea of the defendant's having after notice refused to produce the originals, but because they were the best evidence which the nature of the case would admit of, or that was in the power of the party producing them to give” (6). In such a case the prisoner has notice that he will be called upon to produce the document by the form of the indictment. That case, therefore, is also inapplicable to the one before us. Here there was nothing on the face of the indictment, which I have looked at, to shew that the draft had come into his possession; therefore there was nothing to shew that it was alleged to be still in his possession, and to tell him that he was called upon to produce it.

Four things must be made out: first, that the prisoner stated there was no draft; secondly, that such statement was false; thirdly, that he knew that statement to be false; fourthly, that the statement was material. What is there in those allegations to import that the draft ever came into his possession? He may have alluded to another document from the one described in evidence. There was nothing on the indictment or the evidence to shew that, in order to sustain this prosecution, the prisoner was called upon

(6) It is to be observed in *Aickles's case* that the prisoner had not possession of the bills which he was charged with stealing, but they were traced to the possession of one Smith, who was served with a *subpoena duces tecum*, but he did not appear, nor was the bill produced.

to admit secondary evidence of this document being given against him. If sufficient notice had been given to him, he might have produced it. Speaking for myself, I think that the admissibility of secondary evidence, without the production of the best evidence or the document itself, ought not to be extended.

WILLES, J. concurred.

BRAMWELL, B.—If the question had been merely as to the existence of the draft, I should have been inclined to think the evidence admissible; but the prosecution gave in evidence the contents to shew that the prisoner's denial of its existence was wilful; therefore the contents and the alterations therein became material. I think that parol testimony cannot be given of any existing written document without laying a proper foundation for it. No exception to that rule is here applicable. The indictment did not give notice to the prisoner that he would be required to produce the original draft. The prosecutor might have contented himself with giving evidence of its existence, but he chose to go further.

BYLES, J. and LUSH, J. concurred.

Conviction quashed.

Attorney—Beard, for the prosecution.

[CROWN CASE RESERVED.]

1867. }
Nov. 23, 27. } THE QUEEN v. SMITH.*

Perjury — Bastardy Summons — Information — Evidence of Proceedings before Justices.

Upon an indictment for perjury committed at the hearing of an information in bastardy, which indictment alleged the application for a summons, the issuing thereof, and the hearing upon it, proof of the information, of the appearance of the defendant, of the hearing, of evidence being given on both sides, and of no objection being made of the want of a summons, is sufficient to shew jurisdiction in the Justices who heard the information, without proof of the summons which issued upon that information;

* Coram Kelly, C.B., Willes, J., Bramwell, B., Byles, J. and Lush, J.

and a conviction for perjury upon the above indictment was upheld.

The following case was reserved by Cockburn, C.J.—

This was a case tried before me at the last assizes for the county of Leicester, on an indictment for perjury alleged to have been committed by the defendant on the hearing of an information before two Justices on an application by one Louisa Harrison, the mother of an illegitimate child, against one Tom Mee, for an order of affiliation. The indictment alleged that an information was exhibited before two Justices by Louisa Harrison against Mee, charging him with being the father of her illegitimate child, and that application was made by her to the said Justices for a summons against Mee to answer the said complaint; that a summons was accordingly issued by the said Justices, and that in obedience to the said summons Mee appeared at a petty session to answer the charge. The indictment went on to state the proceedings on the hearing of the summons, and alleged in due form that perjury had been committed by the prisoner Smith.

On the trial before me, evidence was given that an information was duly made by the applicant Louisa Harrison against the defendant Mee; and the information itself was put in and read. It was proved that Mee appeared before the Justices, and that upon the hearing of the information the evidence, which was the subject-matter of the present indictment, was given by Smith, who was called as a witness by Mee. But the summons was not produced on the trial of Smith, nor was secondary evidence given of its contents, nor was it proved that such summons had been served on Mee. It appeared that it was the practice to give duplicate summonses to the police constable whose duty it was to serve the summons. The police constable who served the summons in question not being present at the trial, no evidence of the service of any summons could be given. In all other respects the proceedings before the Justices on the hearing of the information were duly proved, and appeared to have been regular and correct.

On the close of the case for the prosecution, it was objected on the part of the prisoner that the want of proof of a sum-

mons; as required by the 7 & 8 Vict. c. 101; having been served on the defendant in the information, was fatal to the present prosecution, inasmuch as the summons formed the basis of the Magistrate's jurisdiction.

I declined to stop the case in that stage, and witnesses having been called for the defence, and the case having gone to the jury on the merits, the prisoner was found guilty.

The question which I have reserved, and on which I desire the decision of the Court, is whether, the information having been duly served; as well as the proceedings upon it, at the hearing at the petty sessions, the absence of proof of the summons with which the defendant in the information ought, under the statute 7 & 8 Vict. c. 101, to have been served, in order to give the Justices jurisdiction to hear the information in bastardy, was fatal to the prosecution on this indictment for perjury.

Materiality, for the prisoner.—A summons was necessary to give the Magistrate jurisdiction—7 & 8 Vict. c. 101. ss. 2, 3; and therefore the summons ought to have been produced or notice given to the defendant in the bastardy proceedings to produce it, and in default secondary evidence of it given—*The Queen v. Newall* (1). The defendant appears in answer to the summons; and the summons, therefore, is the basis and best evidence of the charge which is heard and of the issue then before the Justices, so as to show what statements are and what are not material—*The Queen v. Whybrow* (2), *The Queen v. Hurrell* (3).

No counsel appeared for the prosecution:
Cur. adv. vult.

The case was argued Nov. 23; and on Nov. 27 the judgment of the Court was delivered by—

KELLY, C.B.—This conviction must be affirmed. This was an indictment for perjury alleged to have been committed on the trial of an information laid under the Bastardy Act. The objection and the only objection before us was, that there was no evidence of the summons or of the service of the summons which issued upon that information. We are of opinion that that objection cannot be sustained. Though there was no summons

produced at the trial of Smith for perjury, nor was it proved that Mee had ever been served with such summons, there was the information, which described the complaint made; evidence was given on both sides, and all the proceedings were regular at the time of the appearance of the defendant before the Justices. The only question, therefore, is, was it necessary to produce the summons? The object of the summons is to bring the party into court. The defendant did appear and did not object to the want of a summons, and there was no necessity at the hearing of the information, or at all events on the trial for perjury, to refer to the summons, and there being an information, and the proceedings under that information being perfectly regular, therefore the production of evidence of the summons was not necessary.

Conviction affirmed.

[CROWN CASE RESERVED.]

1867.
Nov. 23. }

THE QUEEN v. TYSON.*

Perjury—Materiality—Evidence.

Upon an indictment for robbery committed on the 13th of April, between eight and ten o'clock at night, a witness for the prisoner swore, not only that the prisoner was at home at that time, but in answer to the Judge said, that the prisoner had lived in the same house for the two years previous, and that during the whole of that time he had not been absent from the same house for more than three nights together. The last two statements were proved to be false, as the prisoner, for a whole year of the period spoken to, had been in prison:—Held, that the evidence so last given was material to the inquiry, and the proper subject of assignments of perjury, inasmuch as those latter statements tended to render more probable the previous statement made, that the prisoner was at home on the night of the 13th of April.

The following CASE was reserved by the Recorder of London :

* Coram Kelly, C.B., Willes, J., Bramwell, B., Byles, J. and Lush, J.

(1) 6 Cox, 21.

(2) 8 Ibid. 438.

(3) 3 Post. & F. 271.

At a session of the Central Criminal Court, held on the 10th of June, 1867, and following days, Thomas Tyson was tried before me on an indictment for perjury. It was alleged in the indictment and appeared in evidence, that at the May session of the Central Criminal Court, one Owen Sullivan was tried for a robbery, and that upon that trial Tyson was called as a witness on behalf of Sullivan. The indictment went on to allege that upon the trial of Sullivan it was material to ascertain whether Sullivan was or was not at a house No. 20, in Mint Street, in the borough of Southwark, on the evening of the 13th of April, 1867, between the hours of eight o'clock and ten o'clock; and whether Sullivan had lived at same house for two years then last past, or from March, 1865, to March, 1866, and that Tyson falsely swore as such witness—First, that on the 13th of April, 1867, Sullivan came to 20, Mint Street, at half-past eight in the evening, and did not go out again that evening; secondly, that Sullivan had lived in the said house for two years then last past; and, thirdly, that during the whole of that time Sullivan had never been absent from the same house for more than three nights together. Perjury was assigned upon each of the above allegations, and the prisoner was convicted on the last two. The second and third allegations were distinctly contradicted by the oaths of two warders of the Wandsworth House of Correction, who proved that Sullivan was under their charge in that House of Correction from March, 1865, to March, 1866. The prisoner was undefended, and a question was raised whether the averments of the defendant were material on the trial of Sullivan. Counsel for the prosecution contended that they affected Tyson's credit as a witness on Sullivan's trial. I reserved the question for the consideration of the Court, whether the two last allegations of Tyson, upon which perjury was assigned, were sufficiently material on the trial of Sullivan to support the indictment for perjury in respect of them. The defendant is in prison awaiting judgment.

Nov. 16.—The Court remitted the above case, that it might be more clearly stated in what manner the question came to be put which produced the answers, and how the

circumstances arose which made the answers material.

Nov. 23.—This case was now brought up amended, by annexing copy of Mr. Common Serjeant's notes of the trial of Sullivan, which were as follows:

"William Pearce, of 12, Windsor Terrace, saith—On 13th of April, at 8:45 p.m., I was in the Dover Road going to the train. I was passing Leicester House; felt a man seize me and pull me round, and I looked up and saw the man's face, and two others laid hold of me and pinioned my arms, rifled my pockets, took away my watch, a sovereign and 27s. silver, and then they all ran away, and I fell down. I caught the man's eyes, and am sure he is the man. I got up, ran after them to the corner of Kent Street, and lost sight of them. On the following Tuesday I saw prisoner and five others, and I at once picked him out. He said, I was not there, it was Bandy and some other; I said I know there were two others.

"Cross-examined—I am positive I could not swallow anything for a fortnight, my throat was so pinched. I looked up at the man's face; I never saw him before; I did not see the faces of the others.

"William Eldred, P.C. 160 M., saith—I took prisoner at Red Lion, Suffolk Street, and took him to the station. Prosecutor picked prisoner out from six others at once.

"Cross-examined—I told him I had a man in custody.

"Mr. Cooper addressed the jury for prisoner, and called

"Thomas Tyson, who saith—I am under-deputy at 20, Mint Street, Borough, a lodging-house; remember prisoner being taken up. On the Saturday before prisoner came in between eight and nine, and did not go out again. He came in about 8:30; he lay down on a form till 9:45, and then went to bed. He has lodged at the house nearly two years.

"Cross-examined—I know it was 8:30, because the prisoner is such a man for larking. The deputy was there at the time: he is not here.

"Re-examined—He makes the kitchen merry. Another man followed him. The deputy sent the prisoner away from the fire.

"By me—I went to the house in May,

1865. Prisoner lodged there from the time I went, and never was absent more than a night or two, or three at most, at a time. I went out of the kitchen into the room where the clock is to see the time. I do not know why.

"Richard Kemp smith—I am a warder at the House of Correction at Wandsworth. Prisoner was in Wandsworth Prison from March, 1865, to March, 1866.

"Certificate of conviction of Sullivan for robbery produced, dated March, 1865, sentenced twelve calendar months and hard labour, at the House of Correction at Wandsworth.

"Guilty—seven years penal servitude.

"I ordered the witness, Thomas Tyson, to be taken into custody on a charge of perjury."

No counsel appeared for the prisoner.

Metcalf, in support of the conviction.—

It is admitted that the evidence on which the prisoner was convicted of perjury did not directly bear on the question of the guilt or innocence of Sullivan on the charge of robbery, but it was material as a test of the truth of Tyson's evidence.

[WILLIAMS, J.—It is in answer to a question from the Judge.]

In 1 *Hawk. P.C. c. 27. s. 8. p. 434.* it is said: "If it appear plainly that the scope of the question were to sift him as to his knowledge of the substance, by examining him strictly concerning the circumstances, and he give a particular and distinct account of the circumstances which afterwards appear to be false, surely he cannot but be guilty of perjury, inasmuch as nothing can be more apt to incline a jury to give credit to the substantial part of a man's evidence than his appearing to have an exact and particular knowledge of all the circumstances relating to it."

[BRAMWELL, B.—Suppose A. is indicted for robbing B. at D. C. says, I was at X. and A. was there; does it not become material to shew that C. was at Y?]

Yes.

[LUSH, J.—The substantial part appears to me to be whether the prisoner was at that house at the time and on the night in question. Then did not the statement to the Judge, that the prisoner was not in the habit of being out, and had not been out of the house more than two or three times for

two years, incline the jury more readily to give credit to the substantial part of the man's evidence, namely, that Sullivan was at the house on the night and at the time of the robbery. BRAMWELL, B.—It was not material, in the first instance; but the witness makes it so by making it authenticate the part of his evidence which was before material. This brings it within the case mentioned by Hawkins as to the sheep-marks (1). LUSH, J.—It thus becomes material to the issue.]

It is submitted that the scope of the questions put by the Judge on Sullivan's trial to the prisoner in this case was to sift him as to his knowledge of the substantial part of his evidence, and his answers were therefore material, and perjury assigned upon them was rightly assigned, and this conviction should therefore be sustained.

KELLY, C.B.—The question is whether upon this indictment for perjury the two statements upon the assignments of which the prisoner has been convicted were material. We are all agreed that they were material, upon the ground that they tended to render more probable the truth of the other allegation upon which the prisoner has not been convicted, viz., that he saw Sullivan at this lodging-house on the night of the 13th of April, between the hours of eight and ten o'clock. It tends to render that statement more probable that Sullivan lodged there for two years and that he was never out of the house for more than a night or two at a time during that period. That makes the other statement that he was not out on the night in question more probable. It was therefore material to the question of the probability or improbability of the witness speaking the truth in saying that the prisoner was at his house on the night of the 13th of April. We are all of opinion that the conviction should be affirmed.

BRAMWELL, B.—The question is whether the answers were material, for if material on any ground it is sufficient. If the witness had said that he was at such a house at a quarter past ten o'clock on such a night, his evidence would have been less trustworthy if he could give no reasons for saying so. Then he is asked what enables

(1) 1 *Hawk. P.C. c. 27. s. 8. p. 434.*

you to tell us that? and he answers, I was deputy at the lodging-house and I was there at that time, I know him well, and his habits are such that I am enabled to speak to the cardinal matter with more certainty; therefore the matter must be material.

BYLES, J. concurred.

LUSH, J.—I was embarrassed at first by counsel saying that the matter was material as going to the credit of the witness. That is not the ground, however, on which it is material. It was material as being a substantial part of the evidence against Sullivan. It was calculated to induce the jury to give more credit to the witness when he stated that for two years Sullivan had not been in the habit of being out at that time.

Conviction affirmed.

[CROWN CASE RESERVED.]

1867. }
Nov. 23. } THE QUEEN v. RYLAND.*

Parent and Child—Neglect to provide Food—Indictment—Averment of Want of Means.

An indictment for neglecting to provide sufficient food and sustenance for a child of tender years, whereby the child became ill and enfeebled, averred that it was the duty of the prisoner to provide for, give and administer to the said child wholesome and sufficient meat, drink and clothing for the sustenance, &c. of the said child, and that he unlawfully, and contrary to his said duty in that behalf, did omit, neglect and refuse to provide for, &c., the child:—Held, by the majority of the Court, that the indictment sufficiently alleged the breach of duty, and that the prisoner had the ability to provide but omitted to exercise it.

The Chairman of the Quarter Sessions for Surrey reserved the following

CASE.

At the General Quarter Session of the Peace, holden at Guildford, in and for the county of Surrey, on Tuesday, the 2nd of July, 1867, Henry Blucher Ryland was tried and convicted upon the following count of an indictment: "The jurors for our Lady the Queen, upon their oath pre-

* Coram Kelly, C.B., Willes, J., Bramwell, J., Byles, J. and Lush, J.

sent, that before the time of committing the offence hereinafter in this count mentioned, Henry Blucher Ryland was the father of a certain male child of tender age, to wit, of the age of seven years, called and known by the name of Frederick George Ryland, and that Hannah Ryland, before the time of the committing the offence and during all the time hereinafter in this count mentioned, was the wife of the said Henry Blucher Ryland, and as such wife living with the said Henry Blucher Ryland, and during all that time the said child was living under the care and control of the said Henry Blucher Ryland and the said Hannah Ryland, and during all that time it was the duty of the said Henry Blucher Ryland and the said Hannah Ryland to provide for, give and administer to the said child wholesome and sufficient meat, drink, food and clothing for the sustenance, support, nourishment and healthful preservation of the said child, the said child by reason of his tender age being then wholly incapable of providing for himself. And the jurors aforesaid, upon their oath aforesaid, do further present that the said Henry Blucher Ryland and the said Hannah Ryland, on the 5th day of March, in the year of our Lord 1867, and on divers other days and times between that day and the day of the taking of this inquisition, and whilst the said child was of such tender age as aforesaid, and wholly incapable of providing for himself as aforesaid, unlawfully and contrary to the said duty of the said Henry Blucher Ryland and the said Hannah Ryland in that behalf, did omit, neglect and refuse to provide for, give and administer to the said child clothing, meat, drink and food in any sufficient quantity for the sustenance, support, nourishment and healthful preservation of the said child, by means whereof the said male child became and was weak and ill, and greatly disordered and debilitated in his body, to the great damage of the said child, and against the peace of our said Lady the Queen, her crown and dignity."

After the jury were sworn and the defendant given in charge to them, his counsel objected that the indictment was bad, as it did not allege that the defendant had the means of providing his child with wholesome and sufficient meat, drink, food and

clothing for the sustenance, support, nourishment and healthful preservation of the said child. It was replied that such allegation was unnecessary in the indictment, and that it was sufficient to prove such ability at the trial; but that even if such allegation were necessary, the objection was too late, as, being for a formal defect apparent on the face of the indictment, it ought to have been taken by demurrer before the jury were sworn, as provided for by 14 & 15 Vict. c. 100. s. 24. The Court overruled the objection, and, proof having been given of the ability of the said Henry Blucher Ryland to provide the necessary food and clothing for his child, left the case to the jury, who found the said Henry Blucher Ryland guilty; but the Court reserved the two points above mentioned for the determination of the Court for the Consideration of Crown Cases Reserved, viz., first, whether an allegation of the ability of the said Henry Blucher Ryland to provide the necessary food and clothing for his child was requisite in the indictment; and, secondly, whether the objection to the indictment was not too late.

The Court respited judgment upon the defendant, and admitted him to bail till the decision of the Court for the Consideration of Crown Cases Reserved should be known.

J. Thompson, for the prisoner. — The defect is not a formal one within 14 & 15 Vict. c. 100.

[*BRAMWELL*, B.—It has been decided that this Court can take cognizance of defects apparent on the face of the record when reserved at the trial.—See *The Queen v. Webb* (1)].

Then the indictment is bad for omitting the allegation that the prisoner had the means and ability to provide food and sustenance for his child. In *The Queen v. Chandler* (2) the indictment contained the allegation that the prisoner had the ability and means to maintain her child; but the evidence failed to satisfy that allegation, and the conviction was quashed. In *The Queen v. Hogan* (3) one objection taken to

the indictment, which was held bad, was that there was no allegation that the parent had the means to support the child. In *The Queen v. Vann* (4) it was held, that the parent was not bound to incur a debt in order to provide burial for his child, and is only bound to incur such expense if he has the means, without contracting a loan and rendering himself liable to be proceeded against and lose his liberty and be deprived of the means of maintaining his family.

[*KELLY*, C.B. — The question here is, can it be implied or collected from the indictment that the parent here had the ability and neglected his duty therein? Is it necessary that there should be a direct allegation?]

The prisoner ought to have notice that ability to provide is alleged against him, and of the time when.

Lilley, in support of the conviction. — It is the duty of the parent to provide sustenance and food for his children, whether he has the means himself or not; if he has not present means, it is his duty to resort to the poor laws or to private charity—*The Queen v. Mabbett* (5), *The Queen v. Friend* (6) and *The Queen v. Ridley* (7).

[*WILLES*, J., referred to *The Queen v. Pelham* (8)].

Thompson, in reply.

KELLY, C.B. — The majority of the Court think that the indictment sufficiently alleges the breach of duty in this case, in the statement that the prisoner “unlawfully and contrary to his said duty in that behalf, did omit, neglect and refuse to provide food, &c.” The special matter of the ability to provide is included within the meaning of the word “neglect,” and it is, at all events, satisfactory to feel that upon this indictment the prisoner was duly convicted on the merits of the case, inasmuch as the jury have found that, in fact, the prisoner had the ability to maintain which he neglected to exercise.

Conviction affirmed.

(1) 1 Den. C.C. 338; s. c. 18 Law J. Rep. (N.S.) M.C. 29.

(2) 1 Den. C.C. 453; s. c. 20 Law J. Rep. (N.S.) M.C. 109.

(3) 2 Den. C.C. 277; s. c. 24 Law J. Rep. (N.S.) M.C. 219.

(4) 21 Law J. Rep. (N.S.) M.C. 39.

(5) 5 Cox, C.C. 339.

(6) Russ. & R. 20.

(7) 2 Campb. 650.

(8) 8 Q.B. Rep. 959; s. c. 15 Law J. Rep. (N.S.) M.C. 105.

[IN THE COURT OF QUEEN'S BENCH.]

1867. { THE JUSTICES OF LANCASHIRE,
Nov. 13. { appellants, THE OVERSEERS
 { OF THE POOR OF CHEETHAM,
 { respondents.

Poor-rate — Assize Courts — Judges' Lodgings — Public Purposes — Beneficial Occupation.

*By act of parliament, the Justices of the county of L. were empowered to provide courts, Judges' lodgings, offices, &c. necessary and convenient for carrying on the civil and criminal business usually transacted at Courts of Assize. They were further empowered to permit the use of the buildings for any lawful purpose for such consideration as they might think proper, but so as not to interfere with the use of such buildings and premises for the purposes primarily contemplated. They did allow the corporation of M. to use part of the buildings for the city Quarter Sessions, and for the city Court of Record, and they received 900*l.* a year in respect of such use. This sum of 900*l.*, together with all sums received for the use of the buildings, was insufficient to defray the average annual expenses of maintenance and management:—Held, that the Justices were rateable to the poor-rate in respect of the part so let off to the corporation.*

This was an appeal, brought by the appellants, the Justices of the Peace for the County Palatine of Lancaster, against a rate in respect of their occupation of certain premises known as the Manchester Assize Courts, laid upon them by the respondents; and, by consent of the parties and by order of Blackburn, J., according to the statute 12 & 13 Vict. c. 45. s. 11, the following CASE was stated for the opinion of this Court.—

By the 21 Vict. c. xxiv. (local and personal) ("The Manchester Assize Courts Act, 1858"),—after reciting that it had been recommended to Her Majesty that a separate civil and criminal assize should be granted to Manchester, for that city and the borough and hundred of Salford, in the County Palatine of Lancaster, and after reciting an act of the 38 Geo. 3. c. lviii. (local), whereby the business of the said county concerning the general county rate was and is trans-

acted at the annual General Session of the Peace holden at Preston, and at the adjournments thereof, and at special Sessions holden at Preston according to the said act, but the General Quarter Sessions of the county are held, by adjournments from place to place, for the transaction of business arising within the several divisions of the county, and (amongst other places) are so held in the hundred of Salford for the transaction of business arising within the said hundred,—by section 2, the Justices of the Peace for the County Palatine of Lancaster assembled at any Quarter or General Sessions, holden originally or by adjournment within the hundred of Salford, were empowered to provide in or near Manchester, within the hundred, commodious courts, lodgings for Her Majesty's Judges, offices, lock-ups, and all other accommodations necessary or convenient for carrying on the civil and criminal business usually transacted at Courts of Assize.

By section 4, any lands or buildings acquired by the Justices under the act might be conveyed, assigned or demised to the Justices of the County Palatine of Lancaster, and their successors; and such Justices and their successors were thereby empowered to take and hold in the nature of a body corporate, in trust for the purposes of that act, the lands or buildings so conveyed, assigned or demised to them.

By section 5, all the expenses incurred in carrying into effect the purposes of the act, including any expenses incurred in making such temporary arrangements as were authorized by the said act, should be defrayed out of the special rate thereafter authorized to be laid, imposed, assessed and levied from time to time, as the case might require, upon and from the hundred of Salford.

By section 11, the Justices assembled as aforesaid were to have the sole and entire control, repair, management and use of all buildings and premises acquired for the purposes of that act; and it was to be lawful for them to use or permit the use of any such buildings and premises for any lawful purpose, at such times, in such manner, upon such conditions and for such consideration as the same Justices might think proper, but so as not to interfere with the use of such buildings and premises

for the purposes primarily contemplated by that act.

Under the powers of the act, the appellants purchased a plot of land situate in the respondents' township. At the date of the purchase, several houses and other

buildings stood thereon, and were rated and paid rates to the township. These were pulled down, and on the site were built the Manchester Assize Courts, comprehending the premises described in detail in the rate appealed against as follows :

Name of Occupier.	Name of Owner.	Description of Property Rated.	Name or situation of Property.	Gross Estimated Rental	Rateable Value.	Rate of 2s. in the Pound.
Justices of the Peace for the County Palatine of Lancaster.	Justices of the Peace for the County Palatine of Lancaster.	Assize Courts, Entrance Halls, Corridors, Central Hall, Sheriff's Court, Chancery Court, Arbitration Rooms, Libraries, Lavatories, Waiting Rooms, Refreshment Rooms, Retiring Rooms, Galleries, Offices, Cells, Judges' Lodgings, Governor's Rooms, Housekeeper's Rooms, Porter's Rooms, Out-buildings, Yard and Premises.	Great Ducie Street.	£. s. 6,042 10	£. s. 5,035 10	£. s. 503 11

There are, in addition, other rooms for the grand jury, witnesses, for the county officials, for the accommodation of the Judges, the Magistrates, and counsel attending the Assizes and Quarter Sessions, and also refreshment-rooms.

The Judges' lodgings adjoin the main buildings, but are under a separate roof, and are connected with the central hall and courts by a covered corridor. They comprise the necessary accommodation for the Judges and their suite at the Assizes. The Judges' dining-room is also occasionally used for luncheons by committees of county Magistrates, when they assemble in a room attached to the Assize Courts, for the transaction of county business.

The courts are all under one roof, and are used at the County Assizes for the hundred of Salford and the city of Manchester, and at the county sessions for the hundred; and, by special agreement with the city of Manchester, as hereinafter mentioned, for the city Court of Record.

For the purchase of one portion of the site of the Courts, the Justices have paid 4,070*l.*; the rest of the site was purchased by them in fee, subject to yearly chief rents, amounting together to the sum of 620*l.* 6*s.* 10*d.* a year. The erection of the building has cost 131,312*l.*

The money borrowed to the present time amounts to the sum of 68,500*l.*, and the interest paid thereon last year (1866), was 3,690*l.* 3*s.* 5*d.*

The recited act provides that the money borrowed shall be repaid within twenty years, the period limited by "The Commissioners Clauses Act, 1847." The expenses of maintenance and management for the year ending on the 31st of May, 1866, amounted to 1,823*l.* 7*s.* 11*d.*, which sum it is estimated may be considered as the average of those expenses.

The sum raised by the special rate authorized to be raised by the above-recited act during the year ending the 31st of May, 1866, was 12,705*l.* 5*s.* 2*d.*, which was applied partly in paying the current expenses and the interest on loans.

The residue has been expended in completing, decorating and furnishing the Courts and Judges' house, and in providing the sinking fund for paying off the mortgage debt as required by the Commissioners Clauses Act, 1847. The rest of the cost of the buildings and furniture has been paid for out of the special rate authorized to be laid on the hundred of Salford by the said act.

There is a quantity of plate, linen, china, &c., kept in the building, which is the pro-

perty of the Justices, and is used by the Judges, Magistrates and barristers at the Assizes and Sessions without charge. The Judges' lodgings are at all times occupied by and are under the care of one housekeeper, who with his wife resides on the premises, and has the charge of the whole building, courts and lodgings. The wife has also some duty of superintendence, and they have apartments allotted to them, but no accommodation beyond what is necessary to enable them to discharge the duties of their station. The keeper with his wife and family are the only persons occupying any part of the building as a permanent residence. The house has not been let, nor is such letting contemplated.

A charge is made for the use of the arbitration-rooms, varying according to the extent of the accommodation required; and for the year ending the 31st of December, 1856, such charge only reached the sum of 8*l.* 8*s.*

A purveyor has allowed to him by the Justices gratuitously the privilege of supplying the Bar, jurors, witnesses and persons attending the various Courts above mentioned with refreshments, undertaking, with the committee of Magistrates, to do so at reasonable prices; for this purpose he has the use of the refreshment-rooms, kitchens and accessories thereunto without any charge whatever. He is only permitted to occupy the said rooms and kitchens during the transaction of public business at the Assizes and Sessions.

By agreement between the appellants and the corporation of the city of Manchester, all the accommodation required for both the city Quarter Sessions and the city Court of Record is provided in the Assize Courts, the corporation paying to the Justices the sum of 600*l.* per annum for the same, and 300*l.* per annum to cover all incidental expenses, including cleansing, gas, fires, &c., the corporation of the said city providing the necessary police.

There are no other sources of income to the Justices from the use of the buildings, and all sums received in respect of their use are applied by the Justices in aid of the special rate.

The sum of 900*l.* paid by the corporation of the city of Manchester, as before mentioned, and the sums received from all other sources, as above mentioned, were

applied in part payment of the sum of 1,823*l.* 17*s.* 11*d.*, above stated to have been the expenses of maintenance and management during the last year, and the balance of those expenses was defrayed out of the special rate authorized to be raised by the recited act.

No question is at present raised as to the amount of rating.

The questions for the decision of the Court were: First, are the appellants occupiers of the above premises within the statute of 43 Eliz. c. 2; secondly, whether of the whole or of any and what separate parts.

Mellish (C. H. Hopwood with him), for the respondents.—It may be that the rateable value is *nil*, but it is submitted that under the particular circumstances of this case the appellants are rateable. The 11th section of the act provides that it shall be lawful for them to use or permit the use of the buildings for such consideration as they may think proper; and it appears that, in the exercise of the power so given, they have agreed that the corporation of the city of Manchester should use the buildings for the city Quarter Sessions and the city Court of Record, paying the sums of 600*l.* and 300*l.* a year to the appellants. It is true that it appears from the case that the sums so received are not sufficient for the maintenance of the buildings; but still the appellants are rateable. *The Queen v. St. Martin's, Leicester* (1) is not contrary to the proposition now submitted, so far as the part let off to the corporation is concerned.

Manisty (*Holker* with him), for the appellants.—The appellants have no beneficial occupation of the buildings and premises within the meaning of 43 Eliz. c. 2. They make no profit out of them, and the only occupation is for public purposes, and may be considered to be the occupation of the Crown.

Mellish replied.

COCKBURN, C.J.—I am of opinion that this case falls within the principle laid down in *Jones v. the Mersey Docks* (2), and that the appellants are rateable. It is true that the purposes for which the buildings were erected may be said to be public

(1) 36 Law J. Rep. (N.S.) M.C. 99; s.c. 2 Law Rep. Q.B. 493.

(2) 35 Law J. Rep. (N.S.) M.C. 1.

purposes; but then we find that the appellants are empowered to permit the use of those buildings for lawful purposes, at such times, in such manner, upon such conditions, and for such consideration as they may think proper. They do let part of them to the corporation, and they receive 900*l.* a year in respect of such part. Whatever be the occupation, if a profit is made out of the premises occupied, there is a liability to be rated. I think, therefore, that the appellants are rateable in respect of such part as they let off at a rent.

LUSH, J.—I am of the same opinion.

Judgment for the respondents.

Attorneys—Reddale & Craddock, agents for Birchall, Wilson & Hutton, Preston, for appellants; Bower & Cotton, agents for W. H. Guest, Manchester, for respondent.

[IN THE COURT OF QUEEN'S BENCH.]

1867. } DEAL, appellant, SCHOFIELD,
Nov. 9. } respondent.

Ale and Beer House—Licence to sell Beer "not to be consumed on the Premises"—Handing Beer to Customers through Window—4 & 5 Will. 4. c. 85. s. 4.—3 & 4 Vict. c. 61. s. 13.

An information was preferred against a licensed seller of beer by retail, not to be drunk on the premises, for selling beer on his premises contrary to the statutes 4 & 5 Will. 4. c. 85. s. 4. and 3 & 4 Vict. c. 61. s. 13. It appeared that a constable tapped at a window of the defendant's premises, which were about three yards from the highway, and upon its being opened by the man in charge of the house, asked him for a pint of beer. The beer was handed in a mug to the constable, who drank part of it, standing as close to the window as he could, and the remainder while sitting on the window-sill. The window was open all the time and the attendant present:—Held, that there was not sufficient evidence to justify the Magistrates in convicting the defendant.

CASE stated by Magistrates, under 20 & 21 Vict. c. 43.—

At a petty sessions, held at Bixford, Suffolk, April 26th, 1867, an information,

under 3 & 4 Vict. c. 61. s. 13 (1), was preferred, by Charles Schofield, Superintendent of Police, against John Deal, a licensed seller of beer by retail, not to be drunk on the premises where sold, for having, on the 10th of April, 1867, at Assington, in Suffolk, unlawfully sold beer, to wit, one pint of beer, to be consumed in or upon the house or premises where sold without being duly licensed so to do.

The facts deposed to were as follows: On the night of the 10th of April inst., about eight o'clock, police constable Barnard was on duty in Assington parish in plain clothes, and went to the co-operative stores kept by the defendant, who also sells beer on the same premises, "not to be

(1) The act 4 & 5 Will. 4. c. 85. recites that much evil has arisen from the management and conduct of houses in which beer and cyder is sold by retail under the provisions of 1 Will. 4. c. 64, intituled "An Act to permit the general sale of beer and cider by retail in England, and it is expedient to amend the provisions of the said act in certain particulars."

By section 4, If any person licensed to sell beer or cider not to be consumed on the premises shall, with intent to evade the provisions of this act, take or carry, or authorize or employ, or permit or suffer any person to take or carry any beer or cider out of or from the house or premises of such licensed person for the purpose of being sold on his account, or for his benefit or profit drunk or consumed in any other house, or in any tent, shed or other building of any kind whatever belonging to such licensed person, or hired, used or occupied by him, such beer or cider shall be deemed and taken to have been drunk and consumed upon the premises, and the person selling the same shall be subject to the like forfeitures and penalties as if such beer or cider had been actually drunk or consumed in any house or upon any premises licensed only for the sale thereof as aforesaid.

By 3 & 4 Vict. c. 61, "An Act to amend the acts relating to the general sale of beer and cider by retail in England," s. 13, If any person not being duly licensed to sell beer or cider, shall retail any beer or cider, either to be consumed in or upon the house or premises, or off the premises where sold, or if any person shall sell any beer or cider to be consumed in or upon the house or premises where sold, without being duly licensed so to do, such person shall, in addition to any Excise penalty to which he may thereby become subject, forfeit 5*l.*, such penalty to be recovered in the same manner as any other penalties (not being Excise penalties) are by the said recited acts or this act to be recovered, levied and applied. Provided always that no information or other proceeding for the recovery of the said penalty shall be exhibited or commenced except by and in the name of a constable or other officer of the peace.

drunk on the premises." The police constable went to the window (which was shut) on the right hand side of the door and tapped at it. The man in charge of the house opened the window, and the police-constable asked him for a pint of beer, and for which the police-constable paid him 1½d. The storekeeper gave the beer in a pint mug into the policeman's hands, who stood as close to the window as he could and drank part of it, and afterwards, in the presence of the storekeeper, sat down on the window-sill and drank the remainder of the beer, the window remaining open all the time. While the policeman was drinking the beer another man came up and asked for a pint of beer, which was supplied by the storekeeper through the window, and the policeman saw the man pass something to the storekeeper as if in payment, and the man stood about a yard from the window and drank the beer.

There is no mark or boundary of any kind between the window and the road, the space between being about three yards; but on the other side of the door of the adjoining house, and which is occupied by another tenant, a space of about two yards wide in front of the window is inclosed from the road.

The storekeeper (a man in the employment of the appellant) told the policeman, in reply to something he had said, that the appellant was not at home, and that he, the storekeeper, was not aware that he had sold the beer to be consumed on the premises, that he considered he had not done so.

It was admitted that the mug in which the beer was supplied was the appellant's. Upon these facts the appellant's attorney contended that the beer was sold and the transaction completed, so far as the appellant was concerned, immediately the beer was paid for and handed to the policeman, who was upon the highway and not upon the appellant's premises at the time, and that he, the appellant, was not responsible for what was done with the beer afterwards, and referred to 4 & 5 Will. 4. c. 85. s. 4. as defining what is a sale upon the premises. The Justices being of opinion that the sale of beer in the mug of the housekeeper, at the place stated in the evidence, for immediate consumption, with the evident sanc-

tion of the servant, was an offence under 3 & 4 Vict. c. 61. s. 13, and contrary to the spirit of 4 & 5 Will. 4. c. 85. s. 4, convicted the appellant and ordered him to pay a penalty of 2s. 6d. and 7s. 6d. costs. The appellant being dissatisfied with this decision, applied for a case to be stated, which was accordingly done. The question being whether the beer was sold under such circumstances as to constitute a sale on the premises, within the meaning of 4 & 5 Will. 4. c. 85. s. 4. and 3 & 4 Vict. c. 61. s. 13.

Metcalfe, for the respondent.—The conviction was right. The beer was sold in such a manner that it would ordinarily be considered as sold to be consumed on the premises. If it be lawful for unlicensed persons to sell beer in this manner, the roads will be blocked up, and the nuisance greater than if the beer were drunk inside the house. In *Cross v. Watts* (2), where the defendant had a licence to sell beer off his premises, but no licence to sell it upon them, and his wife brought beer from the house in mugs or drinking cups to men sitting on a bench just outside the street door, it was held that the conviction was a proper one, and that the beer must be considered as drunk on the premises.

[*COCKBURN, C.J.*—There is nothing to shew that the appellant or his servant knew that the man to whom the beer was sold intended to drink it immediately.]

The Justices found that the beer was sold for immediate consumption.

Hance, for the appellant, was not heard.

Per Curiam (3).—It is impossible to say that the beer was sold under circumstances which would entitle the Magistrates to say that it was "consumed on the premises" within the meaning of the act.

Conviction quashed.

Attorneys—Doyle & Edwards, agents for Henry Jones, Colchester, for appellant; B. W. & V. Powys, agents for R. Almack, Melford, for respondent.

(2) 13 Com. B. Rep. N.S. 239; a.c. 32 Law J. Rep. (N.S.) M.C. 73.

(3) Cockburn, C.J. and Lush, J. Mellor, J. had left the Court.

[IN THE COURT OF QUEEN'S BENCH.]

1867. { THE CHURCHWARDENS OF ST.
Nov. 9. { GEORGE, HANOVER SQUARE,
 { appellants; THE GUARDIANS
 { OF THE CAMBRIDGE UNION
 { respondents.

*Poor—Settlement by Payment of Taxes—
Payment of Property-Tax—5 & 6 Vict.
c. 35. Schedule (A.)*

*A pauper gains a settlement in the parish
wherein he has been assessed to and paid
property-tax, according to 5 & 6 Vict. c. 35,
Schedule (A.)*

By an order of Justices for the borough of Cambridge, three children of James Legge, who had deserted them, and whose place of abode was unknown, being inhabiting in and chargeable to the common fund of the union, were adjudged to be legally settled in the parish of St. George, Hanover Square, and ordered to be removed from the Cambridge Union.

Upon appeal to the Cambridge Quarter Sessions against this order, the following CASE was stated for the opinion of the Court, pursuant to 12 & 13 Vict. c. 45. s. 11:

James Legge (the father of the paupers) rented a tenement, consisting of a separate and distinct dwelling-house, being No. 11, Hanover Street, Pimlico, in the appellant parish for one year, namely, from Michaelmas, 1863, to Michaelmas, 1864, at the rent of 42*l.*, subject to the tenancy being determined at a quarter's notice. James Legge entered into the occupation of this tenement, and occupied it under the rental and resided there during the whole year. The rent of 42*l.* was duly paid by him. The rates for the relief of the poor of the appellant parish were and are made annually, viz., from Lady Day of one year to Lady Day of the following year. At Lady Day, 1864, the name of James Legge, the tenant, appears in the poor-rate book of the appellant parish, and he was duly assessed and rated therein in respect of his tenement, but no portion of the rate was paid by him. In the assessment for the year ending the 5th of April, 1865, made under the acts of parliament for the assessment of occupiers of property to the pro-

perty and income tax, the name of James Legge, the tenant, appears; and upon the 3rd of June, 1864, he paid to William Blackbourne, the collector of taxes appointed to receive the same, the sum of 1*l.* 3*s.* 4*d.*, being four quarters' duty or income-tax for the year ending the 5th of April, 1864, which became due on the 20th of March, 1864, under schedule (A.), for and in respect of the tenement before mentioned, and which sum of 1*l.* 3*s.* 4*d.* was subsequently allowed and paid by the landlord of the premises to James Legge by deduction from the rent of 42*l.*

If the Court of Queen's Bench is of opinion upon the facts above stated that James Legge gained a legal settlement in the appellant parish under the statute 3 W. & M. c. 11. s. 6, by virtue or in consequence of the payment of the sum of 1*l.* 3*s.* 4*d.*, the order of the Justices is to be confirmed; if otherwise, to be quashed, and a judgment in conformity with the decision of the Court may be entered on motion by either party at the Sessions next or next but one after the decision.

Mayd (O'Malley with him), for the respondents.—The simple question is, whether a settlement is gained under 3 W. & M. c. 11. s. 6. (1), where the pauper has been assessed to and paid property-tax under 5 & 6 Vict.

(1) By the 3 W. & M. c. 11. s. 6, "If any person who shall come to inhabit in any town or parish, shall for himself and on his own account execute any public annual office or charge in the said town or parish during one whole year, or shall be charged with or pay his share towards the public taxes or levies of the said town or parish, then he shall be adjudged and deemed to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required."

By the 5 & 6 Vict. c. 35, the duties to be levied under Schedule (A.) are, for all lands, tenements and hereditaments or heritages in Great Britain there shall be charged yearly, in respect of the property thereof for every 20*s.* of the annual value, the sum of 7*d.*

By No. IV.—"Rules and Regulations respecting the said Duties—First, all properties chargeable to the duties in Schedule (A.) shall be charged in the parish or place where the same are situate, and not elsewhere, except as hereinafter is excepted." Ninth, "The occupier of any lands, tenements, here-

D

c. 35, Schedule (A.). It is submitted that by such an assessment the pauper is charged with and pays his share towards the public taxes or levies of the parish. He is assessed to the property-tax, and payment of it demanded from him. The duties are charged in the parish where the property is situated.

[COCKBURN, C.J.—You say that persons paying this tax must be looked upon as *prima facie* both owners and occupier.]

It has repeatedly been held that all that is required to give a settlement under this

ditaments or heritages, being tenant of the same, and paying the said duties, shall deduct so much thereof in respect of the rent payable to the landlord for the time being (all sums allowed by the Commissioners being first deducted) as a rate of 7d. for every 20s. thereof would by a just proportion amount unto, which deduction shall be made out of the first payment thereafter to be made on account of rent; and the receivers of Her Majesty, and all landlords, both mediate and immediate, their respective heirs, executors, administrators and assigns, according to their respective interests, and their respective receivers or agents, shall allow such deduction upon receipt of the residue of the rent.

By No. IX. —“Rules for charging the said Duties under Schedules (A.) and (B.)—First, the said duties, except where other provisions are made as aforesaid for estimating particular properties, shall be estimated according to the general rule contained in Schedule (A.), and shall be charged on and paid by the occupier for the time being, his executors, administrators and assigns.”

By section 37, officers for receipt of land-tax and assessed taxes, and the inspectors and surveyors of assessed taxes, are to act in the execution of this act, and to have the like powers as under the assessed taxes.

By section 78, “No contract, covenant or agreement between landlord and tenant, or any other persons, touching the payment of taxes and assessments to be charged on their respective premises, shall be deemed or construed to extend to the duties charged thereon under this act, nor to be binding contrary to the intent and meaning of this act; but all such duties shall be charged upon and paid by the respective occupiers subject to such deductions and repayments as are by this act authorized and allowed; and all such deductions and repay-

section is that the parish should rate the pauper so as to shew that they are aware that he is in the parish, and that he should pay on such rating—*The King v. Stapleton* (2). In *The King v. Bramley* (3) it was held that a settlement might be gained by being charged to and paying land-tax, although the statute required that the tax should be repaid by the landlord, Lord Hardwicke saying, “The great difficulty has been, whether the legislature did not mean parochial taxes; but this has long since been gotten over, and the land-tax has been holden to be within the act from the notice of habitancy that arises by the parties being assessed and paying it.” This principle is also recognized in *The King v. Christchurch* (4) and *The King v. Mitcham* (5). The same arguments must apply to the property-tax.

D. D. Keane (*F. T. Streeten* with him), for the appellants.—The father of the paupers did not pay his share of the public taxes within the meaning of the act. With regard to the decisions as to payment of land-tax giving notice of habitancy, it would seem that this impost must have been collected by the parish officers, otherwise there would have been no notoriety.

[MELLOR, J.—In the case of land-tax the parish is not assessed.]

The property-tax is collected by a different machinery from that of the land-tax. By the 5 & 6 Vict. c. 35, s. 36. the appointment of assessors to collect this impost is vested in a body of independent Commissioners. Again, it cannot be said in the present case that the father of the paupers paid the tax. By section 73. of the last-mentioned act contracts between landlords and tenants affecting the statutory liability of the landlord are void, and the landlord must be looked upon as the party actually paying. If the wife of a pauper were to pay for him without his knowledge, he could not

ments shall be made and allowed accordingly, notwithstanding such contracts, covenants or agreements.”

(2) *Burr. S.C.* 649.

(3) *Ibid.* 75.

(4) 8 B. & C. 660.

(5) *Cald.* 276.

(6) 8 East, 383.

be said to pay.—He cited *The King v. Axmouth* (6) and *The King v. Okehampton* (7).

COCKBURN, C.J.—I am of opinion that our judgment must be for the respondents, and that a settlement was gained within the meaning of the 3 W. & M. c. 11. s. 6. by the payment of property-tax. With regard to the question as to notice of habitancy, I see no material distinction between payment of property-tax and payment of land-tax. It may be that what the Courts have thought sufficient evidence that parishes have received notice of habitancy is in fact insufficient, but it has beyond any doubt been decided in *The King v. Axmouth* (6) that any one who is charged to and pays the land-tax in a parish gains a settlement there. And in *The King v. Christchurch* (4) the principle of the former decision is recognized and explained, Bayley, J. saying that the land-tax was held to be within the act from the notice of inhabitancy that arose from the party's having been assessed to and paid it. Whether these cases were well or ill decided, we should be going contrary to the principles upon which this Court has acted, if we disturbed the law on the subject of the settlement of the poor. The land-tax has not been collected by parochial officers, but by officers appointed by the Commissioners of Land-tax; and by section 37. of the Property-Tax Act, officers for the receipt of land-tax and assessed taxes, and inspectors and surveyors of assessed taxes, are to act in the execution of the act, which serves to strengthen the analogy between the two cases. For these reasons, I think that the settlement was proved.

MELLOR, J. and LUSH, J. concurred.

Judgment for the respondents.

Attorneys—Capron, Dalton & Hignins, for appellants; Doyle, agent for Fetch, Cambridge, for respondents.

[IN THE COURT OF QUEEN'S BENCH.]

1867. { WAITE, appellant, THE GAR-
Nov. 9. { STON LOCAL BOARD OF
HEALTH, respondents.

Local Board of Health—By-laws—Dwelling-house not to be erected without a Back Street or Roadway—Local Government Act (21 & 22 Vict. c. 98), s. 34.

A local board of health, purporting to act under the Local Government Act (21 & 22 Vict. c. 98), s. 34,—which enables local boards to make by-laws with respect to the level, width and construction of new streets, and provisions for the sewerage thereof, and with respect to the drainage of buildings, to water-closets, privies, ashpits and cesspools in connexion with buildings,—made a by-law as follows: "No dwelling-house shall be hereafter erected, without having at the rear or side thereof a good and sufficient back street or roadway, at least twelve feet wide, communicating with some adjoining public street or highway, in such situation as shall be approved by the local board, for the purpose of affording efficient means of access to the privy or ashpit belonging to such house; and every plan which shall be left at the office of the local board, in pursuance of the 64th by-law, shall shew the position, width and direction of such roadway as intended to be made, and its mode of communication with adjoining streets or highways: provided always, that it shall be lawful for the local board, at their discretion, in special cases, to modify the requirement hereinbefore contained, and to dispense with strict compliance with the terms of this by-law on such conditions as they may deem fit and reasonable":—Held, that the by-law was unreasonable, and could not be enforced by the board, as it imposed a general and unnecessary restriction upon the building of all houses, instead of being limited to the particular nuisances which it was the object of the statute to prevent.

CASE stated by Magistrates under 20 & 21 Vict. c. 43. The material part of the case was as follows:

The defendant was summoned before the Magistrates by the Garston Local Board of Health for an alleged breach of a by-law

made by the board under the powers of the Public Health Act, 1848, and the Local Government Act, 1858.

The by-law referred to is No. 1. of the by-laws passed on December 5, 1865, and is in these words: "No dwelling-house shall be hereafter erected without having at the rear or side thereof a good and sufficient back street or roadway, at least twelve feet wide, communicating with some adjoining public street or highway, in such situation as shall be approved by the local board, for the purpose of affording efficient means of access to the privy or ashpit belonging to such house; and every plan which shall be left at the office of the local board, in pursuance of the 64th by-law, shall shew the position, width and direction of such roadway as intended to be made, and its mode of communication with adjoining streets or highways: provided always, that it shall be lawful for the local board, at their discretion, in special cases, to modify the requirement hereinbefore contained, and to dispense with strict compliance with the terms of this by-law on such conditions as they may deem fit and reasonable."

The defendant was summoned for having, after the working and passing of the by-law, erected a dwelling-house without leaving at the rear or side thereof a good and sufficient back street or roadway, at least twelve feet wide, communicating with some adjoining public street or highway, in a situation approved by the local board, for the purpose of affording efficient means of access to the privy or ashpit belonging to such house. The facts were not disputed. It was admitted on the part of the defendant, that he had erected the house as alleged, without any back street or roadway, except a passage four feet in width; and that the plan submitted by him previous to the erection of the house, and after the passing and confirmation of the by-law, had been disapproved on that account by the local board; but it was contended, on his behalf, that the by-law was invalid and illegal, by reason of its not having been made with respect to any of the matters mentioned in section 34. of the Local Government Act, 1858, but for another purpose not authorized by that act, or the

Public Health Act, 1848; and also that the board had not, under these acts, the power to require any passage or back street to be made or left at the rear of any house or other building, or to require any alteration to be made in the width of any such passage or back street, if the owner of such house or other building proposed to make or leave such.

No streets or passages were actually formed on the land at the time of the making of the by-law (December 5, 1865), nor had the defendant at that time commenced to build.

The Magistrates convicted the defendant, and imposed upon him a penalty, with costs.

If the Court should be of opinion that the defendant was bound to comply with the requirement of the by-law, the conviction was to be affirmed; if otherwise, to be reversed.

J. A. Russell, for the respondents.—The material question is, whether the by-law set out in the case is a valid one. By the Local Government Act, 21 & 22 Vict. c. 98. s. 34 (1), any local board has power to make by-laws with respect to waterclosets, privies, ashpits and cesspools in connexion with buildings; and the object of this by-law appears to be to afford ready access to houses for the purpose of emptying and cleansing these conveniences, and to prevent

(1) By the Local Government Act (21 & 22 Vict. c. 98), s. 34, "The 53rd and 72nd sections of the Public Health Act, 1848, shall be repealed; and in lieu thereof, be it enacted as follows: Every local board may make by-laws with respect to the following matters; (that is to say,) (1.) With respect to the level, width and construction of new streets, and the provisions for the sewerage thereof; (2.) With respect to the structure of walls of new buildings for securing stability and the prevention of fires; (3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings; (4.) With respect to the drainage of buildings, to waterclosets, privies, ashpits and cesspools in connexion with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation."

the refuse from being carried through the public streets.

[LUSH, J.—If a house is provided with waterclosets, it ought not to be subject to such a regulation.]

The by-law enables the board to dispense with strict compliance with the terms of it in special cases.

[LUSH, J.—If the enactment goes beyond the statutory powers, the proviso will not cure it. It is in its terms absolute.]

R. G. Williams, for the appellant, was not heard.

COCKBURN, C.J.—I think that the by-law is bad, and that it goes beyond the powers of the act. If a field were laid out in building lots, not a house, according to this by-law, could be built unless a back street or roadway were provided; although it might be intended to be provided with a watercloset.

LUSH, J.—If the by-law had provided that no privy, &c. should be constructed without a back street or roadway, it might have been good; but it says that no house shall be erected without having such a back street or roadway.

Conviction quashed.

Attorneys—Wright & Venn, agents for Atkinson, Bartlett & Atkinson, Liverpool, for appellant; Eyre & Lawson, agents for Garnett & Lloyd, Liverpool, for respondents.

[IN THE COURT OF QUEEN'S BENCH.]

1867. }
Nov. 20. } THE QUEEN v. DAMARELL.

Bastardy—Service of Summons—Last Place of Abode—Absence Abroad—7 & 8 Vict. c. 101—Certiorari.

On the 3rd of October E. F. applied for and obtained a summons against D, as the father of a bastard child of which she was then pregnant, and which was born on the 29th. On the 4th, the summons was left at a house in which D. had lived up to the 1st, upon which day he went away to go to America. He sailed on the 14th, and did not hear anything of the proceedings till about two

months after he arrived in America. On the 6th of December E. F. appeared in support of the summons, and, after hearing the case, the Justices made an order adjudicating D. to be the father of the child, and ordering him to pay money for its maintenance. The order recited that it was proved that the summons had been duly served, the same having been left at the last place of abode. The defendant having returned to England, the order was brought up by certiorari for the purpose of being quashed:—Held, that this Court could not interfere, there being nothing to shew that the order was illegal, although the defendant had had no opportunity of objecting to its being made.

Rule calling upon Emma Fish, the prosecutrix, to shew cause why an order of Justices adjudging the defendant to be the putative father of the bastard child of the said Emma Fish, and ordering him to pay her certain sums of money, should not be quashed for the insufficiency thereof.

It appeared from the affidavits that, upon the 3rd of October, 1866, Emma Fish obtained from a Justice of the Peace a summons against the defendant to appear at a petty sessions to be holden at Stratton, in the county of Cornwall, on the 6th of December, to answer a complaint against him as being the father of a bastard child of which she was then pregnant. The summons was granted and was delivered into the hands of a constable for service upon the defendant, who took it on the 4th to a house at Tetcott where the defendant had been residing up to the 1st of the same month, upon which day he left the house intending to go to America. He obtained a ticket for his voyage at Plymouth on the 12th, and he sailed on the 14th. The constable, being informed that the defendant had left the house, gave the summons to the wife of the person who occupied the house, and left it with her. Upon the 6th of December Emma Fish attended at the petty sessions, and the Justices, after hearing the evidence offered in support of the application, made an order adjudging the defendant to be the putative father of the child, and ordering him to pay to her 5s. a week. The order contained, among other recitals, the following: "And whereas the

said John Damarell having been duly served with the said summons, the same having been left at his last place of abode, six days at least before this day, as is now proved before us."

After the defendant had been in America some two months, he was informed that the order had been made, the child having been born on the 29th of October. He had no knowledge of the summons being applied for or issued before he was so informed of it. He swore that for twelve months and upwards before the 29th of October he had no carnal connexion with Emma Fish; but upon this point he was strongly contradicted by the affidavits of Emma Fish and others. He returned to England in March of the present year, and then obtained a *certiorari* to bring up the order for the purpose of having it quashed.

J. O. Griffiths shewed cause against the rule.—(He first objected that the rule did not specify any omission or mistake in the order as required by section 7. of the 12 & 13 Vict. c. 45, and called attention to the remarks of Mellor, J., in *The Queen v. Purday* (1); but the Court overruled the objection on the ground that the order did not appear to be objected to on the ground of any omission or mistake.) The question to be determined is, whether the Court has any power to interfere, even if it should be of opinion that the Justices might more properly have given a contrary decision. The order recites that it was proved to them that the defendant had been duly served with the summons by its being left at his last place of abode. Such service is sufficient under section 3. of the 7 & 8 Vict. c. 101, which enacts, "that after the death of such bastard child, on the appearance of the person so summoned, or on proof that the summons was duly served on such person, or left at his last place of abode six days at least before the petty sessions, the Justices . . . may adjudge," &c. It is clear upon these words that the Justices had power to enter upon the inquiry and to decide whether it was proved that the summons had been left at the last place of abode of the alleged father. They have decided it, and rightly; but even if they

were wrong, this Court could not interfere.—(He was then stopped.)

Kingdon, in support of the rule.—This order has been made behind the back of the defendant, when he had no knowledge of there being any charge against him. Such a proceeding is against natural justice, and this Court will set the order aside. *The Queen v. Davis* (2) was a similar case in some respects, and there the rule for a *certiorari* was refused; but upon the ground that there was nothing in the affidavits to shew that the charge was unfounded. Here the defendant swears that he had no connexion with Emma Fish for more than a year before the child was born, so that the child could not be his unless he has sworn falsely. The real question is, whether the alleged father is in England, or in a position to appear and answer the summons. Here it was impossible that the defendant could appear, as he knew nothing about the proceeding, and was out of the country.—He also referred to *Saunders on Affiliation*, and to cases cited therein.

COCKBURN, C.J.—The Court is bound by the words of the 3rd section.—[His Lordship read them.]—The proof was sufficient that the summons had been left at the last place of abode of the defendant. Mr. Kingdon asks us to put a qualification upon those words, but I do not see how we can do so. It is very true that the order has been made behind the back of the defendant, when he was on his passage to America, or when he had arrived there, which is certainly more or less inconsistent with natural justice, he having no opportunity of being present at the hearing of the case before the Justices; but, on the other hand, when we remember that the woman is limited to a period of twelve months from the birth of the child within which she must make her application, so that if the father absent himself for that period her remedy against him under this statute would be gone, we cannot but see that it would be most inconvenient to hold that the order could not be made by the Justices. The legislature is in fault in not making provision for the case where the

(1) 34 Law J. Rep. (N.S.) M.C. 4.

(2) 22 Law J. Rep. (N.S.) M.C. 143.

father is in such a position, that he should have an opportunity, on his return to England, of shewing that the case ought to be re-opened, or else in not providing that where it is necessary that the service should be effected by leaving the summons at the last place of abode of the alleged father, the time should be extended within which the mother should be at liberty to make the application. By either of such provisions, the present inconvenience might have been obviated; but the statute does not contain any such provision, and we can only decide the question upon the words of the statute. We have only to see whether the summons was shewn to have been left at the last place of abode of the defendant; and when we look at the facts, we find that that cannot be disputed, for the defendant had no place of abode subsequent to the one at Tetcott, which he left before going to America. The decision of the Justices is, therefore, within the very terms of the statute.

MELLOR, J.—I am of the same opinion. I have had considerable difficulty in reconciling with the principles of justice that a man may be convicted without having had any opportunity of shewing that the conviction ought not to have taken place. But we must look at the particular nature of the offence and the circumstances of the case, and then we find that the Justices have embarked upon the inquiry, and that, though the defendant swears that he had no connexion with the woman for twelve months, she swears the contrary. The case was one which the Justices had to consider, and the proof was before them. I think that the safest way is to abide by the words of the statute.

LUSH, J.—I do not think that we have any jurisdiction to set this order aside, unless we see that it was one which ought not to have been made. The statute does not contain any provision to meet the case of a man who is gone abroad, and is out of the way of being served with the summons. The Justices are, upon proof of the summons being left at the last place of abode, to proceed to adjudicate; they do adjudicate; and what jurisdiction have we to say that they are wrong in making the order? It would be a hardship upon the

mother, if we were to quash the order; and I see nothing to shew that it has been illegally made.

Rule discharged.

Attorneys—Vizard, Crowder & Co., agents for A. B. C. Coham, Holworthy, for prosecution; Coode, Kingdon & Cotton, agents for T. Floud, Exeter, for defendant.

[IN THE COURT OF QUEEN'S BENCH.]

1867. }

Nov. 25. }

THE QUEEN v. PRATT.

Footpath, Driving upon—Conviction—General Highway Act (5 & 6 Will. 4. c. 50), s. 72.

Under the 72nd section of the General Highway Act, "if any person shall wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers; or shall wilfully lead or drive any horse, ass, sheep, mule, swine or cattle, or carriage of any description, or any truck or sledge upon any such footpath or causeway," he shall for every such offence forfeit and pay any sum not exceeding 40s. over and above the damages occasioned thereby:—Held, that this enactment does not apply to the case of a footpath simpliciter, but only to such a footpath as is by the side of a road made, &c.

Rule calling upon the prosecutors to shew cause why the conviction should not be quashed.

It appeared that on the 27th of July in the present year the defendant was convicted by two Justices of the borough of Aldeburgh, for that he "unlawfully and wilfully did drive a certain carriage and two horses in, upon and along a certain public footpath there situate, called "the Craig Path," that is to say, between the Moot Hall and Collia's workshop, contrary to the statute, &c., and was adjudged to pay the sum of 2*l.* and certain costs.

It appeared from the affidavits, that the Craig Path was, till within the last ten or twelve years, rough shingle, and formed part of the beach fronting the German Ocean; that it was then improved by the

inhabitants of Aldeburgh; that it was wide enough for carriages to pass along, and had been used for carriages by persons driving to and from the several houses on the west side, and for carts and horses to deliver coals and other articles thereat. The conviction was under the 72nd section of the General Highway Act, but the "Craig Path" was not a footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers, nor is there any road whatever by the side of or near to the "Craig Path."

Keane and *Metcalf* shewed cause against the rule.—By the 72nd section a penalty is imposed "if any person shall wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers; or shall wilfully lead or drive any horse, ass, sheep, mule, swine or cattle, or carriage of any description, or any truck or sledge upon any such footpath or causeway." The words "such footpath" mean any footpath, although it be not by the side of a road, or a causeway by the side of any road, made or set apart for the use and accommodation of foot passengers. In the 5th section, the interpretation clause, the word "highways" is to be understood to mean amongst other things footways and also causeways. The "Craig Path" was clearly a footpath, and the conviction was right.

Hayes, Serj., in support of the rule, was not heard.

COCKBURN, C.J.—The 72nd section in question is very clear, and it follows from the construction which we put upon it that this rule must be made absolute.—[His Lordship read the part of the section above set out.]—The "Craig Path" is not a footpath by the side of any road, and therefore is not within this section. We must take it that it was a highway for foot passengers, and that the defendant drove his carriage and horses upon it: but we must also take it that it was not by the side of any road. It is said that the provision was intended to apply to the case of persons riding or driving along any footpath, but I think not, and it seems to me that if that had been intended, the language would have been, "upon any footpath, or upon any causeway by the side,"

&c. I cannot imagine that the legislature meant to make the act of riding upon any footpath whatever punishable under a penalty. There are many footpaths which are entirely upon grass, and it would be in many cases no injury to anybody if a person was to drive or ride along them. It would certainly be very inconvenient if a person was to be liable to this penalty if he merely rode upon such a path. The provision was intended to prevent persons from riding or driving upon, and thus injuring, footpaths and causeways by the side of roads upon which they might have ridden or driven, and endangering the safety of the foot passengers. Upon the terms of the act and upon principle I come to the conclusion that the penalty only attaches when the person rides or drives along a footpath or causeway which is by the side of a road.

MELLOR, J.—I am of the same opinion. It seems to me clear that the provision in this section was not intended to apply to footpaths *simpliciter*, but only to such as are by the sides of roads, and where persons wantonly ride or drive along them.

LUSH, J.—I was at first a good deal struck by the phraseology of the section, but when I consider the consequences of following out the construction which is contended for by the prosecution, I come to the conclusion that that cannot be the right construction, and that the footpath intended by the legislature was one which was by the side of a road. In the latter part of the clause which we have to construe mention is made of leading or driving any horse, sheep, &c. upon any such footpath or causeway. If this penalty could be imposed in the case of every footpath, it could be imposed upon every person who being the owner drove a sheep, &c. along a footpath. That cannot have been intended; and the only other construction is, that it applies only to cases where the footpath or causeway is by the side of a road.

Rule absolute.

Attorneys—*J. R. Wood*, for prosecution; *R. Southie*, for defendant.

[IN THE COURT OF QUEEN'S BENCH.]

1868. { THE QUEEN, on the prosecu-
 Jan. 18. { tion of THE VESTRY OF ST.
 { GEORGE, HANOVER SQUARE,
 { v. M'CANN AND ANOTHER.

Poor-Rate—Commissioners of Works and Public Buildings incorporated for constructing Public Works—Servants of the Crown—Consolidated Fund—Beneficial Occupation—Chelsea Bridge—Mandamus.

*The Commissioners of Her Majesty's Woods and Forests were, by act of parliament, incorporated for the purpose of making a bridge over the Thames, which had been recommended by the Commissioners for improving the metropolis, and the plans of which had been approved of by the Commissioners of the Treasury. Power was given to obtain an advance of money from the Consolidated Fund, such advance to be repaid out of the money collected by way of tolls which the corporation were authorized to take by means of toll-houses and collectors to be established on the bridge. These tolls were to be applied, first, in payment of all expenses of management and collection of the tolls; secondly, in maintaining the bridge; thirdly, in repayment of the money advanced; and the surplus, if any, was to form a fund for such metropolitan improvement as the legislature should determine. By a subsequent act, this provision as to the surplus was repealed, and it was provided that when a sum of 80,000*l.* and interest had been paid off, no toll should be demanded in respect of foot-passengers. The bridge was built and vested in the Commissioners, and the tolls taken exceeded the cost of maintaining the bridge. 13,500*l.* of the 80,000*l.* advanced had been repaid, and not more than 2,500*l.* towards the said sum of 13,500*l.* was received from the tolls and proceeds of the bridge. The Commissioners were assessed in a rate for the relief of the poor of the parish, in which part of the bridge and its approaches was situate:—Held, that they were not liable, their only occupation being as servants of the Crown, and the work, although a local and private object, being de facto done by servants of the Crown and with the funds of the Crown.*

Mandamus to the defendants, Justices of the county of Middlesex.

NEW SERIES, 37.—MAG. CAS.

1. Whereas, by an act passed in the 9th and 10th years of our reign, entitled 'An act to enable the Commissioners of Her Majesty's Woods to construct an embankment and roadway on the North shore of the River Thames from Battersea Bridge to Vauxhall Bridge, and to build a Suspension Bridge over the said River, at or near Chelsea Hospital with suitable approaches thereto, including a Street from Lower Sloane Street to the northern extremity of the Bridge,' it is, amongst other things, recited that the Commissioners appointed by us to inquire into and consider the most effectual means of improving the Metropolis and of providing increased facilities of communication between the same, did by their report, made on the 23rd of July, 1845, recommend, amongst other things, the construction of a suspension bridge across the river Thames between Battersea and Vauxhall bridges, from a point near Chelsea Hospital, on the north side, to a point near the public house, called the Red House, on the south side, and also recited that the Commissioners of our Woods, Forests, Land Revenues, Works and Buildings had caused surveys, plans and designs to be made of the said intended bridge and the approaches thereto, and that such surveys, plans and designs had been approved by the Commissioners of our Treasury.

2. And whereas, by the same act, by section 1, the Commissioners of our Woods, Forests, Land Revenues, Works and Buildings for the time being are to be and are thereby constituted a corporation, by the name and style of "the Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works and Buildings," in order to enable them to execute and carry into effect the several powers and purposes of that act, and amongst such powers and purposes, the power and purpose of building the said bridge, and by that name for such purposes are to have perpetual succession and use a common seal, and sue and be sued, implead and be impleaded, and take lands and hereditaments, to them and their successors for ever, for the purposes of such act.

3. And whereas, by the same act, by section 2, the Lord High Treasurer, or the Commissioners for executing the office of Lord High Treasurer, are empowered for

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the purposes of that act to authorize the Commissioners for issuing Exchequer Bills for Public Works, to advance and lend to the Commissioners for executing such act any sum or sums of money in Exchequer bills, not exceeding in the whole the sum of 120,000*l.*, the repayment of such advances to be secured by an assignment of, amongst other tolls and moneys, the tolls of the said bridge thereafter authorized to be taken, which tolls the Commissioners for executing such act are thereby empowered to assign accordingly.

4. And whereas, by the same act, by section 3, the Commissioners for executing the same were, upon certain terms and under certain conditions therein stated, empowered to construct and complete a bridge across the said river Thames at the place and from and to the respective points hereinbefore mentioned, with convenient approaches thereto, together with convenient piers, stairs, hard, and landing-places, in manner and according to the surveys, plans and designs aforesaid. And such bridge, when so erected, together with the approaches thereto, was to be kept in repair by the Commissioners for executing such act out of the tolls and other moneys coming to them under such act.

5. And whereas, by the same act, by section 9, the Commissioners for executing the same were empowered to appoint such and so many clerks and other officers and persons as they should deem necessary to employ in the execution of the same, and from time to time to remove them, or any of them, and to allow to such clerks and other officers such salaries and allowances as to the said Commissioners should seem meet and be approved of by the Lord High Treasurer, or the Commissioners for executing the office of Lord High Treasurer.

6. And whereas, by the same act, by section 64, the Commissioners for executing such act are empowered to erect a toll-gate or bar, or toll-gates or bars, on the said bridge, and from time to time to remove such gate or gates, bar or bars, and erect others in lieu thereof, and to erect and maintain from time to time such toll-houses or other conveniences near such toll-gate or gates, bar or bars, as they shall think fit, and to take and demand tolls at such gate or gates, bar or bars, by such person

or persons as the said Commissioners should from time to time appoint before any foot-passenger, or any horse, mule, ass or other beast, or any coach, cart or other vehicle, should be permitted to pass or return over or on to the said bridge.

7. And whereas, by the same act, by section 112, all tolls received by virtue of such act are to be applied by the said Commissioners for executing the same in payment of all expenses of the management and collection of the said tolls, and in the next place in keeping and maintaining (amongst other structural works and improvements) the said bridge, and in the next place in payment of all advances, costs and other expenses made or paid for by the State out of the Consolidated Fund, or otherwise in and towards the works and improvements thereby authorized to be made, and the surplus, if any, to form a fund for such metropolitan improvements as the legislature should determine.

8. And whereas by another act, passed in the 9th and 10th years of our reign, entitled 'An act to empower the Commissioners for the Issue of Loans for Public Works and Fisheries to make loans in money to the Commissioners of Her Majesty's Woods, in lieu of loans heretofore authorized to be made in Exchequer bills,' the Commissioners for the issue of loans for public works and fisheries for the time being are empowered to make loans to the Commissioners of our Woods, Forests, Land Revenues, Works and Buildings for the time being; and also to the said Commissioners (who are incorporated by several acts for effecting improvements in the metropolis) and their successors, in money in lieu of Exchequer bills.

9. And whereas by another act, of the 14th and 15th years of our reign, entitled 'An act to make better provision for the management of the woods, forests and land revenues of the Crown, and for the direction of public works and buildings,' it is recited (amongst other things) that it is expedient that the direction of Her Majesty's works and public buildings should be separated from the management of the possessions and land revenues of the Crown; and by such act (by section 1.) the person who may at the commencement of such act be the first

Commissioner of our Woods, Forests, Land Revenues, Works and Buildings is to be first Commissioner of our works and public buildings; and, further (by section 15), certain other persons are by virtue of their offices to be Commissioners of our works and public buildings conjointly with such first Commissioner, and with such person to be styled "The Commissioners of Her Majesty's Works and Public Buildings."

10. And whereas by the said last-mentioned act (by section 22.) the Commissioners or first Commissioner of our Works and Public Buildings for the time being are to perform and exercise all the duties and powers under the said first-mentioned act of the 9th and 10th years of our reign, which would have been performed and exercised by the Commissioners or first Commissioner for the time being of our woods, forests, land revenues, works and buildings if such act of the 14th and 15th years of our reign had not been passed, and such act is to apply to the Commissioners or first Commissioner of our Works and Public Buildings as if they had been originally named therein; and the said act of the 9th and 10th years of our reign, whereby the said Commissioners of Woods were constituted a corporation for (amongst other purposes of such act) the purpose of building the said bridge, is to be read and construed as if the Commissioners of our Works and Public Buildings had been thereby incorporated by the name of "The Commissioners of Her Majesty's Works and Public Buildings," and the perpetual succession, use of common seal and other rights and privileges and powers whatsoever thereby given to or vested in the Commissioners of our Woods, Forests, Land Revenues, Works and Buildings are to be deemed and construed to have been thereby given to and vested in the Commissioners of our Works and Public Buildings.

11. And whereas by the said last-mentioned act of the 14th and 15th years of our reign, all the lands, tenements, hereditaments and property whatsoever, which, at the commencement of such act, were vested in the Commissioners of our Woods, Forests, Land Revenues, Works and Buildings in a corporate capacity or otherwise, under or for the purposes of the

said first-mentioned act of the 9th and 10th years of our reign, are to be vested in the Commissioners of our Works and Public Buildings and their successors, in the like corporate capacity or otherwise as the case may require, alone or jointly, for the estate or interest and purposes, and subject to the rights and equities for and subject to which the same respectively were vested in the Commissioners of our Woods, Forests, Land Revenues, Works and Buildings.

12. And whereas, by an act passed in the 21st and 22nd years of our reign, entitled 'An act to amend the act of the 9th and 10th years of Her present Majesty, chapter 39,' and to abolish foot-passenger tolls on Chelsea Bridge after payment of the sum of 80,000*l.* and interest, it is (amongst other things) recited that the Commissioners for carrying the act of the 9th & 10th years of our reign into execution had borrowed upon certain securities from the Commissioners for the issue of loans for Public Works and Fisheries, &c., divers sums of money for the purpose of executing the works by that act authorized, which sums amounted in the whole to 80,000*l.*, which said amount, together with interest thereon, remained due and owing on the said securities on the 31st of March, 1858.

13. And whereas, by the same act (by section 1.) so much of the said act of the 9th and 10th years of our reign as directs that all the surplus (if any) of the moneys arising from tolls by that act authorized to be taken, rents for the same, or penalties, fines and forfeitures under that act, shall form a fund for such metropolitan improvements as the legislature shall determine and shall be applied accordingly, is repealed.

14. And whereas, by the same act (by section 2), when the said sum of 80,000*l.* and interest shall have been paid off no toll is to be demanded or taken for or in respect of foot-passengers passing over or on to the said bridge.

15. And whereas, under and by virtue of, and in accordance with the provision in that behalf of the several acts hereinbefore mentioned, or some or one of them, the said bridge had been constructed and completed with convenient approaches, piers, stairs, hardts and landing-places, in

manner and according to the said surveys, plans and designs, and was on or about the 29th of March, 1858, opened to the public.

16. And whereas, toll gates or bars were then erected, and have ever since been and still are maintained on the said bridge.

17. And whereas, under and by virtue of the said acts, or some or one of them, tolls have ever since been and still are taken and demanded by persons in that behalf duly appointed for and in respect of pedestrian and other traffic over and on to the said bridge, and such tolls, at the time of the making the rate hereinafter mentioned, exceeded and always *have exceeded the costs and expenses of keeping and maintaining the said bridge, and incidental thereto.*

18. And whereas the said moneys received, taken and demanded under and by virtue of the said several acts, or some or one of them, at the time of making the said rate, exceeded and have always exceeded in the aggregate the costs and expenses of keeping and maintaining the works and improvements done and made under and in pursuance of the powers and provisions of the said several acts or some or one of them.

19. And whereas the said bridge and approaches, and other works connected therewith and appurtenant thereto, on the completion thereof, became vested in, and have ever since been in the possession and under the control and management of the Commissioners of our Works and Public Buildings, in their said corporate capacity, under and by virtue and for the purposes of the said several acts, or some or one of them.

20. And whereas the said Commissioners of our Works and Public Buildings, so being such corporation as aforesaid, and in their said corporate capacity, before and at the time of making the said rate, were and still are *under and by virtue of the said several acts or some or one of them, and not otherwise,* beneficial occupiers of the said bridge and works appurtenant thereto, and as such occupiers, *under and by virtue of the said acts,* liable to be rated to the relief of the poor and for other purposes of the parish of St. George, Hanover Square, in the county of Middlesex.

21. And whereas, by a local act, passed in the 7th year of the late King George

the Fourth, intituled 'An act for the better paving, lighting, regulating and improving the parish of St. George, Hanover Square, within the liberty of the city of Westminster,' it is enacted (by section 58), that the vestry and overseers of the poor of the parish for the time being, or the major part of them, duly assembled, shall, in the month of March in every year, make a fair and equal formal rate upon all persons who do or shall occupy any lands, buildings or erections then built or thereafter to be built, and any lands or grounds whatsoever, or possess any rateable property within the said parish, for raising such sums of money as shall be necessary for defraying the expense of maintaining and employing the poor of the said parish, and all other expenses relating thereto.

22. And whereas, by the said local act (by section 71.) the said rates are to commence and take place on the 25th of March in every year, and be payable by equal quarterly payments, and be collected and received at the time after the expiration of thirty days from the commencement of the quarter; and in case any person shall refuse or neglect to pay the same for the space of seven days next after demand at his or her dwelling-house, or usual place of abode, the money which shall be so unpaid shall be levied and recovered by distress and sale of the goods and chattels of such defaulter, upon complaint to any Justice of the Peace of the district by warrant under the hand and seal of such Justice, together with all costs and charges incident to and attending such complaint, distress and sale.

23. And whereas by the Metropolis Management Act, 1855, the vestry of the said parish is incorporated by the name of "The Vestry of the Parish of St. George, Hanover Square, in the County of Middlesex."

24. And whereas part of the said bridge and the approaches and works belonging thereto, is situate within the parish of St. George, Hanover Square.

25. And whereas, under and by virtue of the said local act and the Metropolis Management Act, 1855, the said vestry of the parish of St. George, Hanover Square, in the county of Middlesex, on or about the 29th of March, 1866, made a rate in due form of law for the relief of the poor and

other purposes of such parish, in and by which rate the said Commissioners of our Works and Public Buildings were assessed, as occupiers of the said bridge, at the sum of 135*l.* 8*s.* 4*d.*, for and in respect of that part, and so much of the said bridge as is within the said parish.

26. And whereas, on or about the 20th of November, 1866, payment of the sum of 101*l.* 11*s.* 3*d.*, being the proportion of the said rate then due and unpaid, was duly demanded of the said Commissioners of our Works and Public Buildings, and payment thereof was refused and the same remains wholly unpaid.

27. And whereas, on or about the 10th of January, 1867, complaint thereof was made before one of our Justices of the Peace in and for the county of Middlesex, and thereupon a summons was issued in our name, commanding the said Commissioners of our Works and Public Buildings to be and appear on a day and time therein named at the Sessions House, in the Broad Sanctuary, Westminster, in the said county, before such two or more of our Justices of the Peace for the said county, as might then be there, to shew cause why they had not paid or refused or neglected to pay the said proportion of the said rate.

28. And whereas, at the time and place therein mentioned, the said summons was duly attended on behalf of the said vestry and the said Commissioners, and then came on to be heard, and was heard before you, the said Nicholas M'Cann and James Alfred Hallett, and upon and after such hearing you did refuse to make any order on such summons, and you did refuse to issue your warrant to levy by distress and sale of the goods and chattels of the said Commissioners, the said sum so due in respect of the said rate, and the same still remains due and unpaid.

29. Whereupon the said vestry hath humbly besought us that a fit and speedy remedy may be applied in this matter, and we, being willing that due and speedy justice should be done therein, do command you, the said Nicholas M'Cann and James Alfred Hallett, so being such keepers of the peace and our Justices in and for the county of Middlesex, forthwith to issue your warrant to levy, by distress and sale of the goods and chattels of the Commis-

sioners of our Works and Public Buildings, the sum of 101*l.* 11*s.* 3*d.*, being the amount due on the 25th of October, 1866, in respect of the said rate made upon them on the 29th of March, 1866, for the relief of the poor and other purposes of the parish of St. George, Hanover Square, in the said county of Middlesex, and how you shall have executed this our writ make known to us at Westminster on the 15th of April next, then returning to us this our said writ. And this you are not to omit.—Witness, Sir Alexander James Edmund Cockburn, Bart.

Return.—We, the keepers of the peace and Justices to whom this writ is directed, do most humbly certify and return to our Sovereign Lady the Queen, at the time and place in this writ mentioned, that on the hearing of the complaint and summons in this writ mentioned, it was proved on behalf of the Commissioners of Works and Public Buildings in this writ mentioned, and the fact was that they were appointed and constituted under, and that all their rights, powers, duties, liabilities, interest, exemptions and privileges, in reference to the bridge and works in this writ mentioned, were conferred and imposed upon them by the several acts of parliament in this writ mentioned, and not otherwise; and that *save and except and in so far as the said Commissioners were or are (if at all) in possession or occupation of the said bridge and works under or by virtue of the said several acts, or by virtue of such acts, liable, if at all, to be rated in respect thereof, the said Commissioners never were in possession or occupation of the said bridge and works, or any of them, nor had they beneficial or other occupation of the said bridge or works, nor were they liable to be rated in respect thereof, as in and by the said writ is stated and suggested*; and that towards the erection of the said bridge and execution of the other works in the said first-mentioned act of the 9th and 10th years of your Majesty mentioned, Parliament made free or net grants from the Consolidated Fund of the United Kingdom to the amount of 127,149*l.* 5*s.* 2*d.*, and authorized loans by the Commissioners for issuing Exchequer bills for public works, not exceeding 120,000*l.*, at interest not exceeding 4*l.* per cent. per annum, and that of the sum of 80,000*l.*

borrowed under the said authority as within and in the said act of the 22nd year of your Majesty mentioned, not more than the sum of 13,500*l.* had been repaid at the time of making the said rate, and that towards the repayment of the last-mentioned sum, not more than the sum of 2,500*l.* had been received from the tolls and proceeds of the said bridge, and thereupon it was submitted on behalf of the said Commissioners of Works and Public Buildings, and it appeared to us, and we adjudged and determined that they, the said Commissioners, were not before or at the time of making the said rate liable to be rated as occupiers of the said bridge and works, for which cause and reason we ought not to issue our warrant pursuant to the exigency of this writ.

J. A. Hallett.

Demurrer to the return, and joinder in demurrer.

Keane (F. T. Streeten with him), in support of the demurrer.—The point which is to be submitted to the Court is, that the effect of the several statutes referred to in the writ is to make certain persons, who are servants of the Crown, a corporation for the purpose of carrying out the provisions of the statutes in making the bridge, the approaches, &c.; to vest the bridge, &c. in them; to enable them to occupy it by servants; to take tolls; and that then, having done so, they become the beneficial occupiers of the bridge, &c., and are rateable as trustees within the principles laid down in *The Mersey Docks case* (1), and are not exempt from liability by reason of any of the decisions which have been given with respect to occupation by the Crown or by the servants of the Crown. The stat 9 & 10 Vict. c. 39. recites that the Commissioners for the Improvement of the Metropolis have recommended the construction of a bridge, and that surveys and plans had been made and approved of by the Commissioners of the Treasury. By the 2nd section, the last-mentioned Commissioners are empowered to advance a sum not exceeding 120,000*l.*, the repayment of which is to be secured in part by an assignment of the tolls to be taken. The 64th section gives power to erect toll-houses and to take tolls; and by section 112. the tolls received are to be applied in payment

of all expenses of management and collection of the tolls, next in maintaining the bridge, next in payment of the money advanced, and the surplus, if any, to form a fund for such metropolitan improvements as the legislature shall determine. By the 11th section of 14 & 15 Vict. c. 42, the property is vested in the Commissioners of Works and Public Buildings, and they are the body who are now rated. Next, the 12th paragraph of the writ refers to the 21 & 22 Vict. c. 66, which recites that 80,000*l.* had been advanced, and remained unpaid, with interest thereon; and provides by section 2, that when the said sum of 80,000*l.* and interest shall have been paid off, no toll is to be demanded or taken for and in respect of foot-passengers for passing over the bridge. By section 1, the provision in the former act as to the surplus being applied in metropolitan improvements is repealed. The material allegations in the writ are, that the bridge has been constructed, the toll-gates erected and maintained; that the tolls exceed the cost of maintaining the bridge and the works; that the bridge is vested in the Commissioners, and that they are liable, as beneficial occupiers under the several acts, to be rated. The last proposition is supported by the opinions expressed by Lord Chelmsford and by Lord Cranworth in *The Mersey Docks case* (1). The former said, "I am of opinion that, under the words of the 43 Eliz. c. 2, every occupier of a tenement yielding profit is within the rating clause of the statute, although the tenement be a public work for the general good of the realm, and the profit be directed to be applied exclusively to its maintenance;" and Lord Cranworth said, "To avoid all misconception, I wish to add that there are certain cases to which the observations I have made do not apply. The Crown not being named is not bound by the act. It follows, therefore, that lands or houses occupied by the Crown, or by servants of the Crown for the purposes of the Crown, are not liable to be rated; and I conceive that it is from a confusion between property occupied for public purposes and property occupied by servants of the Crown, that this mistake has arisen. This principle exempts from rates, not only royal palaces, but also the offices of the Secretaries of State, the Horse Guards, the

(1) 35 Law J. Rep. (N.S.) M.C. 1.

Post Office, and many similar buildings. On the same ground, police courts, county courts, and even county buildings occupied as lodgings at the assizes for the Judges have been held exempt. These decisions, however, have all gone on the ground, more or less sound, that these might all be treated as buildings occupied by servants of the Crown, and for the Crown, extending in some instances the shield of the Crown to what might be fitly described as the public government of the country." The Commissioners of Works and Buildings are a corporation created to carry out what was intended to be a public improvement. Since their incorporation they have, so far as this question is concerned, no longer any body, or identity as servants of the Crown; neither do they occupy as servants of the Crown, or perform their duties as such.

[BLACKBURN, J.—They are empowered to make the bridge, and the money is to be advanced out of the public funds. The question is, do they not do it all as servants of the Crown? They are servants of the Crown and great Ministers of State.]

The King v. the Chelsea Waterworks Company (2) much resembles this case, and there the company were held to be rateable in respect of the reservoirs in St. James's Park, which they had been permitted to make use of under a royal warrant. In *The Queen v. Shee* (3) the members of the Royal Academy were held not to be rateable, on the ground that they might be considered to be the ministers or agents of the Crown; but the Commissioners in the present case are not so. Why were they incorporated, if they were still to be looked upon as Ministers of the Crown?

[BLACKBURN, J.—Suppose a field near Windsor Great Park was purchased as an addition to the Park. Although it had been rateable before, it would cease to be so; because it would be *de facto* in the occupation of the Crown. MELLOR, J.—In some respects *De la Beche v. the Vestry of St. James* (4) is very like this case.]

But the Crown has no power to interfere with these incorporated Commissioners, or to give any orders. They are entirely

independent of the Crown, just the same as any other corporation.

[MELLOR, J.—The Commissioners of Woods and Forests are a varying body. They were created a corporation in order that they might be able to make the necessary contracts more easily. LUSH, J.—If the rates which you claim were paid, they would come out of the Consolidated Fund; you would intercept money which would otherwise find its way into that fund.]

No; the rates will be paid out of the tolls. Further, it must be borne in mind, that portions of land which have been hitherto rateable have been given up in order to make the bridge. Is the parish to lose the right of rating such land? Again, even supposing that the Commissioners are still servants of the Crown, although they have been incorporated, it is submitted that they are rateable in respect of their occupation, unless it can be shewn that their duties are regal duties, such as *prima facie* belong to the Crown. There is no pretence for saying so; the duties performed by them are for the improvement of the metropolis, not for any purpose connected with the government of the country.

The Attorney General (Sir J. B. Karslake) (*M'Mahon* with him), contra, was not heard.

BLACKBURN, J.—In this case the principle is, I think, very plain. Since the decision in *The Mersey Docks case* (1), the occupier of property from which profit is derived, after making the proper deductions, according to the Parochial Assessment Act, is rateable, as a general rule, without regard to the purpose for which the funds are ultimately appropriated; but there is the exception that the Crown, not being named in the statute of Elizabeth, is not within that statute, and that consequently, where the Crown is the occupier, there is no liability to be rated; and consequently, where the property is *de facto* occupied by the Crown, or the property is *de facto* occupied for the Crown, there is no liability. The Crown not being rateable, there can be no rate on the occupier; and the same principle has been extended to the case where the occupation is by a servant of the Crown who has taken a lease of property, as in the case of *Lord Amherst*

(2) 5 B. & Ad. 156.

(3) 4 Q.B. Rep. 2; 12 Law J. Rep. (N.S.) M.C. 53.

(4) 24 Law J. Rep. (N.S.) M.C. 74.

v. *Lord Somers* (5), where the property was taken by an individual officer for the use of it as stables for the troops, and consequently he was held to be a trustee for the Crown; and the same principle exists whether the person occupying be a servant or a trustee; it is all one thing, and therefore he is not rateable. That, so far from being overthrown in *The Mersey Docks* case (1), is affirmed. The opinion of the Judges, which I wrote and delivered, as far as this part of it is concerned, was partly altered when we were having a consultation upon the subject; that is, the language originally used was altered to meet the view of the other Judges more accurately. Their view was the same as my own, only different expressions were used; therefore what I am about to quote is not merely theoretically the language of the other Judges, but is the language that was used to meet their express views, and it goes to this, that after stating (6) that "where a lease of private property is taken in the name of a subject, but the occupation is by the Sovereign or her servants on her behalf, the occupation being that of her Majesty, no rate can be imposed," the judgment goes on to say, "So far the ground of exemption is perfectly intelligible; but it has been carried a good deal further, and applied to many cases in which it can scarcely be said that the Sovereign, or the servants of the Sovereign, are in occupation. A long series of cases have established that, where property is occupied for the purposes of the Government of the country, including under that head the police and the administration of justice, no one is rateable in respect of such occupation. And this applies not only to property occupied for such purposes by the servants of the great departments of State, such as the Post Office, the Horse Guards, or the Admiralty, in all which cases the occupiers might strictly be called the servants of the Crown, but also to property occupied for local police, to county buildings occupied for the Assizes, and for the Judges' lodgings; or occupied as a county court, or for a gaol. In these latter cases it is difficult to maintain that the occupants are, strictly speaking, servants of the So-

vereign so as to make the occupation that of her Majesty; but the purposes are all public purposes of that kind which, by the constitution of this country, fall within the province of the Government, and are committed to the Sovereign, so that the occupiers, though not perhaps strictly servants of the Sovereign, must be considered *in consimili casu*. These decisions are uniform, and it was not disputed at the bar that the exemption applies so far; but there is a conflict between the decisions as to whether the exemption goes further." My original draft, which was not in these words, was altered to meet the views of the other Judges; consequently, that is a deliberate view adopted upon consideration, and it is perfectly right.

Then Mr. Keane argues upon that in this way: that where property is held for the purposes of Government, and purposes such as are, to use the old words, merely *spectant regi*,—such as public justice,—the occupation shall be treated the same as if it were the actual occupation of the servants of the Crown. His argument is, therefore, that if property ever can be exempted from rateability, it is because the purposes for which it is held are those which *prima facie* belong to the Crown. Now, I think, that is not borne out at all by either of the previous decisions, or by *The Mersey Docks* case (1). In the present case, in construing the act of parliament, what I think we must come to is this, that the legislature, having in view an embankment of the Thames or a bridge, which is not one of those government purposes that are *spectant regi* at all, instead of enacting that it shall be carried out by private enterprise, or by a private body that shall act for themselves, enact that it shall be carried out by the Government out of the Government funds. They create the Commissioners of Woods into a special corporation for doing it. They enact that it shall be paid for out of the Consolidated Fund by public money; they grant powers to raise money from its occupation, which would, no doubt, make the occupation beneficial in general; but it is solely and exclusively for the purpose of repaying the Government the advance, for keeping up the bridge and so on, and if there be any surplus, in the original act they have enacted that such surplus shall be

(5) 2 Term Rep. 372.

(6) See 36 Law J. Rep. (N.S.) M.C. page 10.

applied to such metropolitan improvements as the legislature shall direct. That has been subsequently repealed, and, consequently, if there ever should come to be any surplus, it would be held by the Commissioners; certainly not for the benefit of the individual Commissioners; but, like everything else, it would be held by them in trust for the Consolidated Fund; so that this is a case in which a special corporation is created of the servants of the Crown, for the purpose of executing a private work, but executing it out of the general fund, which, by the general theory of law, has been granted to Her Majesty: this is called the Consolidated Fund; out of that the work is to be carried on, into that the surplus is to go; and, consequently, this is *de facto* an occupation by the servants of the Crown, the servants of the general government. The whole scheme of the enactment is, that the Commissioners of Woods and Forests are created a special corporation, who are to execute this work, private in its nature, but *de facto* for the Government, with the Government funds, and to receive the profits of the occupation for the Government funds, and in that case it is the occupation of the Crown, and is not any more rateable than the private estates of the Crown would be, such as the Home Park, at Windsor, or anything else. This is not new law, because this is what was decided in the case of *De la Beche v. the Vestry of St. James* (3); for there the premises that were occupied were not so occupied for government purposes; it was "The Museum of Practical Geology," but *de facto* they were occupied by the Government, and were permitted to be used for the purposes of the museum, and, consequently, were not rateable. Had it been a private occupation for the purpose of holding land for the Museum of Practical Geology, it would have been liable to be rated; but being occupied by the servants of the Crown, it was not.

MELLOR, J.—I am of the same opinion. At the time *The Mersey Docks case* (1) was before the House of Lords, this matter underwent very considerable discussion; and when it is recollected that my Brother Byles dissented from the opinions of the other Judges, it will be seen that it became the more necessary to look carefully and

accurately at the expression of the opinions of the Judges, in order that the matter might be made clear. I was one of the Judges who joined in the opinion delivered by my Brother Blackburn, and I may say it underwent considerable discussion among the Judges. I believe that, in accordance with the opinion expressed by Lord Cranworth in the House of Lords, they only intended to interfere with those cases where the occupation of the property was beneficial, and to hold that although the benefit ultimately was appropriated to the public in one sense, that is to say, to public purposes of various kinds—for charity and other objects, still the property was rateable, because it did not derive any exemption from rateability from the principle that governed the construction of the statute of Elizabeth. The statute of Elizabeth was not framed with a view to bring property of this kind within the meaning of its enactments. There is a long series of decisions upon the statute, and it appears to me that this follows clearly from the authority of various cases. Now, I think that my Brother Blackburn has put it quite as I desire to put it; the work has been really *de facto* done by the servants of the Crown, who are created a corporation for that purpose; although the object in one sense is a local and private object, yet it is done entirely with the funds of the Crown, by the servants of the Crown, and when the object is attained, any surplus is to go back to the Consolidated Fund for the benefit of the public; in fact, it is, therefore, a work executed by the servants of the Crown, and with the money of the Crown, and therefore, I think, is within the exemption.

LUSH, J.—It appears to me that, on the true construction of the statute, this bridge was a national undertaking. Every argument used by Mr. Keane would be equally applicable to make out the rateability of the Post Office, or any other national establishment in this country.

BLACKBURN, J. added—This is a mandamus to enforce the rate, and, in deciding for the defendants, the return being sufficient, we are not infringing the extremely wholesome rule that the Justices in a case of this sort are ministerial officers, and that you cannot in answer to an appli-

cation to make them enforce the rate, set up an objection upon which the rate might have been quashed. In the present case the decision goes to this, that there was no jurisdiction to make the rate. It is like *Milward v. Caffin* (6).

{*Keane*.—This course was adopted in order to obtain the opinion of the Court.}

BLACKBURN, J.—It was quite right to resort to it, in order that the case might go to error, if necessary; but I merely wish to guard against being supposed to infringe upon the other decision.

Judgment for the defendants.

Attorneys—Capron, Dalton & Hitchins, for the parish; the Solicitors to Her Majesty's Commissioners of Works and Public Buildings, for the Crown.

[IN THE COURT OF QUEEN'S BENCH.]

1868. } AUSTIN, appellant, OLSEN,
Jan. 18. } respondent.

The Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 257, 525.—Attempting to persuade a Seaman not to join his Ship—Limitation of Time for Prosecution.

The 257th section of the Merchant Shipping Act, 1854, makes it an offence to persuade or attempt to persuade a seaman to neglect to join his ship; and the 525th section, which limits the time for instituting proceedings, enacts, that "no conviction for any offence shall be made under this act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the commission of the offence; or if both or either of the parties to such proceeding happen during such time to be out of the United Kingdom, unless the same is commenced within two months after they both first happen to arrive, or to be at one time within the same:—Held, that if both parties, the seaman and the offender, remain in the United Kingdom, the proceeding against the offender must be commenced within six months after the commission of the offence; but that if one of them goes away within six months after the offence is committed, and afterwards returns, so that he and the other are in the United Kingdom

at one time, a further period of two months is allowed within which the proceedings may be commenced.

Held, also, that the offence may have been committed although there was an informality in the engagement entered into by the seaman.

CASE stated by Justices under 20 & 21 Vict. c. 43.

On the 19th of November an information, under the 257th section of the Merchant Shipping Act, 1854, against the appellant, a licensed shipping agent at Cardiff, for that he, on the 4th of April last, at Cardiff, did unlawfully attempt to persuade Israel Olsen (a seaman, lawfully engaged to serve on board a certain British ship called the *England's Rose*), to neglect to join his ship, contrary to the Merchant Shipping Act, 1854, section 257, was heard and determined by us, the undersigned, two of Her Majesty's Justices of the Peace for the borough of Cardiff; and we convicted the appellant and imposed the penalty of 10*l*.

On the 4th of April last Israel Olsen, the respondent, signed an agreement at the office of a ship-broker, at Cardiff; to serve as a seaman on board the British ship *England's Rose* as a substitute for one of her crew who had deserted. Shortly afterwards, about five o'clock in the afternoon of the same day, Olsen was asked by the appellant to join a ship called the *Etta*. He refused, stating that he had shipped in the *England's Rose*. The appellant repeated his request; but without success, and Olsen sailed the next morning, but at what exact time the evidence does not shew. He returned to England at the end of October last, having been continually absent since he sailed from Cardiff on the 5th of April.

The information before us was laid on the 14th of November last.

At the hearing, the appellant's attorney took the preliminary objection that the information was not laid in due time, inasmuch as Olsen, one of the parties, was at the time of the commission of the offence and for some time after not out of the United Kingdom, and ought, therefore, to have commenced his proceedings within six months from the 4th of April.

By the 525th section of the Merchant Shipping Act, 1854, it is enacted that no conviction for any offence shall be made

under this act, in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the commission of the offence, or if both or either of the parties to such proceeding happen during such time to be out of the United Kingdom, unless the same is commenced within two months after they both first happen to arrive, or to be, at one time, within the same.

Having heard the evidence, a copy of which is herunto appended, we considered that as Olsen could not have stayed in this country to institute his proceedings without, in some way more or less disadvantageous to him, putting an end to his contract to serve in the *England's Rose*, and considering that, except for a very short time (probably not so much as twenty-four hours), he was actually out of the United Kingdom for the whole period of six months, the case might be held to be within the last half of the clause; and, consequently, that the information being laid within the allowed period of two months was in time.

It was also contended that Olsen was not a seaman lawfully engaged to serve on the *England's Rose* within the meaning of sections 243. and 257.

According to the fourth paragraph of the 150th section, the engagement of Olsen as a substitute ought, if practicable, to have been made before the superintendent of mercantile marine or his deputy; and that being impracticable, the agreement should have been read over and explained to him, and signed in the presence of an attesting witness.

It was shewn to our satisfaction that it was not practicable to engage the man before the regular official, and it also appeared that the agreement was signed in the presence of an attesting witness; but there was no evidence to shew that the agreement had been read and explained, both Olsen and the attesting witness forgetting whether that had been done or not. We presumed that formality to have been observed, and held that the agreement was lawfully made.

The following evidence was taken: read Israel Olsen—“I was engaged as a seaman in the *England's Rose* British ship. Articles are those produced. I signed on the 4th of April last. On the same day I saw the defendants [one Brunede was charged

with the respondent, but the case as against him was dismissed]. Austin said he wanted me to go on board a vessel called the *Etta*. I said I could not go because I was shipped in the *England's Rose*. Austin told me to take my clothes and go out to another vessel. Brunede was there. This conversation took place at five p.m. Brunede told me I had better take my clothes and go out to the roads. I said I had shipped in the *England's Rose* and had got an advance-note. It was after that they asked me to go on board the *Etta*. I went on board the *England's Rose*. My clothes went on board the *Etta*. My ship sailed the next day. We went to the Rio Grande, returning to England; we called at Dartmouth for orders and went to Antwerp, and returned to England a fortnight ago. I pulled the captain ashore at Dartmouth. We came to Dartmouth in October, at the end.”

Cross-examined by Austin's attorney—“It was between ten and eleven o'clock a.m. that I first saw Austin. I was with two Swedes. I saw them, Austin and Brunede, when they came out of the Windsor Hotel; it was not earlier than eleven a.m. The other two shipped in the *Etta*. We were all three asked if we wanted a ship. I said I was already shipped. The question was put to me in English and Swedish. Austin told me in English to ship in the *Etta* because she was a good ship. I shipped in the *England's Rose* at three o'clock.”

Cross-examined by Brunede's attorney—“I signed in some house near the cabstands. I'll swear I did not sign in the Cardiff Roads. I told Austin I wouldn't go such a long voyage as twelve months. The other two agreed to go too. The captain and owner of the vessel sent me here.”

Re-examined—“When I signed articles I got an advance-note. I first heard of the *England's Rose* at half-past twelve on the 4th. I saw Austin after I had signed those articles. I had a conversation about going on board the *Etta* after five o'clock with the captain of the *Etta*, Austin and Brunede.”

Edward Erle—“In April last I was clerk to Messrs. Rowland. The articles produced were signed at our office at the docks by this man Olsen. He was a substitute.”

John Clarke—“I am an able seaman in the *England's Rose*. On Wednesday, the

4th of April last, I saw Olsen, Austin and Brunede. I heard the conversation between the captain of the *Etta*, Austin and Olsen. It was about a quarter to six in the evening. The captain of the *Etta* asked Olsen to go in his ship. Olsen said he had shipped in the *England's Rose*. Then Austin said, Never mind the *England's Rose*, you go in this ship, the captain of the *Etta* is a good man. Olsen said that he could not go; he had his advance-note."

Cross-examined—"I am sure Austin was there. Olsen could talk as I could understand him."

For the defence.

William Clode—"I remember the 4th of April. I know the captain of the *Etta*. I remember Olsen. I saw Austin and him together. Some men wanted Olsen to go off in a boat. I said to Austin, Why don't you make him go? Austin said, I can't; he has shipped in another vessel."

Waddy, for the appellant, argued in support of the two objections stated in the case.

No counsel appeared for the respondent.

BLACKBURN, J.—I do not think that either of these objections can prevail. The offence which the appellant is charged with having committed is the attempting to persuade the respondent to neglect to join his ship. That is made an offence by the 257th section, and the question turns upon the construction to be put upon the 525th section, as to whether the proceeding could be commenced within two months after the respondent arrived at Cardiff, where the appellant was. The 525th section speaks of "both or either of the parties to such proceeding." Now, literally, the party in whose name the information is laid is a party, and it would seem that in respect of such an offence anybody might lay the information; but it would lead to gross absurdity if we were to put that construction upon the word "parties." I think it means the person committing the offence, and the person aggrieved, against whom the offence is committed. A great many offences of this kind are committed, and it may almost be said that the normal mode of committing such offences is the attempting to persuade seamen who are about to leave England to neglect to join the ships on board of which they are engaged to

serve; and I cannot think that the legislature intended to provide such a limitation as would make the offender non-punishable if the seaman did join his ship and did sail with her, and did not return to the United Kingdom for six months. If both the offender and the seaman remain here, the proceeding must be commenced within six months; but if one goes away, there is a further period of two months after he comes back, and both are in the United Kingdom at one time. As to the other point, there is really nothing in it. The respondent was engaged to serve in the ship, and the offence committed by the appellant is the attempting to persuade him to neglect to join.

MELLOP, J.—I am of the same opinion on both points. The second would lead to serious consequences if we were obliged so to construe the act. It would be a monstrous thing to say that the offender should escape because some particular formalities were not observed in the mode of engaging the seaman. Upon the other point, the language of the section is certainly open to some doubt; but we must endeavour to put a reasonable construction upon it: and I think that the construction adopted by my Brother Blackburn is the most reasonable one, because it seems to meet the case when both parties, the solicitor and the person solicited, are in this country for six months after the offence is committed, when the period of limitation is to be six months; but if one goes away within six months, then there is to be a further period of two months after he comes back, and both are in this country at the same time.

LUSH, J.—I am of the same opinion on both points. There are, no doubt, difficulties in the way of any construction of this enactment; but upon the whole I think that the most reasonable construction is that the section gives a period of six months if both the offender and the seaman remain in this country; but if that period is broken by either party going away, then there is a further period of two months after both are here together.

Conviction affirmed.

Attorneys—Thomas Henry Smith, agent for T. H. Ensor, Cardiff, for appellant.

[IN THE COURT OF QUEEN'S BENCH.]

1868. } THE QUEEN v. THE INHABIT-
Jan. 23. } ANTS OF IPSTONES.

Highway—Indictment for Non-Repair—Costs of Prosecution—Certiorari—5 & 6 Will. 4. c. 50. & 95.—5 W. & M. c. 11. s. 2, 3.

Where an indictment for the non-repair of a highway has been preferred by order of Justices under 5 & 6 Will. 4. c. 50. s. 95, and has been removed by certiorari into this court at the instance of the defendants, the Judge who tries the indictment has no power, under that section, to direct that the costs of the prosecution shall be paid out of the rate. The costs in such a case are provided for by the 5 W. & M. c. 11.

The Queen v. Eardisland (1) dissented from.

This was an application for a rule calling upon the defendants to shew cause why an order should not be made by Mellor, J., directing that the costs of the prosecution should be paid out of the highway-rate.

Proceedings had been taken by the prosecutor under the General Highway Act; and an indictment had been preferred by the order of Justices against the parish for the non-repair of the highway.

The indictment was removed by *certiorari*, and was tried, before Mellor, J., at the last Summer Assizes for Stafford. The defendants pleaded, that the prosecutor was bound *ratione tenuræ* to repair the highway, and they obtained a verdict. The learned Judge refused to direct that the costs of the prosecution should be paid out of the rate; and, upon a subsequent application to him at chambers, he referred the matter to the Court.

Huddleston (J. O. Griffiths with him) moved for the rule.—The learned Judge was bound to direct the costs to be paid out of the rate. The words in section 95. are imperative, "shall be directed." The question is decided by *The Queen v. the Inhabitants of Yarkhill (2)*, *The Queen v.*

Boughton (3), *The Queen v. Haslemere (4)* and *The Queen v. Eardisland (1)*. In the last case the indictment had been removed by *certiorari* into this court, and it was held that the Judge sitting at Nisi Prius had power to make the order. Unless, therefore, the Court is prepared to say that that decision is wrong, the prosecutor is entitled to the rule now asked for.

[COCKBURN, C.J.—The prosecutor in the present case has put the law in motion himself, endeavouring to relieve himself of the burden which it appears he ought to have borne. But still, if the statute is imperative, you are entitled to a rule.]

In *The Queen v. the Justices of Surrey (5)* the Sessions had refused to make the order, but this Court held that they were bound to do so.

The COURT granted a rule *nisi*.

A. S. Hill shewed cause in the first instance.—The learned Judge was right in refusing to make the order, for the enactment in the 95th section as to costs does not apply to a case where the indictment has been removed by *certiorari*. Where that has been done, the Judge before whom it is tried sits as a Judge of this Court, and not as a Judge under a Commission of Oyer and Terminer. This is pointed out by Erle, J. in *The Queen v. Eardisland (1)*. No case can be found where when the indictment has been removed by *certiorari* at the instance of the defendants, and a verdict obtained by them, the enactment has been held to be imperative, so that the prosecutor must have his costs paid out of the rate. In such a case the costs are provided for by sections 2. and 3. of 5 W. & M. c. 11, and the prosecutor will receive such costs as are reasonable.—He also referred to *The Queen v. Chadworth (6)*.

Huddleston was then heard, in support of the rule.—He referred to *The Queen v. Heanor (7)* and to *The Queen v. Preston (8)*.

(3) 2 Moo. & R. 444.

(4) 3 Best & S. 313; s. c. 32 Law J. Rep. (N.S.) M.C. 30.

(5) 21 Law J. Rep. (N.S.) M.C. 195.

(6) 9 Car. & P. 285.

(7) 6 Q.B. Rep. 745; s. c. 14 Law J. Rep. (N.S.) M.C. 38.

(8) 7 Dowl. P.C. 593.

(1) 3 El. & B. 960; s. c. 23 Law J. Rep. (N.S.) M.C. 145.

(2) 9 Car. & P. 218.

COCKBURN, C.J.—I am of opinion that this rule must be discharged, upon the ground that after an indictment for the non-repair of a highway has been removed into this court by *certiorari*, the prosecutor is no longer within the 95th section so as to be entitled to have his costs paid out of the rates. When a highway is out of repair, the surveyor may be summoned before Justices under section 94; and then section 95. provides, that if the duty and liability to repair is denied by the surveyor, or by the party charged with such liability, the Justices may direct an indictment to be preferred, and the costs of such prosecution shall be directed by the Judge of Assize, or by the Justices at Quarter Sessions, &c. As far as my opinion goes, it is quite plain that the meaning of the legislature was, that when the complaint was duly made, and the Justices were satisfied that the road was out of repair, the party who did what he was ordered to do in preferring the indictment should be indemnified out of the rates, so important was it thought to be that the road should not remain out of repair. But it was not intended that there should be any interference with the right of the defendants, whether they were the inhabitants of the parish or persons who were liable *ratione tenuræ*, to remove the indictment by *certiorari* into this court. There is a proviso to that effect at the end of the 95th section. That was done in the present case, and therefore incidents attached to this trial which do not attach when the indictment is tried in the ordinary course. The Judge tried the indictment as a Judge of this Court, and was no longer a "Judge of Assize," as intended by section 95. The indictment is removed upon recognition and finding securities to pay the costs. It may be that those who framed the provisions in section 95. did not foresee what the consequences would be, and I cannot think that it was intended that the costs of the prosecution should be directed to be paid out of the rates when the indictment was tried before the Judge of Assize, but not when it was tried before the Judge as representing this Court. Nevertheless, if the legislature failed to bear in mind the effect of the enactment and the proviso, and has omitted to give any power to the latter tribunal, it is not our duty to make

such a provision. In terms, the 95th section only applies to an indictment tried in the ordinary course at the Assizes, or by the Chairman at Quarter Sessions; the language does not fit or square with a trial at Nisi Prius, where the costs depend upon the rates of taxation and practice in this court. The only order that could be made under section 95. is that the costs should be paid out of the highway-rates; while in the case of the indictment being removed by *certiorari*, every inhabitant of the parish would be responsible for costs. I am quite aware that this decision will, to some extent, overrule *The Queen v. Hardistand* (1); but I observe that the point was raised there in a very cursory manner, and was summarily dismissed without any great amount of consideration.

BLACKBURN, J.—I am of the same opinion. The distinction between this and other cases is, that in this case the indictment was removed by *certiorari*, and was tried by my Brother Mellor as a Judge of this Court, and representing this Court. The statute in question is unaltered by the recent Highway Act, because that act has not been adopted in the district. The legislature thought it right to give the Justices the power to direct an indictment.—[His Lordship read the section.]—The costs of the prosecution are to be directed by the Judge of Assize, or by the Justices, and I think that words like these would probably not have been used if the legislature had thought of a case like the present. I do not wish to decide whether the Judge of Assize or the Justices have any discretion as to whether the costs shall be directed or not; but the section does not in any way state what is to be done as to the costs where the indictment is tried before a Judge at Nisi Prius representing this Court. Whether it is a *casus omissus*, or whether the legislature thought that this question was sufficiently determined by the statute of William and Mary, I do not know; but the 2nd section of that statute provides for the parties indicted finding sureties, and the 3rd section provides that if they be convicted, they shall pay reasonable costs to the prosecutor, &c. The legislature may have thought that where a case was of sufficient importance to make it worth while to remove the indictment by *certiorari*, the

costs might be left to be provided for under that statute; but it is clear that there are not words to enable this Court to direct that the costs shall be paid out of the rates. I am of course aware that the effect of this decision is really to throw doubt upon *The Queen v. Eardisland* (1); but the point was not very clearly brought before the Court in that case, and I do not think myself bound by it, the more as there was no means of taking the case to a court of error. I decide upon the one point, that this Court has no power to order the costs to be paid out of the rates under section 95.

MILLER, J.—I am of the same opinion. I should have thought myself bound by *The Queen v. Eardisland* (1) if the Court had expressed their opinion after greater consideration; but the matter appears to have been rather summarily dismissed, and when I look at the language used in the 95th section, I come to the conclusion that the words "Judge of Assize" mentioned in that section mean the Judge sitting at the assize under the Commission of Oyer and Terminer. A Judge so sitting is in a like position in that respect as the Chairman of Quarter Sessions, and the legislature did not contemplate the consequences which would flow from the provision as to the *certiorari*. There are no words in the 95th section which properly apply to a Judge sitting as a Judge of this Court, representing this Court. If a direction is made by a Judge sitting at Nisi Prius as representing this Court, it is considered as a direction of this Court. But when a Judge is sitting under the Commission of Oyer and Terminer, he has to dispose of the matter finally in the same manner as the Chairman of Quarter Sessions. It would amount to straining the words of the 95th section if we were to say that there was power in a case of this sort to direct that the costs of the prosecution should be paid out of the rate. I cannot find any words applying to such a case.

LEAH, J.—I do not think that the decision in *The Queen v. Eardisland* (1) is satisfactory. The question which is now before us not having been pointedly brought before the Court, and as it is a case which did not admit of an appeal, we are at liberty to reconsider the question and put what we think is the proper construction upon

the statute. By the 95th section, the authority to direct payment of the costs of the prosecution out of the rate is given to the Judge of assize before whom the indictment is tried, when tried at the Assizes, and to the Justices at Quarter Sessions if tried there. Does the description "Judge of Assize" include the Judge sitting on the civil side, so as to comprehend the case of an indictment removed by *certiorari*, and entered on a record of Nisi Prius; or does it point exclusively to the Judge to whom the designation "Judge of Assize" properly belongs, viz. the Judge sitting under a Commission of Oyer and Terminer? I am of opinion that it means the latter, and contemplates a trial of the indictment on the criminal side only; and that for two reasons: First, because the proviso at the end of the 95th section, which gives, or rather preserves, to the party against whom the indictment is preferred the right to remove it into this court by *certiorari*, is silent as to the costs of the removal. I do not know why the proviso is limited to indictments found at the Sessions, nor is that point material in the present case. What is significant to the point is, that it leaves the costs in such a case apparently to be governed by the *Certiorari* Act, the 5 W. & M. c. 11. Secondly, because to hold that the enactment applies to the trial of an indictment at Nisi Prius would exclude certain cases from its operation, and thus make distinctions for which no reason can be assigned, for it is nearly confined to trials at "Assizes." Now there are no Assizes in this county—the county of Middlesex. If an indictment found at a Sessions in this county were removed by *certiorari*, it would be tried in this court, and in such a case, if the costs were not governed by the act of William and Mary, the prosecutor could not in any event have his costs. The same observation applies to the county palatine. I am therefore of opinion that the section applies only to indictments tried in the criminal court, and that when removed by *certiorari*, the costs can only be claimed under the recognizance given, or required, by the *Certiorari* Act.

Rule discharged.

Attorneys—W. J. Holt, agent for E. & A. Tennant, Hanley, for prosecutor; Austin & De Gex, agents for Blagg & Son, Chandle, for defendants.

[IN THE COURT OF QUEEN'S BENCH.]

1868.
Jan. 25.

{ MERIVALE, *appellant*, THE
TRUSTEES OF THE EXETER
TURNPIKE-ROADS, *respondents*.

Turnpike-Road—Cleansing and Scouring Watercourses—Duties of Occupiers of Adjoining Lands—3 Geo. 4. c. 126. (General Turnpike Act), s. 113.

The duty of cleansing, scouring and keeping open ditches and watercourses for the keeping of turnpike-roads dry, is cast by section 113. of the 3 Geo. 4. c. 126. (the General Turnpike Act), not upon the occupiers of the adjoining lands, but upon the trustees themselves.

CASE stated by Justices under 20 & 21 Vict. c. 43.

The material part of the case was as follows: At a petty sessions holden at the Guildhall, in the city of Exeter, on the 5th of July, 1867, the appellant appeared to answer the information and complaint of the respondents, the trustees of the Exeter turnpike-roads, under the 3 Geo. 4. c. 126. s. 113, for that she, being the owner and occupier of certain lands next to and adjoining that portion of the Exeter turnpike-road, in the parish of St. David, in the county of the city of Exeter, known as the Cowley Bridge Road, and having received due notice from the trustees of the said road to cleanse, scour and keep open the ditches, drains and watercourses of such portion of the said road as adjoined her said lands of a sufficient width and depth, so as to carry off the water therefrom without obstruction, and keep the same road dry, had failed so to do, contrary to the statute, &c., whereby she had incurred a penalty of not exceeding 5*l*.

Upon the hearing of the said summons and complaint, the following facts were proved, or admitted as proved: Prior to the passing of 7 Geo. 4. c. xxv. (1826) a parish road existed from Cowley Bridge to Stoke Bridge. By that act (which has expired, and the trusts continued under a new act), power was given to the respondents to make, widen and form a new line of road from Cowley Bridge to the Exeter turnpike-road, near Stoke Bridge, through

and over the lands, grounds and hereditaments comprised in the maps and books of reference thereto, and amongst others, through the lands in question, then belonging to John Merivale, through whom the appellant derives title. In 1830 the new line of road was duly widened and formed. In forming and widening the said road through the said lands, a wood was cut through, whereby a high slope or bank of from 30 to 80 feet high was formed on the one side for some little distance. The foot of this bank or slope was stone fenced in the manner termed "stone ditching," and watercourses were duly formed by the respondents by the sides of the turnpike-road. The land adjoining the banks or slopes, which consist of loose shale and shillet, are not drained, nor is any provision made for carrying off the water falling thereon, and preventing the same from running over the said slopes; and by reason of the water flowing over the said slope and the action of the frost thereon, occasional landslips have taken place at the spot where the stone ditching or fencing was erected, and the earth has at times been carried, not only into the watercourses, but into and over the road itself. These slips have hitherto been removed by the owners or occupiers of the said lands. The slip in question took place where the above-mentioned stone ditching stands; and by it not only the watercourse by the side of the turnpike-road was filled up, and the water prevented from passing away, but a portion of the road itself covered and obstructed by the earth and rubbish.

The Justices were of opinion that it was the duty of the appellant, under the 3 Geo. 4. c. 126. s. 113, to remove all obstructions from the watercourses and ditches occasioned by the landslip, and to cleanse and keep open the same, and convicted her under the said statute in the penalty of 20*s*.

If the COURT should be of opinion that the appellant was and is liable to remove the obstruction occasioned to the watercourses and drains by reason of such slip as aforesaid, and to cleanse and keep open the same, then the conviction to stand, otherwise the summons to be dismissed.

Hayes, Serj. (Lopes with him), for the respondents, referred to section 113. of the

3 Geo. 4. c. 126. (1), and contended that the appellant was duly convicted thereunder.

The COURT then called upon

Coleridge (*Raymond* with him), for the appellant.—The first portion of section 113, which is to be read *divisim*, relates to matters obligatory not upon adjoining occupiers, but upon the trustees themselves, viz., the making sufficient ditches, drains and watercourses for keeping the roads dry, and the scouring and cleansing of the same, all of which duties, being necessary to the preservation of the road, fall as properly upon the trustees as the making of the road itself. The second portion of the section, which relates to the making of bridges, &c. in places where carriageways, &c. are made leading from a turnpike-road into the adjoining lands, unquestionably imposes duties upon the occupiers of such lands; and further duties are cast upon them by

the third portion of the section, which requires the occupiers of lands adjoining to or near turnpike-roads, through which water from turnpike-roads has been used to pass, to cleanse and scour the ditches, &c. necessary to its passage. Three separate and distinct sets of duties are thus created, of which the last two only have reference to the adjoining owners. The appellant was therefore wrongly convicted.

[BLACKBURN, J.—The section is not very clearly worded, and grammatically considered it would appear to cast the duty upon the appellant, the adjoining occupier. The question, however, is, are the words "by the occupier or occupiers of such lands or grounds," which occur at the end of the second portion of the section, to be read as having reference to all that goes before?]

If read by the light of other enactments, it is clear that the true construction of section 113. is that contended for. By

(1) Section 113, which enacts, "That ditches, drains and watercourses of a sufficient depth and breadth for the keeping all turnpike-roads dry, and conveying water from the same shall be made, scooped, cleaned and kept open, and sufficient trunks, tunnels, plate or bridges shall be made and laid where any carriage-ways or footways lead out of the said turnpike-roads into the lands or grounds adjoining thereto, by the occupier or occupiers of such lands or grounds; and every person or persons who shall occupy any lands or grounds adjoining to, or lying near such turnpike-road, through which the water hath used to pass from the said turnpike-road, shall and is and are hereby required from time to time, as often as occasion shall be, to open, cleanse and scour the ditches, watercourses and drains for such water to pass without obstruction; and that every person making default in any of the matters or things aforesaid, after ten days' notice to him, her or them given, shall for every such offence forfeit any sum not exceeding 5*l*."

Section 115. of 3 Geo. 4. c. 126. enacts, "That in all cases where any gutter, drain, sink, sewer or under-drain, made, or hereafter to be made, under or at the sides of any turnpike-road shall be used as well for the conveyance of water from such turnpike-road as for conveying water, filth or other matters from the houses or premises of the inhabitants of any town, hamlet, village, street or place, and no specific mode of repair or persons liable to the expenses of maintaining the same shall be appointed; the expense of maintaining and repairing such gutter, &c. shall be borne and defrayed equally or in proportion by the Trustees or Commissioners of such turnpike-road, and the inhabitants of the town, &c., using the same," &c.

Section 66. of the 4 Geo. 4. c. 95. enacts, "That in all cases where the Trustees or Commissioners of any turnpike-road shall turn or alter any part

or parts of any turnpike-road, or make any new road over and through any private grounds, or across any public or private footway, or shall take away any fence for widening or improving any such road, the said Trustees or Commissioners shall make, or cause to be made and planted, proper quickset hedges, or shall make or build proper fences or walls on both sides of such new-made road, or upon the side upon which any such fence may be so removed as aforesaid, with sufficient ditches to the same, and sufficient posts and rails or other fence on both sides of such quickset hedges to protect the growth thereof, &c., and also proper gates, stiles, posts, bridges and arches, where necessary, out of any such road into the lands adjoining, and shall keep such fences so to be made in good order and repair for and during the term of five years from the time that such fences shall have been made or set up; unless the owners or proprietors for the time being of any such land or ground shall agree with the Trustees or Commissioners to keep such fences in repair from an earlier period for such time as aforesaid."

Section 67. enacts, "That it shall be lawful for the surveyor or surveyors and such other persons as shall be appointed by the Trustees or Commissioners, &c., from time to time to cut, make or maintain drains or watercourses upon and through any lands lying contiguous to any such road, and also to make ditches in such places and in such manner as such surveyor, &c., by order of such trustees, &c., shall judge necessary; and make sufficient fences and barriers and other erections on any part or parts of the said road, in order to prevent any rivulet or current of water from flooding the same, as such surveyor, &c. shall judge necessary; making such satisfaction to the owners or occupiers of such lands so to be used, &c., for the damages they may sustain thereby as such trustees, &c., shall judge reasonable," &c.

the 4 Geo. 4. c. 95. s. 66, in cases where the trustees alter or make new roads through private grounds, &c., they are required to provide proper fences or walls, with sufficient ditches, and to keep the same in good order for the space of five years. Section 67. of the same statute requires the surveyors, or other persons appointed by the trustees, to cut, make and maintain drains or watercourses upon and through lands lying contiguous to the road, in such manner as shall appear necessary, making reasonable satisfaction to the owner for damages sustained.

[LUSH, J.—Section 115. of the 3 Geo. 4. c. 126. seems to lead irresistibly to the conclusion that the duty of cleansing and scouring watercourses by the sides of turnpike-roads devolves, not upon the adjoining occupiers, but upon the trustees themselves.]

Hayes, Serj., in reply.—Section 66. of the 4 Geo. 4. c. 95. has no bearing upon the question; it relates to fences to be made, in certain cases, by the trustees for the private benefit of adjoining occupiers, and is altogether irrespective of section 113. of the 3 Geo. 4. c. 126, which was meant for the public benefit, and refers to the maintenance of water-courses for the keeping dry and preservation of turnpike-roads. The object of section 67. is to provide for the passage of water away from, and not alongside, turnpike-roads; and the duty of cleansing the ditches and drains necessary for that purpose is clearly imposed by the latter portion of section 113. of the earlier act upon the occupiers of lands near to or adjoining such roads. A similar liability is cast upon adjoining occupiers by the first portion of the same section. The conviction was therefore right.

BLACKBURN, J.—At first I was disposed to think that my Brother Hayes was right in his view of section 113. of the General Turnpike Act; but upon consideration I am of opinion that he was wrong, and that the appellant was improperly convicted. When a road is formed, it is essential to its preservation that means should be provided for the free passage of water alongside until it can be carried away by some outlet into and through the adjoining lands; and the ques-

tion upon whom devolves the duty of cleansing and keeping open the ditches alongside such roads for this purpose, depends upon the proper construction to be placed upon the section under consideration. It enacts, that sufficient watercourses for the keeping of turnpike-roads dry "shall be made, scoured, cleansed and kept open"; and if, as contended for the appellant, this portion of the section is divisible from that which follows, the duty would be cast on the trustees. The section, however, then proceeds to provide for the making of tunnels, bridges and other works in places where carriage and footways are formed leading out of turnpike-roads "into the lands and grounds adjoining"; which tunnels, &c. are to be made "by the occupier or occupiers of such lands and grounds." I was at first disposed to the opinion that these latter words overrode the whole sentence, as, grammatically considered, they certainly appear to do; but on reflection I think that the parts of the sentence are separable, and that the earlier portion of it imposes a duty not upon the adjoining occupiers, but upon the trustees themselves. In fact, if in reading the words "shall be made, scoured, cleansed and kept open, and sufficient trunks, tunnels, &c. shall be made," we interpolate the word "that" between the words "and sufficient," the language of the section, which as it stands is somewhat obscure, becomes perfectly intelligible. That this is the proper construction of the section further appears from section 115. of the same statute which enacts, that where ditches along a turnpike-road serve the double purpose of conveying water from such road, and from the houses or premises of the inhabitant of any town, village, &c., the expense of its maintenance and reparation shall be borne equally or in proportion, according to circumstances, by the trustees and the inhabitants using the same. Upon the third portion of the section, which unquestionably casts upon the occupiers of lands adjoining, or near to turnpike-roads, through which water from the turnpike-road has been accustomed to pass away, the obligation of cleansing the ditches necessary for the purpose, no question arises; the appellant is not shewn to be the occupier of such lands, nor, in fact, was the convic-

tion founded upon this part of the section. Nor do I think that sections 66. and 67. of the 4 Geo. 4. c. 95, which last is merely supplementary to the latter part of section 113. of the earlier act, have any bearing upon the question. The reason of my judgment that the conviction was wrong is, that by the first part of section 113. no such obligation as that contended for is cast upon the appellant.

MELLOR, J.—I am of the same opinion. The object of the portion of section 113, on which the question arises, was, the keeping roads dry, which is necessary to their preservation; and the duty of cleansing and scouring the side ditches for the purpose has been imposed by the legislature not upon the adjoining owners, but the trustees themselves.

LUSH, J. concurred.

Judgment for the appellant.

Attorneys—G. E. Philbrick, agents for Winslow Jones & Follett, Exeter, for appellant; Dobinson & Gears, agents for W. Buckingham, Exeter, for respondents.

[CROWN CASE RESERVED.]

1868. }
Jan. 18. } THE QUEEN v. KEENA.*

*Embezzlement — Indictment — Money —
Cheque—24 & 25 Vict. c. 96. ss. 1, 71.*

An indictment for embezzlement alleged the property embezzled to be money. The proof was that the prisoner had received a cheque, but no evidence was given that the cheque had ever been presented or cashed, nor did it appear that the maker had an account or balance at the bank on which it was drawn, but it was proved that he had received no notice of its dishonour:—Held, (Figgott, B. dissentiente) that in the absence of any proof that the cheque had been converted into money, the allegation in the indictment was not sustained, and a conviction upon such indictment must be quashed.

The Chairman of the Quarter Sessions for the West Riding of Yorkshire stated the following—

* Before Cockburn, C.J., Keating, J., Montague Smith, J., Figgott, B. and Shew, J.

CASE.

Peter Keena was tried before me and others, at the Michaelmas Adjourned Quarter Sessions, held at Bradford, for the West Riding of the county of York, on the 4th of December, 1867, charged in the first count of the indictment with embezzling, on the 18th of September, at the parish of Dewsbury, certain money, to the amount of 4*l.* 14*s.*, the property of Andrew Hirst, his master.

The second count charged him with embezzling, on the 16th of October, at the parish aforesaid, certain other money, to wit, to the amount of 16*l.* 14*s.*, the property of the said Andrew Hirst, his said master.

No proof was given of the payment of 4*l.* 14*s.* to the prisoner in the first count mentioned, and that count was abandoned; but proof was given of payment to the prisoner of 16*l.* 14*s.* in the second count mentioned, by a cheque for that amount, but no evidence was given that the cheque had ever been presented or cashed. It was proved that in August last the prisoner sold goods on behalf of the prosecutor for 16*l.* 14*s.* to James Fenton, and that it was the prisoner's duty to pay over all moneys he received to his master on the same day. James Fenton proved that the prisoner came to him on the 16th of October for payment of the above 16*l.* 14*s.*, and that he (Fenton) paid the prisoner the 16*l.* 14*s.* by cheque, whereupon the prisoner gave a receipt in these words, "Settled, 16th Oct., 1867, Peter Keena." Receipt was produced and not disputed. Fenton had not received any notice of dishonour of the cheque.

A. Miller, superintendent of police, proved apprehending the prisoner on the 29th of October at Liverpool, on board a vessel bound for America, and prisoner upon being charged with embezzling money, property of his master, said, "It is all right; I intended to send him the money when I got to America." The prisoner's counsel contended that there was no evidence to support the indictment; that payment by cheque was not a payment in money, as stated in the indictment; that the cheque might have been lost and never presented, or it might have been that James Fenton had no balance at the bank.

I held that the cheque was money, and

directed the jury to take the law from me, that receipt of the cheque was receipt of the money.

The jury convicted the prisoner, and he was sentenced to be imprisoned in the House of Correction at Wakefield, for six calendar months, subject to a case for the opinion of the Court of Criminal Appeal on the above point.

No counsel appeared to argue the case.

[*Campbell Foster*, as *amicus Curie*, informed the Court that he was counsel for the prisoner at the trial, and that he then contended before the jury, that the explanation of the prisoner's statement upon being told of the charge referred to the money mentioned in the first count, which count had been abandoned.]

COCKBURN, C.J.—Our decision in this case must turn upon the construction to be put upon the 71st section of the 24 & 25 Vict. c. 96. (1). I think the meaning of that section of the act of parliament is, that if a servant receives a cheque for his master, and fraudulently appropriates it to his own use, and converts it into money, it is sufficient to allege and prove that he either embezzled the cheque, or that he embezzled money; if it is alleged that he embezzled money, then it must be proved that the cheque was cashed, and so converted into money. Upon the facts stated in this case, I can find no proof that the cheque was converted into money. I think, therefore, that the case technically failed. But further, as far as anything goes to the contrary in the case, James Fenton might have no money in the bank, nor even an account there; and I therefore also think

the case failed substantially on the proof. It seems to me that if a man embezzles a cheque, and is intercepted before he has converted that cheque into money, I think there is evidence to go to the jury in support of an allegation in the indictment that he embezzled a cheque, being a valuable security, but not under the allegation of embezzlement of money. The conviction must be quashed.

KEATING, J.—I agree that the conviction must be quashed, and especially as the learned Chairman stated that the receipt of the cheque was the receipt of money.

MONTAGUE SMITH, J.—I agree. The description in the indictment of the property embezzled is *money*; proof of the embezzlement of a cheque does not satisfy that description, unless some statutory enactment provides that it shall be sufficient. The 71st section enacts that "such allegation, so far as regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled or fraudulently applied or disposed of any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved." "Any amount" there means any amount of *money*. This indictment would have been satisfied if there had been proof of the receipt of any amount of money.

FIGOTT, B.—Though I do not say I differ, yet I doubt whether the legislature, upon the true construction of this statute, did not intend to say that, whilst a man might be guilty of the embezzlement either of a cheque or of money, as the case might be, if he were indicted for embezzling a cheque, and it turned out that he had embezzled money, or if he were indicted for embezzling money, and it appeared that he had really embezzled a cheque, the indictment describing the property as money should be sufficient in either case. The word "amount," in the section, seems to apply as well to valuable security as to coin.

SHEE, J. concurred.

Conviction quashed.

(1) 24 & 25 Vict. c. 96. s. 71. enacts (*inter alia*), that in every indictment for embezzlement, where the offence shall relate to any money or any valuable security, it shall be sufficient to allege the embezzlement or fraudulent application or disposition to be of money, without specifying any particular coin or valuable security; and such allegation, as far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled or fraudulently applied, or disposed of any amount, although the particular species of coin, or valuable security of which such amount was composed, shall not be proved. By the 1st section of the same act, the term "valuable security" shall include any warrant, order or other security whatsoever for money, or for the payment of money.

[CROWN CASE RESERVED.]

1868. } THE QUEEN v. SHEPHERD.*
Jan. 18. }

Cutting Trees with Intent to Steal, &c.—
24 & 25 Vict. c. 96, s. 32.—*Injury done exceeding in Amount 5l.—More Trees than One,*

Upon an indictment for cutting eight trees with intent to steal, whereby an amount of injury was done to them exceeding 5l., framed upon the latter part of the 24 & 25 Vict. c. 96, s. 32, proof that the aggregate value of a number of trees cut at one time exceeded the amount of 5l. will satisfy the indictment, though no one tree was of the value of 5l.

The following CASE was reserved by the Chairman of the Devon Quarter Sessions.

Benjamin Shepherd was tried before me and other Justices of the Peace for the county of Devon, at the Midsummer Sessions, 1867. The indictment consisted of three counts. The first, under the statute 24 & 25 Vict. c. 96, s. 32, charged the prisoner with stealing eight oak-trees, of a value exceeding 5l.; the property of the Right Hon. William Wells, Viscount Sidmouth, growing on lands of the said Viscount Sidmouth, in the parish of Upottery, in the county of Devon.

The second count, under the same statute and section, charged the prisoner with cutting with intent to steal these eight trees growing elsewhere than in a park, pleasure-ground, orchard or avenue, or any ground adjoining or belonging to any dwelling-house, thereby then doing injury to the said Viscount Sidmouth, to an amount exceeding the sum of 5l.

The third count charged a larceny of the trees. The charge of larceny was abandoned by the prosecution, as the trees had not been removed.

It was proved in evidence that a sale of standing timber, the property of Viscount Sidmouth, to the number of 261 oak-trees, had taken place by auction on the 5th of February, 1867, and the trees had been purchased by three persons, one of whom, Mr. Heath, purchased 49 trees, marked for the purposes of the sale with the numbers 73 to 120 inclusive,

* Coram Cockburn, C.J., Keating, J., Montague Smith, J., Pigott, B. and Shee J.

and 261. These trees were all standing on Aller Chapplehayes and Bucketchayes Farms in Upottery; they were not grouped together, but were for the most part standing in hedges on these farms, at various distances from one another. Mr. Heath employed the prisoner, who was a carpenter and accustomed to the work, to fell and bark these trees in the usual way. The prisoner engaged about five men to assist him in the work. None of the trees included in the sale were the subject of the indictment, but eight other trees not marked for sale or sold. The evidence shewed that the felling and ripping of the trees bought by Mr. Heath took place during the ripping season of 1867, which extended over the month of May, and that during that time the eight trees in question were felled, stripped of bark, and had their tops cut off. There was evidence to connect the prisoner with the felling of these trees; but there was no evidence to shew the precise day or days on which these trees, or any of them, were felled, or on how many days the prisoner and his assistants were engaged in the work; but it was proved that the work was commenced and steadily prosecuted without intermission until the whole number of trees which the prisoner had been employed to throw were thrown, and it was then found that the eight trees in question had also been felled, and were lying on the ground. The bark and tops of these eight trees had been removed and sold by the prisoner, and he offered the trees themselves for sale as they lay on the ground after the bark and tops had been removed from them.

The injury resulting from the cutting down of these trees did not amount in the case of any one tree to 5l. The value of the eight trees, with their tops and bark, amounted altogether to 24l. 15s. 9d. The evidence on the point of value and situation of the trees was as follows: one tree (worth 3l., tops and bark 1l.), total value 4l., stood in a field called "Wood Close"; another (worth 3l., tops and bark 1l.), total value 4l., stood in a hedge between this field and "Wood Close Meadow"; one tree (worth 2l. 10s., bark 10s. 6d.), total value 3l. 0s. 6d., stood between the bottom of "Yellow Close" and a field called "Chapplehayes Six Acres"; another, worth 1l. 15s. (no evi-

dance as to the value of the bark and top of this tree was given), stood "two fields off Chapplehayes Six Acres"; one, numbered 71 (worth 3*l.*, bark and top 1*l.* 0*s.* 9*d.*), total 4*l.* 0*s.* 9*d.*, and another, numbered 72 (worth 2*l.*, bark and top 1*s.*), total value 2*l.* 1*s.*, stood in the same hedge between "Chapplehayes Six Acres" and "Bucketshayes Farm"; and another (worth 1*l.* 15*s.*, bark 10*s.* 6*d.*), total value 2*l.* 5*s.* 6*d.*, stood between "Yellow Close" (above mentioned) and "Chapplehayes Lane." The eighth tree (worth 2*l.*, bark and top 1*l.*), total value 3*l.*, stood on the edge of a marl-pit in "Chapplehayes Moor," but beyond the name "Chapplehayes," there was no evidence of the contiguity or proximity of this last-mentioned marl-pit to any of the before-mentioned situations of the other seven trees.

At the close of the case for the prosecution, the prisoner's counsel objected that there was no evidence to go to the jury that the prisoner at any one time cut any trees, thereby doing injury to an amount exceeding 5*l.* The Court overruled the objection, and left the case to the jury, directing them that, in order to convict the prisoner, they must be satisfied that he cut down at one time, or so continuously as to form one transaction, such a number of the trees as would make the injury done amount to a sum exceeding 5*l.* The jury found the prisoner guilty, and he was sentenced to nine months' imprisonment with hard labour; but, at the request of the prisoner's counsel, the Court reserved the point, and the prisoner was discharged on bail to surrender in execution when called on by the clerk of the peace for the time being.

The question for the Court is, whether there was any evidence to go to the jury to shew that injury amounting in the aggregate to a sum exceeding 5*l.* was done by feloniously cutting trees so continuously as to constitute the offence charged in the second count of the indictment. If the Court should be of opinion that there was any such evidence, the conviction will be affirmed; if not, the conviction will be quashed.

No counsel appeared for the prisoner.

Mortimer appeared for the Crown.—The question left to the jury was the proper one, and they have convicted.

[COCKBURN, C.J.—That seems to be so;

but the question for us is, whether there was any evidence to go to the jury upon which they could find that the prisoner had cut the trees down at one time, or so continuously as to form one transaction.]

The grouping of the trees upon the evidence, as stated in the case, shews that trees to more than the value of 5*l.* were so contiguous as to be evidence from which the jury might draw the inference that such trees were cut down at one time. Then, as no one tree was injured to the extent of 5*l.*, it was permissible to add the amount of injury done to the several trees to make up the total amount of injury done to exceed 5*l.* The 24 & 25 Vict. c. 96. s. 32. enacts: "Whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any under-wood, respectively growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, shall (in case the value of the article or articles stolen, or the amount of the injury done shall exceed the sum of 1*l.*) be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny; and whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any under-wood, respectively growing elsewhere than in any of the situations in this section before mentioned, shall (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of 5*l.*) be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny." In *The Queen v. Hodges* (1) it would appear that the indictment charged the stealing of more than one tree as making up the value of 1*l.*, under the first part of the section; and that case was on the repealed statute of 7 & 8 Geo. 4. c. 29, which is re-enacted in the present consolidating statute, and contains the same words. And in *The Queen v. Whiteman* (2) it was assumed that the actual injury to all the trees was to be taken into consideration;

(1) Moo. & M. 341.

(2) 1 Dears. C.C. 353; s. c. 23 Law J. Rep. (N.S.) M.C. 120.

but as the indictment was on the latter part of the section, and it only amounted to 1*l*. without taking consequential injury into account, the conviction was quashed on the latter ground.

COCKBURN, C.J.—I think the question was properly left to the jury, and upon the evidence which has been pointed out as to the situation and grouping of the trees, they might have been cut at one time. Then, upon the construction of the 32nd section of the 24 & 25 Vict. c. 96, can the injury done to two or more trees be taken into consideration in estimating the amount of injury done within the meaning of that section? I cannot but say that a clause so confusing and inartistically drawn ought never to have been allowed to remain in a consolidating statute; still I think that the construction we must put upon the section is, that the value of the injury done to two trees may be taken into consideration in estimating the amount. In the first part of the section, the words “whole or any part of any tree” would point to one tree; but then afterwards, when reference is made to the value, it speaks of the “value of the article or articles stolen.” Then, with reference to the injury done to things intended to be stolen, the amount of injury done must be read of the article or articles referred to before. It may be said that the word “articles” is used to refer to underwood *reddendo singula singulis*, and this undoubtedly creates a difficulty; but I resolve the doubt in favour of this conviction, on the ground that if the legislature would afford protection to a number of small sticks in the shape of underwood, it would certainly desire to give the same protection to young growing trees; therefore I think that the words “whole or any part of any tree, sapling or shrub, in case the amount of injury done should exceed 5*l*,” must be taken to extend not only to cases where the injury is done to one tree, sapling, &c., but to a number.

The other Judges concurred.

Conviction affirmed.

Attorneys—Barlow & Bowling, agents for Stamp & Son, Honiton, for the Crown.

[CROWN CASE RESERVED.]

1868. }
Jan. 25. } THE QUEEN v. BULLOCK.*

Maliciously Wounding Cattle—24 & 25 Vict. c. 97. s. 40.—Wound—Evidence.

Upon an indictment for wounding a gelding, contrary to the statute 24 & 25 Vict. c. 97. s. 40. the prisoner was convicted upon evidence which shewed that the gelding had suffered a laceration of the roots of the tongue, which protruded, and a tearing of the mouth, which injuries might have been caused by a pull of the tongue by the hand; but there was no evidence to shew that any other instrument than the hand had been used:—Held, that there was sufficient evidence of a wounding; and the conviction was affirmed.

The following CASE was stated by the Chairman of the Quarter Sessions for Gloucestershire.

At the General Quarter Sessions of the Peace for the county of Gloucester, holden on the 1st of January, 1868, George Bullock was tried before me on an indictment which charged him with maliciously and feloniously wounding a gelding, the property of James Ricketts. The prisoner pleaded not guilty.

On the trial it was proved that the prisoner, who was sent by his master with a cart and horse to fetch stone from a distant field on the 20th of December last, at half-past one p.m. returned about four p.m., bringing back the horse with his tongue protruding seven or eight inches, and unable to draw it back into his mouth. The veterinary surgeon who examined the horse the following day proved that he found the roots and lower part of the tongue much lacerated, and the mouth torn and clogged with clotted blood. The injury he considered might have been done by a violent pull of the tongue on one side. He was obliged to amputate five inches of the tongue, and the horse is likely to recover.

The prisoner's statement was that the horse bit at him, and he did it in a passion.

* Coram Cockburn, C.J., Keating, J., Montague Smith, J., Pigott, B. and Shee, J.

There was no evidence to shew that any instrument beyond the hand had been used.

The prisoner's counsel contended that no instrument having been proved to be used in inflicting the injury, the prisoner could not be convicted under the 24 & 25 Vict. c. 97. s. 40. For the prosecution, it was maintained that under the statute it was not necessary to shew that the injury had been caused by any instrument other than the hand or hands of the prisoner. The prisoner's counsel, on the point being reserved, declined to address the jury, and a verdict of guilty was found by them. I respited the judgment and liberated the prisoner on recognizance, in order that the opinion of the Justices of either Bench and the Barons of the Exchequer might be taken on the question, whether the prisoner was properly convicted of the wounding, there being no evidence to shew that he used any instrument other than his hand or hands.

No counsel appeared for the prisoner.

Sawyer, in support of the conviction.—The question is, what is the proper construction to be put upon the word "wound" in 24 & 25 Vict. c. 97. s. 40, which enacts, "Whosoever shall unlawfully and maliciously kill, maim or wound any cattle shall be guilty of felony, and being convicted thereof shall be liable," &c. The language is substantially the same as that which was used in stat. 7 & 8 Geo. 4. c. 30. s. 16, and it is said that a "wound" cannot be inflicted unless some kind of instrument is used. At the trial the case of *The Queen v. Jeans* (1) was cited; but when the report of that case is examined it will be found that no decision was there given upon the present point: the only point decided was upon the word "maim," and the decision is to some extent in favour of the present contention on the part of the prosecution; for it would seem that if a permanent injury had been inflicted, the prisoner would have been convicted, although no instrument was used. If that would be the construction upon the word "maim," the same ought to be put upon the word "wound." But further, that case, as far as the meaning of the word "wound" is concerned, proceeded upon a misconception. Two cases, *The*

King v. Owens (2) and *The King v. Hughes* (3), were cited for the defence, and the counsel for the prosecution appears to have given up the point, although neither of those cases supports the proposition in proof of which they were cited, viz., that the word "wound" must be taken to mean a wound caused by an instrument. Such a construction has been put upon the word "wound" in the 7 Will. 4. & 1 Vict. c. 85. s. 4; but the ground of it is explained by Patteson, J., in *The Queen v. Harris* (4), viz., that it was evidently the intention of the legislature, according to the words of the statute, that the wounding should be inflicted with some instrument, and not by the hand or teeth. In *The King v. Stevens* (5) that construction was upheld by seven Judges against five, and Alderson, B. afterwards, in *Jennings's case* (6), explained the reason in these words: "The Judges decided under the former statute, 9 Geo. 4. c. 31. ss. 11 and 12, that the 'wound' must be made by an instrument, because the word 'wound' is there used concurrently with 'stab' and 'cut'; and inasmuch as a stab or cut must be made by an instrument, they thought that the legislature intended by the word 'wound' an injury (not being a stab or cut) which was made by an instrument also." Of course this reason does not apply to a case arising under the present statute, which has the words kill, maim or wound only.—(He was then stopped.)

COCKBURN, C.J.—We need not trouble you any further. You have satisfactorily explained the doubt which has arisen in this case. The case last referred to gives the reason for putting the construction upon the old statute, namely, that the word "wound" was used in conjunction with the other words, "stab" and "cut." But under the statute which we now have to construe, there is nothing to shew that we are not at liberty to construe the word "wound" according to its ordinary interpretation. The mischief which is done to the animal is quite as great, although only done by the hand, as if an instrument had

(2) 1 Moo. C.C. 205.

(3) 2 Car. & P. 420.

(4) 7 Ibid. 446.

(5) 1 Moo. C.C. 409.

(6) 2 Lewin, 130.

(1) 1 Car. & K. 539.

been used. It may possibly be that the guilt of the prisoner may not be so great as if he had inflicted the wound by the use of an instrument; but it is equally within the terms and spirit of the statute, and the conviction must be affirmed.

KEATING, J., MONTAGUE SMITH, J., FIGOTT, B. and SHEE, J. concurred.

Conviction affirmed.

Attorneys—Rogerson & Ford, agents for Carter & Geold, Newnham, for prosecution.

[IN THE COURT OF COMMON PLEAS.]

1867. } TOOMER AND ANOTHER, appel-
Nov. 11. } lants, REEVES, respondent.

Turnpike—Exemption from Toll—Stores for the use of Troops—Stat. 3 Geo. 4. c. 126. s. 32.

The exemption from toll in the Turnpike Act, 3 Geo. 4. c. 126. s. 32, in favour of carts conveying stores belonging to Her Majesty, or for the use of Her Majesty's forces, applies where stores are being bona fide conveyed for the use of such forces, although at the time of claiming the exemption no property in such stores has passed to the Crown, and there has been no irrevocable appropriation of them for the use of such forces.

CASE stated by Justices under 20 & 21 Vict. c. 43.

The case stated that an information had been laid before the Justices under 3 Geo. 4. c. 126, charging the respondent with having demanded and taken from the appellants, at a toll-gate called Farnborough Gate, on a turnpike-road, the sum of 6d. as a toll payable there in respect of a waggon drawn by two horses and containing hay, the said waggon and horses then being exempt from the said toll, as being employed in conveying commissariat for the use of Her Majesty's forces, within the meaning of the 32nd section of the said act.

At the hearing, before the Justices, it was proved by witnesses that on the 11th of December, 1866, the appellants were trading under the name of Messrs. Toomer Brothers, and were then contractors for the supply of forage for the use of Her

Majesty's forces at Aldershot, in the said county, under and by virtue of a certain contract made on the 22nd of October, 1866, between them and Her Majesty's Deputy Commissary General, on behalf of Her Majesty's principal Secretary of State for War, to supply hay at Aldershot Camp and Command, in such quantities, and at such times and at such barracks or camps as might be required within the command by the proper officer, as specified in certain conditions thereto annexed, for twelve months, commencing the 1st of November, 1866, (a copy of which said contract and conditions were thereunto annexed and made part of the case) (1). It was also proved that on the said 11th of December, 1866, the appellants under the said contract were by their servant conveying, in the said waggon drawn by the said two horses, certain hay to Aldershot Camp; that in order to take the said hay to Aldershot Camp it was convenient and necessary for the said waggon and horses to pass through the said toll-gate; that on the waggon and horses arriving at the said toll-gate, the respondent demanded and took from the appellants, the sum of 6d. as and for toll in respect of the said waggon and horses, and refused to allow the said waggon and horses to pass through the said toll-gate except on payment of such sum of 6d. as and for such toll as aforesaid, although the appellants then claimed exemption from such toll, on the ground that the said hay was hay for the use of Her Majesty's forces, and that by reason thereof the said waggon and horses

(1) The following are the only conditions of the contract which it is necessary to set out, viz.: "1. The contractor shall either reside at Aldershot himself, or appoint a resident agent. The agent to be subject to the approval of the Deputy Commissary General, and to be removed on his requisition. 2. The contractor shall deliver the forage at his own expense, at such periods and in such quantities as may be required, into the stores, or on the ground at Aldershot Camp. 4. The forage offered by the contractors shall be subjected to the joint inspection and approval of a commissariat officer and of a garrison staff officer or regimental officer as regards quality (with the qualifications in paragraph 5), and the weight shall be finally and absolutely determined at the time of delivery into store." The 5th condition provided for the contractor's removing forage found on opening the trusses of hay for issue to be not equal to the quality stipulated for.

were exempt from such toll. At the time when the said waggon and horses and hay passed through the said gate, and at the time when the said toll was demanded, the said hay had not nor had any part thereof been inspected or approved by any person in accordance with the said condition No. 4, nor by any person whatsoever on behalf of Her Majesty, nor had the same or any part thereof been actually delivered or offered to be delivered to any person on behalf of Her Majesty, or on behalf of Her Majesty's forces or commissariat, except as otherwise appears from this case. The respondent was then and is a person duly authorized to demand and take such toll as is legally payable at the said toll-gate, and the amount of the sum so demanded and taken would be the amount of toll legally payable for the said waggon and horses if any were payable.

It was contended for the appellants that no toll was payable, inasmuch as the waggon and horses were within the exemption from toll mentioned in the 32nd section of the said act, and were a waggon, or other carriage, and horses drawing the same, conveying commissariat or other public stores for the use of Her Majesty's forces. The respondent contended that the said waggon and horses were not within the said exemption. The said Justices were of opinion that the said waggon and horses were not within the said exemption. The question for the opinion of the Court was, whether the said Justices were right.

C. Wood (Mangles with him), for the appellants.—The waggon and horses were exempt from toll by the 32nd section of 3 Geo. 4. c. 126, which exempts them from toll when employed in conveying "public stores of or belonging to His Majesty, or for the use of His Majesty's forces." It is sufficient therefore for the exemption if the stores were being conveyed for the use of Her Majesty's forces, as has been already decided by this Court, the present case being substantially the same as that of *The London and South-Western Railway Company v. Reeves* (2).—(He was then stopped by the Court.)

Harington, for the respondent.—No one appeared for the respondent in the former

case of *The London and South-Western Railway Company v. Reeves*, who is the defendant in this case (2), and as there is no appeal from the decision of this Court in these cases, it is asked that the present case may be allowed to be argued. There is, moreover, some distinction between the two cases, and the present one ought not necessarily to be governed by the former one. It now distinctly appears that the hay had not been approved by any one on behalf of the Crown, and that nothing had been done to pass the property in the hay to any one on behalf of Her Majesty. In *The London and South-Western Railway Company v. Reeves* (2), Erle, C.J. seems to have based his judgment on the fact that the property in the goods had passed to the Crown, for he is reported in the *Law Reports*, at p. 582, to have said, "that the fact that Her Majesty can refuse to receive the stores if of inferior quality cannot prevent their being her property."

[BOVILL, C.J.—No; the decision in that case was not on that ground, but on the ground that the hay was being conveyed for the use of Her Majesty's forces. There must be some mistake in this respect in the report. KEATING, J.—The passage cited does not appear in the report of the case in the *Law Journal Reports*. The point which the Chief Justice seems to have chiefly dwelt on in his judgment was the protection of the carrier, and he considers him equally protected with the contractor, on the principle of *qui facit per alium facit per se*. I observe, also, that Mr. Wood, in his argument, called the attention of the Court to the power of the officer in command to reject the hay.]

It is conceded that the mere power of rejection is not sufficient to prevent the exemption from applying; but it is contended that to entitle the contractors to carry the hay toll free, there must previously have been such an appropriation of it for the use of Her Majesty's forces as would have prevented the contractors from otherwise disposing of it; whereas, in the present case, there was nothing to have hindered the appellants after they had passed the toll-gate with the hay from substituting any other hay for it, and delivering such substituted hay under their contract for the supply of forage to the forces. The

(2) 35 Law J. Rep. (N.S.) M.C. 239; s. c. 1 Law Rep. C.P. 580.

effect of the first and second conditions of the contract in this case is to make the contractor set up a shop at Aldershot for the use of the forces, and therefore, if the exemption in such a case as the present is to apply, the contractor will be able to bring a quantity of stores to his place at Aldershot toll free, on the plea that he intends to offer them for the use of Her Majesty's forces, but which in fact he may sell and dispose of in other markets. Suppose the appellants, after they had passed the toll-gate, had sold the hay to any dealer they had met with on the road before they reached Aldershot, is the exemption to apply because at the time they passed the toll-gate they said the hay was for the use of Her Majesty's forces? There surely ought to have been previously an irrevocable appropriation of the hay by the contractor for the use of the forces, and one test as to that would naturally be whether the property had passed.

[KRATING, J.—The words of the act are in the alternative, “of or belonging to His Majesty, or for the use of His Majesty's forces.”]

It is admitted that to come within the exemption, the stores need not bespecifically Her Majesty's; they might be vested in some officer or other public authority for the use of the forces, and therefore to meet such a case the words in the act are “or for the use of,” &c. They ought, however, to have been ear-marked, or in some other way irrevocably appropriated, so as properly to be stores for the use of Her Majesty's forces.

[BOVILL, C.J.—It must be a question of fact to be ascertained by the Magistrates, whether the stores are or are not for the use of Her Majesty's forces; but the moment it has been ascertained that they are for such use, they are exempt.]

At the time the hay was being conveyed it was under the control of one who had no power to say it was for the use of Her Majesty's forces, for until some other person on the part of the Crown had assented to its being so used, it was uncertain whether it would be or not for the use of the forces. The contractors for the supply of hay for the forces might contract with other persons for the purchase of it, and there might be many hands and a long line of road

through which it would pass before it came from the land where it was cut to the camp at Aldershot, and could it be said that all along such road every person who should assist in forwarding it would be entitled to pass with it toll free?

BOVILL, C.J.—In the former case no counsel appeared for the respondent, and therefore we have not been unwilling to hear this case argued. After hearing, however, what has now been urged on the part of the respondent, I have no doubt that the exemption applies to this case. The words of the statute exempt carts and horses employed in conveying public stores for the use of Her Majesty's forces. Mr. Harington says that the stores must be either Her Majesty's or under the control of Her Majesty, but those are not the words of the act. Here there was a contract for the supply of forage for the use of Her Majesty's forces at Aldershot, and the hay was going under that contract. I see no injustice which would be done even if the hay were afterwards appropriated to some other person; for in that case the contractor might have been proceeded against summarily under the statute, and the Magistrates would no doubt have convicted him, on its being proved that he made an untrue statement when he claimed exemption. The Magistrates form the proper tribunal to decide whether the stores are being conveyed with a *bona fide* intention of conveying them for the use of Her Majesty's forces. I do not agree with Mr. Harington that because these contractors were exempt, the persons who may have supplied them with the hay would be exempt also; for these others would not then, in point of fact, be conveying the hay for the use of Her Majesty's forces. I think there must be some mistake in the report of the former case in the *Law Reports*, for the judgment of the Court could not have proceeded on the ground of the property in the hay having passed to Her Majesty, but only on the ground of the hay being for the use of Her Majesty's forces.

WILLES, J.—I am of the same opinion.

BYLES, J.—I am of the same opinion. I was present at the time the decision in the former case was given, and my impression is, that it entirely turned on the latter

branch of the act of parliament, which exempts stores for the use of Her Majesty's forces. It is to be observed that the vendors of the hay had here intended it for the use of the forces, and, further, that they had appropriated it for such purpose, although no doubt they might afterwards have revoked such appropriation. This is an exemption in favour of the Crown, and also in favour of the public; and therefore a fair and reasonable and not a strict construction should be put upon it.

KEATING, J. concurred.

Judgment for the appellants, with costs.

Attorneys—Dyne & Harvey, agents for Hollest & Mason, Farnham, for appellants; L. Crombie, for respondent.

[CROWN CASE RESERVED.]

1868. }
Jan. 18. } THE QUEEN v. DOWEY.*

*False Pretences, Obtaining Money by—
Passing the Note of a Bank which had become Bankrupt for a good Note—Evidence.*

*An indictment charged the prisoner with obtaining money by falsely pretending that a five pound bank note was of the value of 5*l.* It appeared in evidence that the note was the note of a bank which had been made bankrupt forty years before, and had not re-opened, and the prisoner knew it. The bankruptcy proceedings were not produced, and there was no evidence as to what dividend, if any, had been paid:—Held, that the evidence was sufficient to justify the conviction of the prisoner.*

The following CASE was reserved by the learned Presiding Chairman of the Quarter Sessions for the North Riding of Yorkshire.

The defendant was indicted at the Epiphany Quarter Sessions of the Peace of the North Riding of Yorkshire, for obtaining money and goods by false pretences, with intent to defraud.

The first count of the indictment stated

that the defendant falsely pretended to one John Beal, that a piece of paper was a bank note then current, and good and available for the sum of 5*l.*, and of the full value of 5*l.*, by which false pretence the defendant then unlawfully obtained from the said John Beal the sum of 5*l.* with intent to defraud; whereas in fact the said piece of paper was not a bank note then current, or good, or of the full value of 5*l.*, as the defendant then well knew.

The second count stated that the defendant falsely pretended to the said John Beal that there was then in existence a banking co-partnership of persons carrying on business as bankers, under the name of the Stockton and Cleveland Bank, and that a piece of paper, purporting to be a bank note of the Stockton and Cleveland Bank, for the payment of 5*l.* was then of value, by which false pretence the defendant then unlawfully obtained from the said John Beal 5*l.*, with intent to defraud; whereas, in fact, there was not any banking co-partnership then carrying on business as bankers under the name of the Stockton and Cleveland Bank, nor was the said piece of paper of any value whatever, as the defendant well knew.

The fifth count stated that the defendant falsely pretended, to one Walter Grimshaw, that a piece of paper was a bank note, then current, and good and available for 5*l.*, and then of the value of 5*l.*, by which false pretence the defendant then unlawfully obtained from the said Walter Grimshaw a boy's coat and a pair of leather leggings, and 4*l.* 7*s.*, with intent to defraud; whereas, in fact, the said piece of paper was not a bank note then current, or good, or of the value of 5*l.*, as the defendant then well knew.

The sixth count stated that the defendant falsely pretended to the said Walter Grimshaw, that there was then in existence a banking co-partnership carrying on business as bankers under the name of the Stockton and Cleveland Bank, and that a piece of paper purporting to be a bank note of the Stockton and Cleveland Bank, for the payment of 5*l.* was then of value, by which false pretence the defendant then unlawfully obtained from the said Walter Grimshaw a boy's coat and a pair of leather leggings, and 4*l.* 7*s.* in money, with intent

* Coram, Cockburn, C. J., Keating J., Montague Smith, J., Pigott, B. and Shee, J.

to defraud; whereas, in fact, there was not any banking co-partnership then carrying on business as bankers under the name of the Stockton and Cleveland Bank, nor was the said piece of paper of any value whatever, as the defendant well knew.

It was proved that the defendant, on the 24th of October last, obtained, through one Hansill, from John Beal, a butcher at Whitby, 5*l.* in gold in exchange for a piece of paper purporting to be a 5*l.* note of the Stockton and Cleveland Bank, and that on the same day he made a small purchase, through Hansill, to the amount of 13*s.*, of Walter Grimshaw, a shopkeeper at Whitby, paying for the same with another piece of paper purporting to be a 5*l.* note of the same bank, receiving from Grimshaw the articles purchased and 4*l.* 7*s.* in exchange. The defendant told Hansill to be sure if any one asked about the notes to say that he (Hansill) got them from a man he did not know. The defendant was taken into custody a few days afterwards in his own house, when a similar note was found in his pocket, seven others inside his trowsers, and one in his boot, all of which were produced, and when charged with obtaining money by false pretences the defendant said, "The notes were mucky old things which the old man (meaning his uncle) had taken in payment of a dairy of cheeses at Yaem fair forty years ago, and that the bank had stopped payment directly after." It was also proved by John Heavisides, a printer at Stockton-on-Tees, that a bank, called the Stockton and Cleveland Bank, had formerly existed in that town, but had stopped payment about forty years ago, and had never re-opened, and was not now in existence. On cross-examination by the defendant's counsel, this witness stated that he knew the partners in the bank were made bankrupts, that he was employed by the Bankruptcy Commissioners to print in their presence the indorsements on the back of the notes, of their having been produced and exhibited to the Commissioners without which no holder of a note could get a dividend. The notes produced bore this indorsement; but the witness did not know what dividend was paid.

The defendant's counsel then made the following objection in writing: "It being

proved that the partners of the bank became bankrupt, I object that, none of the bankruptcy proceedings being produced, there is no evidence that the notes are not of the value of 5*l.*, and no evidence that there are no assets to pay the notes in full, and therefore that there is no case for the jury."

I told the jury that there was no evidence that the notes were of no value; but that if on the evidence they believed the defendant to have passed the notes as good notes of an existing bank of the value of 5*l.*, knowing that the bank was insolvent, and had stopped payment forty years ago, and had not re-opened, and that the notes were not of the value of 5*l.*, they might find him guilty. The defendant was found guilty, and the Court had no reason to be dissatisfied with that verdict. At the request of the defendant's counsel, this case was granted for the opinion of the Court of Criminal Appeal, whether the defendant was properly convicted or not. The defendant was admitted to bail, to appear at the next Quarter Sessions of the North Riding of Yorkshire to receive judgment.

Shepherd, for the prisoner.—The indorsement on the back of the note was a memorandum which shewed that it had been exhibited in the proceedings in the bankruptcy of the partners in the bank. Then the bankruptcy proceedings ought to have been produced; and as they were not, there was no evidence here that the estate might not pay 20*s.* in the pound, or whether any or what dividend had been paid under the bankruptcy. It might be that the estate would pay 20*s.* in the pound, and that the dividends were still due on the note. There was no evidence as to what had been paid, if anything, nor therefore of the value of the note. In *The Queen v. Clarke* (1) it appeared, on an indictment for obtaining a bull by falsely pretending that a promissory note of V. & Co. was a good note, that the prisoner, when he uttered the note, said it was a very good one, and on being asked where he lived gave a false address. V. & Co. had ceased business above twenty years, and one of their then clerks swore that the note uttered by the prisoner had been

(1) 2 Russell on Crimes, 4th edit. by Greaves, 634.

regularly cancelled and withdrawn from circulation. The note was old and discoloured. The proceedings in bankruptcy against V. & Co. were not produced, and the prisoner was acquitted under the direction of Coleridge, J.

[COCKBURN, C.J.—In that case, the express ground of Mr. Justice Coleridge's direction was that there was no evidence that the prisoner knew that the bank had stopped.]

In *The Queen v. Williams* (2), under similar circumstances, Martin, B. directed an acquittal, on the ground that there was no evidence that the estate might not pay 20s. in the pound. In *The Queen v. Spencer* (3) Gaselee, J. directed an acquittal, on the ground that as the note might ultimately be paid there was no evidence that the prisoner was guilty of a fraud in passing it away. In *The Queen v. Flint* (4) the notes passed appeared on their face to have been exhibited in the bankruptcy of the bank, and there was hearsay evidence that the bank had stopped payment upwards of seven years before, but the notes had never been presented by the prosecutor for payment. The conviction was quashed on the ground that the evidence was not sufficient to shew the note was bad. In *The Queen v. Evans* (5) the prisoner obtained change to the full amount of 5*l.* for a note on a bank which had stopped payment eight years before, and had paid a dividend of 2*s.* 4*d.* in the pound six or seven years before; it was objected that there was not sufficient evidence to go to the jury in support of the allegation that the note was not good, or of the value of 5*l.*, or of any value whatever. The Chairman told the jury that there was evidence from which they might infer that the note was not of any value. The prisoner was convicted; but the conviction was quashed by the Court, on the ground that there was no evidence that the note was of no value; and Pollock, C.B. said: "For although 2*s.* 4*d.* in the pound has been paid upon it, it might still be of some value."

(2) 7 Cox, C.C. 351.

(3) 3 Car. & P.

(4) Russ. & R. 460.

(5) Bell (C.C.R.) 187; s.c. 29 Law J. Rep. (N.S.) M.C. 20.

COCKBURN, C.J.—I have no doubt upon this point. The evidence stated in the case clearly shews that the prisoner passed off the notes of the Stockton and Cleveland Bank as good 5*l.* notes, well knowing that the bank had stopped payment forty years ago and had not re-opened; and that is, I think, amply sufficient.

The other Judges concurred.

Conviction affirmed.

Attorney—T. T. Trevor, Guisborough.

Note.—We have thought it desirable to report this case as settling a point upon which a difference of opinion seems to have prevailed, according to the reported statements of the law as laid down by learned Judges on circuit. For whilst Mr. Baron Martin, in *The Queen v. Williams*, cited in the argument of the case, seems to have thought that, in the absence of proof to the contrary, the possibility that the bank might at a future time pay 20s. in the pound, entitled the prisoner to his acquittal, in *The Queen v. Smith* (1) Mr. Justice Talfourd seems to have held that, on an indictment for obtaining money by falsely pretending that the promissory note of a bank which had stopped payment by reason of bankruptcy, was a good and a valuable security for the payment of the amount mentioned in it, and was of that value, it was not necessary to prove the bankruptcy proceedings, and that it was sufficient to prove the time when the bank stopped payment, and that cash could not be obtained for the note on its being duly presented for payment, and prior to this case the matter seems to have created some doubt. Mr. Greaves, in his note to p. 636 of 2 *Russell on Crimes*, 4th edit., says in reference these cases, that "it deserves consideration whether these cases have ever been dealt with on the proper ground. Assuming that the evidence shews that the prisoner was guilty of a fraud in passing the note, it should seem that the only proper question is, was the note at the time it was passed an available note for the sum mentioned in it? The representation of the prisoner is that it was, and the truth or falsehood of that representation depends

(1) 6 Cox, C.C. 314.

[IN THE COURT OF QUEEN'S BENCH.]

1868. { LYNE, *appellant*, LEONARD
 Jan. 25. { *respondent*.
 { LYNE, *appellant*, FENNELL
respondent.

Salmon Fishery Act, 1865 (28 & 29 Vict. c. 121), s. 36.—Instruments and Devices for catching Salmon — Licence — Evidence of Intention.

The bare use of the instruments and devices for catching salmon enumerated in section 36. of the Salmon Fishery Act, 1865, is sufficient to render an unlicensed person using them liable to the penalty therein mentioned, without evidence that they were used for the purpose of taking salmon.

CASES stated by Justices under the 20 & 21 Vict. c. 43.

LYNE v. LEONARD.

At a petty session holden at the Victoria Hall, Newport, in the county of Mon-

on the state of facts at the time. Suppose a prisoner believes a note to be valueless and passes it for full value, how could his guilt be turned into innocence by the possibility that years afterwards some dividend may be paid on the note?—see the remarks of Pollock, C.B., Williams, J. and Crowder, J., *infra*, in *The Queen v. Evans*.—It does not, however, seem to be so much a question of principle as of evidence. Assuming the law to be as stated by Mr. Greaves, the question seems rather to be, is the fact of the bank having stopped payment and not re-opened for a lapse of time to be taken as sufficient proof against the prisoner in a criminal proceeding that the bank had not assets at the time of the passing of the note to pay it in full, after it has appeared in evidence that the bank has been made bankrupt and the non-production of the bankruptcy proceedings not accounted for, when by their production it might appear what the real value of the note was, and whether of full value or not? Because it must be borne in mind that the note must be shewn in fact not to be of the value pretended as well as that the prisoners believed it not to be of such value. The case in the text, however, shews that the bankruptcy proceedings need not be produced in such a case.

mouth, on the 1st of June, 1867, an information was preferred by Charles Lyne, secretary of the Usk and Ebbw Board of Fishery Conservators (hereinafter called the appellant), against William Leonard, who occupies a fishery at Undy, in the said county (hereinafter called the respondent), under section 36. of the 28 & 29 Vict. c. 121, charging "for that he the said William Leonard, after the time appointed by the conservators, did, on the 27th day of May, in the year of our Lord 1867, at the parish of Undy, in the said county, then and there use seventy fishing putts for catching salmon, without having any licence for the same," was heard and determined by the Justices, and dismissed on the ground that there was no proof that the putts were there for the purpose of catching salmon.

Upon the hearing of the said information, it was admitted by the respondent, and found as a fact, that he had seventy putts laid down in his fishery with circles (an apparatus formed of wire) at all times in them, to prevent salmon from passing into them; and the respondent alleged that the putts were there for the purpose of catching shrimps and flat fish only, and therefore that it was not necessary for the respondent to take out, and he did not take out, any licence for putts. It was argued, on the part of the appellant, that putts are fixed engines for catching salmon, and are so declared to be under the Salmon Fishery Act, 1861, and that it was not necessary to prove the purpose for which they were put down. The Justices, however, were of opinion that it was necessary for the appellant to prove that the putts were laid down for the purpose of taking salmon, and that it was not sufficient, in order to bring the respondent within the penal clause, under which he was charged, to prove only the naked fact that the putts were there, and they declined to convict, on the ground that there was no evidence before them that the putts were there for the purpose of catching salmon, or that salmon had been caught in them.

The question of law arising on the above statement is as follows: Is the naked fact of the putts being placed in the fishery

sufficient evidence on which to convict the respondent of using them for catching salmon, without a proper licence for the same?

LYNE v. FENNELL.

In this case the information under the same statute charged that the respondent, the occupier of a fishery at Goldcliffe, in the county of Monmouth, "after the time appointed by the conservators, did, on the 27th day of May, 1867, at the parish of Goldcliffe, in the said county, then and there use fifty-nine fishing putts for catching salmon, without having any licence for the same."

It was proved, on the part of the appellant, that the respondent had fifty-nine putts laid down, the nearest putt being about fifty yards from his putchers, and that they were laid down without circles or stop-nets over them, but the respondent denied that they were placed there for the purpose of catching salmon, alleging that they were intended to catch coarse fish and shrimps, and were laid down in a place where salmon do not usually run, and that they were not in the same position in which engines are generally placed for catching salmon, and that therefore it was not necessary for the respondent to take out a licence for the putts. It was argued, on the part of the appellant, that putts were fixed engines for taking salmon, and are so declared to be under the Salmon Fishery Act, 1861, and that it was not necessary to prove the purpose for which they were put down. The Justices declined to convict, on the ground that there was no evidence before them that the putts were there for the purpose of taking salmon, or that salmon had been caught by them.

The question of law upon the above facts is, whether the naked fact of the putts being placed in the fishery without circles or stop-nets, is sufficient on which to convict the respondent of using them for catching salmon, without a proper licence for the same.

Manisty, for the appellant.—By section 36. of the 28 & 29 Vict. c. 121. from and after a certain appointed time, any person using within a fishing district putts, &c.

for the catching of salmon without a licence, is liable to a penalty of not less than double the amount to be paid for the licence, and not exceeding 20*l*. Section 33. provides for the issue of such licences, and both in that section and paragraph 2. of section 34. putts are enumerated amongst the instruments and devices for catching salmon, in respect of which licences are to be taken out by the person using them. The object of the legislature was clearly to prevent the use of these instruments, which are included under the term "fixed engines," by section 4. of 24 & 25 Vict. c. 109. by unlicensed persons; it was therefore not incumbent upon the appellant to prove that the putts were laid down for the purpose of taking salmon, and the Justices were wrong in not convicting.

No counsel appeared for the respondents.

BLACKBURN, J.—We think the Justices came to a wrong conclusion in both cases. Looking at sections 33, 34. and 36. of the 28 & 29 Vict. c. 121, it is obvious that the legislature intended that the use of these kinds of instruments should be confined to licensed persons; and it seems to me that the enactments in question are to be read entirely irrespective of the intention of the parties using them. In the first case, on which only any question can arise, it appears that the respondent used circles, for the purpose of preventing salmon from passing into the putts; but this circumstance, in our opinion, does not make the least difference, the rather that this apparatus may, at any moment, be removed from the instrument, which thereupon becomes immediately available for catching salmon. A putt no more ceases to be a putt because a circle is placed in it, than a bottle ceases to be a bottle when corked.

Case remitted to the Justices.

[IN THE COURT OF QUEEN'S BENCH.]

1868. } LAKEMAN, appellant;
 Jan. 22. } STEPHENSON, respondent.

Factory—Accident preventing Person Injured from returning to Work—Factories Act (7 Vict. c. 15. s. 22).

By the *Factories Act* (7 Vict. c. 15), s. 22, "If any accident shall occur in a factory which shall cause any bodily injury to any person employed therein which shall have been of such a nature as to prevent the person so injured from returning to his work in the factory before nine of the clock of the following morning, the occupier of the factory, or in his absence his principal agent, shall within twenty-four hours of such absence send a notice thereof in writing to the surgeon appointed to grant certificates of age for the district in which the factory is situated," &c. A girl employed in a factory was tripped up by a rope placed in her way as a practical joke, and falling against some machinery not in motion, sprained her arm. She returned to the factory before nine o'clock on the following morning, having arranged that her mother should take her place as soon as possible, and came away after attempting to work for about an hour, using her knees and mouth instead of her injured arm:—Held, first, that the accident was one of which the occupier was bound to give notice according to the section above stated; secondly, that the girl was prevented from returning to her work within the meaning of the section, as it is necessary, in order to excuse the occupier from giving notice, that the person injured should return, not merely with the intention but with the ability to resume work.

CASE stated by Justices under 20 & 21 Vict. c. 43.

On the 9th of May, 1867, John Stephenson, cotton-manufacturer, appeared before two Justices, upon the summons of J. B. Lakeman, one of Her Majesty's sub-inspectors of factories. The summons charged Stephenson with being, on the 21st of March last, at Todmorden, in Lancaster, "the occupier of a certain factory within the same county, the same being a factory within the meaning of the *Factories Act* (7 Vict. c. 15), and that an accident then occurred in the factory which caused

bodily injury to a young person named Jane Greenwood, of the age of fourteen years, employed therein, which was of such a nature as to prevent the person so injured from returning to her work in the factory before nine o'clock of the following morning, and that he did not, nor in his absence did his principal agent, within twenty-four hours of the absence of Jane Greenwood, send a notice of it in writing to the surgeon appointed to grant certificates of age for the district in which the factory is situated."

It was proved before the Justices that John Stephenson was the occupier of a cotton factory, and subject to all the provisions of the act 7 Vict. c. 15. It was also proved that Jane Greenwood was employed in the factory as a weaver, and that she was under the age of eighteen years, and so registered in the books of the factory. It was also proved that, on the 21st of March, 1867, at half-past five in the afternoon, Jane Greenwood was tripped up by and fell over a rope in the factory, which had been tied across the passage between the looms by one Richard Carter, a nephew of John Stephenson, and who was employed by him in the factory as a responsible servant, for a practical joke (or, as it was termed before the Justices, "fooling"). In consequence of this fall over the rope, Jane Greenwood was injured, and sustained a severe sprain to her right wrist and arm by her having fallen against a machine in the factory, but which machine was not in motion. She did not then leave the factory, but remained till six o'clock in order to await the return of the defendant from Manchester to tell him of the accident, and did so; but, after the accident and until six o'clock, she endeavoured to keep her looms running, but could not do her usual quantity of work. She returned to the factory next morning at five minutes past six o'clock; but it was proved that she so returned under an arrangement with her mother that, as they were poor and could not afford the loss of wages which would be consequent on her absence, she should go and "try" to work as she was best able, and remain there until her mother had lighted her fire and performed her domestic duties, when she was to come and take her daughter's place and work till her recovery;

and thus, by this arrangement, reduce the loss of wages. It was proved before the Justices that the girl could not raise her arm above her waist or stretch it out, and was obliged to use her knee and mouth and one hand for the purpose of placing her cotton "cop" into the shuttle, with a slight assistance from the injured hand. Her mother came at twenty-five minutes past six and relieved her; but she was obliged to go home at five minutes after seven o'clock, having remained until that time in order that her mother might shew the defendant the state of the girl's arm, who then left and put herself under the care of Mr. Foster, a surgeon at Todmorden, who put her arm in splints, in which they were kept for five days. It was also proved that the girl did return to the factory after the fifth day, but contrary to the advice of her surgeon, and that the bandages were not removed from her arm till after the 16th of April. It was admitted that no notice whatever was sent to the certifying surgeon, as mentioned by the statute 7 Vict. c. 15. s. 22. The defendant contended before the Magistrates that, inasmuch as Jane Greenwood did actually return on the morning of the 22nd of March, and as he saw her at her looms, that no notice of the accident was required to be given by him to the certifying surgeon.

Mr. Lakeman, the sub-inspector, contended that the meaning of the words of the act, "return to his work," was returning and performing continuously the usual amount of regular work. That the 22nd section enacts, that any accident shall be reported which has been of such a nature as to prevent the injured person from returning to his work in the factory before nine o'clock next morning: hence the words require *all* accidents, whether from machinery or not, to be reported. That the words of the act also require all accidents to be reported which prevent the injured person from returning to his work. That if an accident occurred and the injured person returned, and was employed on some other work, such an accident should be reported, because he did not return to his work; and that though the girl came on the morning of the 22nd of March, at five minutes past six o'clock, and set on her looms, which were worked by steam power, she only did

so for the short time she was at the factory in the morning, by the aid of her knee, mouth and hand, and the little assistance she could bear to give with the other hand, her object being to carry on the looms till her mother could come to attend to them, and so reduce the loss to her wages, which would have been otherwise greater. That the clear meaning of the words "return to her work" is, that the returning should be accompanied with the performance of her work, not the mere returning to the factory, but the returning to and doing her work; and although it was proved in evidence that the injured girl did return before nine o'clock on the following morning, and attempted to do her work, she could not do so efficiently, inasmuch as she was obliged to leave at five minutes past seven o'clock, and was laid up for some time afterwards; that such an attempt to perform work will not withdraw the case from the operation of section 22. of 7 Vict. c. 15; and, therefore, the defendant ought to have sent a notice of the accident to the certifying surgeon. The Magistrates said that it was not for them to look into the quantity of the work, or the quality of it, or whether it was done well or ill, or more or less expeditiously, or whether the girl continued at her work till breakfast-time; but the fact that she did come to her work before nine o'clock of the following day was sufficient to justify, in law, the defendant in not having sent a notice, and that consequently they could not convict him of any offence under the 22nd section of the Factories Act.

If the Magistrates were wrong in dismissing the summons on the grounds before mentioned, then they submitted to the Court whether the accident was such an accident as was intended by the section.

It was not proved or alleged that any arrangement existed on the 21st of March between the defendant and Jane Greenwood that she should return to her work before nine o'clock of the morning of the following day, nor that her return on the following morning was colourable on her part, to avoid the necessity for a notice to the factory surgeon.

The Attorney General (Sir John Karslake) (Hannen with him), for the appellant.—The first question is, whether the accident which occurred to Jane Greenwood

was an accident within the meaning of the act, 7 Vict. c. 15. s. 22 (1); and it is submitted that there can be no doubt that it was such an accident. It is not necessary that the accident should be caused by the actual working of the machinery in the factory. In many cases it would be very difficult to say whether the accident was caused by the works in the factory or not. The legislature intended that every accident which occurred in a factory, no matter how caused, should be reported to the proper officer. There are provisions in the statutes which compel the owner or occupier of a factory to fence his machinery; it may possibly be to his interest to prevent an injury which would disclose a breach of the regulations from being made public. The next question is, whether the accident prevented the girl from returning to her work in the factory. It does not seem to have occurred to the Magistrates that there may be a colourable return which does not satisfy the words of the statute.

[LUSH, J.—It may be said that if a workman is absent, the foreman will know of it, but that he cannot know whether the workman is able to return to his work or not. Suppose the girl had worked on till the middle of the day, could she then be said to have returned, or not?]

No such difficulty arises in the present case, as for all practical purposes the girl was unable to resume her work on the next day.

No counsel appeared for the respondent.

(1) By 7 Vict. c. 15. s. 22, it is enacted, "That if any accident shall occur in a factory which shall cause any bodily injury to any person employed therein, which shall have been of such a nature as to prevent the person so injured from returning to his work in the factory before nine of the clock of the following morning, the occupier of the factory, or in his absence his principal agent, shall within twenty-four hours of such absence send a notice thereof in writing to the surgeon appointed to grant certificates of age for the district in which the factory is situated, in which notice the place of residence of the person injured, or the place to which he may have been removed, shall be stated; and the surgeon shall send a copy of such notice to the sub-inspector of the district by the first post after the receipt thereof."

COCKBURN, C.J.—I am of opinion that our judgment should be in favour of the appellant. The true meaning of section 22. is, that to take a case out of the statute the person injured must not only return, but at the time of his return must be in a condition to work. A return with the intention of resuming work, is not by itself sufficient. In the present case it appears that although the girl returned with the intention of continuing her work, she had not the capacity to do so. The respondent does not appear to have had notice of her condition when she first returned; but he was bound, as soon as he knew of the real facts of the case, to give the notice required by the statute. With regard to the question whether the accident was of the description intended by the statute, it appears that the girl was not hurt by the machinery of the factory, but in consequence of a stupid trick played by a relation of the respondent. But there can be no doubt that the accident occurred within the factory; and the fact that it was not caused by the machinery does not exonerate the respondent from giving notice of it.

BLACKBURN, J., MELLOR, J. and LUSH, J. concurred.

Judgment for the appellant.

Attorney—The Solicitor to the Treasury, for the appellant.

[IN THE COURT OF QUEEN'S BENCH.]

1868. } SWEETMAN, *appellant*, GUEST
Jan. 22. } *respondent*.

Jurisdiction of Justices of the Peace—Warrant of Distress to levy Rates under Local Act—Limitation under Jervis's Act (11 & 12 Vict. c. 43), s. 11.—Power to state a Case under 20 & 21 Vict. c. 43.

A local act provided that if any person rated under its powers should for ten days after demand neglect to pay the rate, it should be lawful for any Justice of the Peace of the borough, by warrant under his hand and seal, to authorize the collector to levy the rate by distress and sale:—Held, that the issuing of a warrant under this act was not within the limitation of Jervis's

Act (11 & 12 Vict. c. 43), s. 11, which enacts that, in the absence of special limitation, complaints under the act are to be made within six months from the time when the matter of complaint arose.

Semble—that, upon application for such a warrant of distress as above mentioned, the Justices may state a case for the opinion of the Court under 20 & 21 Vict. c. 43. s. 2.

CASE stated by Justices under 20 & 21 Vict. c. 43.

At a petty session for the borough of Kidderminster, held on the 10th of May, 1867, a complaint was preferred by the respondent against the appellant for the nonpayment of two rates duly made according to the 53 Geo. 3. c. 83, "An act for paving, cleansing, lighting, watching and otherwise improving the streets and other public passages and places in Kidderminster, in the county of Worcester."

By section 67, the money directed to be raised by this act is to be assessed and collected by two assessors nominated by the Commissioners entrusted with the execution of the act. By section 68, rates made in pursuance of the act are to be allowed and signed by the Commissioners or any seven of them, who are empowered to amend such rates by inserting or causing to be inserted the name or names of any person or persons who ought to have been rated or who should appear to have been omitted therein, or by taking out the name or names of any person or persons whose name or names should have been inserted in any such rate and who ought not to be rated, or by varying, altering or reducing the amount of the rate. By section 72, the rates when signed and allowed by the Commissioners are to be collected, and if any person liable to pay them refuses or neglects to do so, "it shall be lawful for any Justice of the Peace of the borough of Kidderminster, by warrant under his hand and seal, to authorize and direct the collector or any other person to levy such rate or assessment and all arrears thereof by distress and sale of the goods and chattels of such person or persons so refusing or neglecting to pay as aforesaid, rendering the overplus (if any) to the owner or owners of the goods and chattels to be so distrained, after deducting

the costs of recovering the same, and of the distress and sale."

The 67th section and the two subsequent ones are as follows:—

Section 67. enacts, "That it shall and may be lawful to and for the said Commissioners, or any seven or more of them, not exceeding twice in every year, as they shall see occasion, under their hands to nominate and appoint, and they are hereby empowered to nominate and appoint, two or more inhabitants or residents in the said town, to be assessors, with their consent, of the money by this act directed to be raised, and from time to time to issue their order or precept to the said assessors to be appointed as aforesaid, specifying how much in the pound shall be raised by taxation upon all messuages, tenements, buildings and hereditaments, within the said town, at the same rate and in the same proportion as the same messuages, tenements, buildings and hereditaments shall be then rated or assessed in the poor rate or assessment for the relief of the poor of the said borough, and shall and may from time to time divide the said town into such suitable and convenient parts, and also direct and appoint the said assessors to such parts as they the said Commissioners shall think proper, for the more convenient and easy assessment and collection of the money by this act directed to be assessed and collected; and which said rate or assessment so to be made, raised and assessed as aforesaid, for the purposes of this act, shall be levied and assessed in the proportions following (that is to say), upon all and every person and persons who shall rent or occupy within the said town of Kidderminster any houses, tenements or other hereditaments, which shall for the time being be rated or assessed in the then rate or assessment for the poor of the said borough, under 5*l.* 1*s.*, in the pound; at 5*l.* and under 10*l.*, the sum of 2*s.* in the pound; at 10*l.* and upwards, the sum of 3*s.* in the pound; and the said assessors are hereby authorized and required to rate and assess the same accordingly, which said tenants and occupiers shall pay and are hereby made liable to pay the whole of every such rate according to the annual value or rent of all such houses, tenements, buildings or other hereditaments and premises whatsoever, to be occupied by him, her or them respectively, at which they shall be so rated in the said poor rate or assessment."

Section 68. enacts, "That all rates and assessments which shall be made in pursuance of this act as aforesaid shall be allowed and signed by the said Commissioners, or any seven or more of them, and they shall and may have power to amend any such rates or assessments by inserting, or causing to be inserted, the name or names of any person or persons who

ought to have been rated, and shall appear to have been omitted therein, or by taking out the name or names of any person or persons whose name or names shall have been inserted in any such rate or assessment, and who ought not to be rated, or by varying, altering, raising or reducing the several and respective sum and sums of money which shall be charged, rated or assessed in such rate or assessment upon any person or persons whomsoever, regard being had to the then poor rate for the said borough, and such assessors shall appear and bring with them, at any time or place, when thereto required by the said Commissioners, or any seven or more of them, or by the clerk for the time being, a true copy of such assessment, fairly written and subscribed by them, and shall deliver the same unto the said Commissioners; and shall, upon any reasonable notice, from time to time attend upon the said Commissioners at any of their meetings in pursuance of this act, or at any Court or Courts of Quarter Sessions for the said borough, or at any adjournment thereof or otherwise, as there shall be occasion, then and there to explain, amend and justify such assessments; and after the said rates and assessments are so made and confirmed, the said Commissioners, or any seven or more of them, shall and may, and they are hereby authorized and required to cause the same to be collected and received as soon as may be, of and from the person and persons respectively on whom the same shall be rated, charged and assessed."

Section 72. enacts, "That when and so soon as the said rate or rates, assessment or assessments shall have been made, and assigned and allowed by the said Commissioners, or any seven or more of them, as aforesaid, the collector or collectors appointed by the said Commissioners shall, and he and they is and are hereby required to collect the same accordingly; and in case any person or persons who shall be rated or assessed, or subject or liable to the payment of any rate or assessment to be made or laid, or made payable by virtue of this act, shall refuse or neglect to pay such rate or assessment to any collector to be appointed as aforesaid, for the space of ten days next after personal demand made by the collector or collectors thereof, or demand in writing under the hand of such collector left at the last or usual place of abode of the person or persons so refusing or neglecting to pay as aforesaid, or on the premises so charged with such rate or assessment, then and in every such case it shall and may be lawful to and for any Justice of the Peace of the said borough of Kidderminster, by warrant under his hand and seal, to authorize and direct the said collector, or any other person to levy, such rate or assessment, and all arrears thereof, by distress and sale of the goods

and chattels of such person or persons so refusing or neglecting to pay as aforesaid, or on the goods and chattels so found on such premises, rendering the overplus (if any) to the owner or owners of the goods or chattels to be so distrained on demand, after deducting the costs and charges of recovering the same, and of such distress and sale; or it shall and may be lawful to and for the said Commissioners to recover any such rate or rates, assessment or assessments, due and payable by virtue of this act, by action of debt or on the case, in any of His Majesty's courts of record at Westminster, or in any court of request, wherein no essoin, protection, wager of law or more than one imparlance shall be allowed."

Sections 78. and 79. impose various penalties for offences committed against its provisions, and provide the particulars and special modes of recovering "all penalties, forfeitures and fines inflicted or imposed," the manner of levying and recovering whereof is not therein otherwise directed.

The following are copies of sections 78. and 79:

Section 78. "That all penalties, forfeitures and fines by this act inflicted or imposed, or authorized to be imposed, the manner of levying and recovering whereof is not herein otherwise directed, shall, upon the proof of the offences respectively before any one or more Justice or Justices of the Peace for the said borough, either by the confession of the party or parties offending, or by the oath of one or more witness or witnesses (which oath such Justice or Justices of the Peace is and are hereby authorized and required to administer, without fee or reward), be levied by distress and sale of the goods and chattels of the party or parties offending, by warrant or warrants under the hand and seal or hands and seals of such Justice or Justices, which warrant or warrants such Justice or Justices is and are hereby empowered to grant; and the penalties and forfeitures, when recovered, after rendering the overplus (if any there be) upon demand to the party or parties whose goods and chattels shall be so distrained and sold, (the costs, charges and expenses of making such distress, and the keeping and selling thereof being first deducted) shall, if not directed to be otherwise applied by this act, be paid to the treasurer for the time being to the said Commissioners, and applied towards the purposes of this act, and in aid of the rates to be made in pursuance of this act, &c.; and in every such case where distress is directed to be made, levied or taken by this act, and sufficient distress shall not be found, and such penalties, forfeitures and fines shall not be forthwith paid, it shall and may be law-

ful for such Justice or Justices of the Peace, and he and they is and are hereby authorized and required, by warrant or warrants under his or their hand and seal or hands and seals, to cause such offender or offenders to be committed to the common gaol or house of correction of the county of Worcester, there to remain without bail or mainprize, for any time not exceeding one calendar month for the first offence, and for the second and every other offence of the same kind, for any time not exceeding three calendar months, unless such penalties, forfeitures or fines, and all reasonable charges and expenses attending the same, shall be sooner paid and satisfied."

Section 79. enacts, "That all and every Justice or Justices of the Peace, before whom any person or persons shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up in the following words, or any other form of words to the same effect; (that is to say,)

"Be it remembered, That on this day of in the year of our Lord is duly convicted before me [or, us] of His Majesty's Justices of the Peace for the borough of Kidderminster, of having [*here state the offence against this act, as the case may be*] contrary to the form of the statute in that case made and provided; and I [*or, we, as the case may be*] do declare and adjudge that the said hath forfeited for his [*or her, as the case may be*] said offence, the sum of . Given under my hand and seal [*or, hands and seals, as the case may be*] the day and year above written."

All the powers, directions and authorities contained in the said act have been duly and legally transferred to and vested in the town council and body corporate of the borough of Kidderminster, under and by virtue of the 5 & 6 Will. 4. c. 76. s. 75, intituled, 'An Act to provide for the regulation of Municipal Corporations in England and Wales.'

The complaint stated that the appellant was subject and liable to the payment of two rates and assessments, duly made and laid, and made payable by virtue of the act of 53 Geo. 3, to wit, a certain rate and assessment of 2*l.* 2*s.* 9*d.*, made on the 2nd of August, 1865, and one other certain rate and assessment of 15*s.* 4½*d.*, made on the 6th of March, 1866, and had refused and neglected to pay such rates and assessments to the said Ebenezer Guest, the duly-appointed collector, for the space of ten days next after demand

in writing made by him thereof, contrary to the said act of parliament, and therefore the said Ebenezer Guest prayed the issue of a warrant to levy the same by distress and sale of the goods and chattels of the said appellant. It was heard and determined by the Justices, and they directed that a warrant should issue to levy the rates upon the goods and chattels of the appellant, pursuant to the statute of 53 Geo. 3. The appellant, being dissatisfied with their determination as being erroneous in point of law, did, pursuant to section 2. of the statute 20 & 21 Vict. c. 43, apply to them, in writing, to state and sign a case setting forth the facts and the grounds of their determination, for the opinion of this Court, and duly entered into a recognizance with a surety, as required by the statute. The Justices, in compliance with the application and the provisions of the statute, stated and signed the following case:

Upon the hearing of the complaint the above-mentioned rates or assessments were produced before us, the first appearing, to be signed by the assessors, on the 25th of July, 1865, and allowed and signed by the mayor and eleven councillors of the said borough, on the 2nd of August, 1865.

The second rate or assessment appeared to be signed by the assessors, on the 5th of March, 1866, and allowed and signed by the mayor and seven councillors of the said borough, on the 6th of March, 1866.

It was admitted by the appellant upon the hearing that he had not appealed to the council on the powers of the said act of 53 Geo. 3. against either of the said rates or assessments. It was admitted by the said appellant that all the proceedings before us as to the making and signing of the two several rates or assessments by the assessors, and the allowance and signing of them by the council, were legal and regular, with one exception, namely, that inasmuch as the rates or assessments appeared to be signed by the assessors, and allowed and signed by the council, on different days, they were in that respect illegal and void, and could not therefore be legally enforced against the appellant by distress.

It was also admitted that the requisite and proper statutory demand of the rates had been made upon the appellant by the col-

lector, and that the appellant refused to pay.

It was proved in evidence that the written demand of the first rate was made on the 19th of October, 1865, and of the second rate on the 29th of May, 1866, in both cases more than six calendar months before the date of the complaint.

The appellant further objected to the jurisdiction of the Justices, upon the grounds that by the statute 11 & 12 Vict. c. 43. s. 11, commonly called Jervis's Act, it was enacted "that in all cases where no time is already or shall hereafter be specially limited for making any *such* complaint or laying any *such* information, in the act or acts of parliament relating to each particular case, *such* complaint shall be made, and *such* information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose," and that as upwards of six calendar months had elapsed, not only since the making of both rates, but since the demand for payment from the appellant, before the date of the complaint, the Justices had no power to issue a warrant of distress against him.

The respondent contended, as to the first objection, that as there was no time specified in the act of 55 Geo. 3, as to when the council should allow and sign the rate or assessment after being made by the assessors, it is perfectly immaterial to its validity whether it is the same day as when signed by the assessors, or within a reasonable time afterwards, as the two acts are distinct and separate, and that these rates may be compared to a poor-rate, which is first made by the overseers, dated and signed on one day, and afterwards on a necessarily different day is allowed and signed by two Justices. And as to the second objection, the respondent contended that Jervis's Act does not apply to such a case as the present, but only to cases where Justices are authorized by law, on complaint made to them, to make an order for payment of money or otherwise, and to hear and determine any matter between the complainant and the defendant, and make orders thereon in favour of the complaining party, that, in this case, the act of parliament directs in express terms the

mode of proceeding to recover the rate, if not paid after demand, and does not even require any summons to a defaulter to shew cause why he should not pay, and does not give the Magistrates any power or discretion either to lessen or excuse the payment of the rate, or to make any order thereon; and that the summoning of the defaulter is more an act of courtesy than of necessity.

The Justices, however, being of opinion that the objections raised to their jurisdiction in the matter were not good in law, gave their determination against the appellant in manner before stated.

The questions of law for the opinion of the Court, therefore, were, first, whether the variance in the dates of signing the rates or assessments by the assessors, as stated in the case, and of the dates of allowing and signing the same rates by the members of the town council (acting as Commissioners under the act of 53 Geo. 3), rendered the rates or assessments illegal; secondly, if such variance did not invalidate the rates or assessments, whether their jurisdiction was ousted by the operation of Jervis's Act, 11 & 12 Vict. c. 43, or otherwise, so as to make it illegal for them to grant a warrant of distress to levy the rates upon the goods and chattels of the appellant.

If the Court should be of opinion that the Magistrates were right in their determination to issue a warrant of distress, then the same was to issue; but if the Court should be of opinion otherwise, then the complaint was to be dismissed.

F. T. Streeten, for the respondent.—There is a preliminary objection in this case, viz., whether the Justices had power to state a case under the 20 & 21 Vict. c. 43. s. 2, inasmuch as the issuing a distress warrant for rates under this local act is not a matter for summary decision within the meaning of that section; it is a purely ministerial act, and the Justices were not called upon to determine anything.

[*COCKBURN, C.J.*—Though the Justices had no power to interfere in questions relating to the validity of the rate, other questions may arise on the application for the distress warrant, such, for instance, as a question of identity. *MELLOR, J.*—The preamble of the 20 & 21 Vict. c. 43,

which recites that "it is expedient provision should be made for obtaining the opinion of a superior Court on questions which arise in the exercise of summary jurisdiction by Justices of the Peace," goes to shew that it was intended to allow Justices to state a case on a question of law arising on any exercise of their jurisdiction. BLACKBURN, J.—Where Justices refuse to state a case, the remedy is by mandamus, or rule under Jervis's Act, to compel them; and there are cases in which we have refused so to compel them. But is there any case where we have declined to decide a point of law for them?

Ex parte May (1) is in point. Then, with respect to the questions of law raised by the case, the first is answered by the fact that the local act expressly gives an appeal to the Commissioners (now the town council) or the Quarter Sessions, or both.

[*Harington*, for the appellant.—It is not intended to argue that point. The only question is, whether Jervis's Act applies so as to limit the time for issuing the distress warrant to six months.]

Jervis's Act does not apply here. The 11th section of that act, 11 & 12 Vict. c. 43, enacts "That in all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the act or acts of parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose." The words "such complaint" refer to the 8th section, and mean a complaint upon which the Justices have to make an order. Here no order need be made, and none is drawn up. The rate itself is the order,—a *quasi* record which the Justices cannot alter. There is a note to that effect in *Mr. Oke's Magisterial Synopsis*, 9th edit. p. 1165, where it is said that none of the provisions in Jervis's Act, especially that as to limitation of time in the 11th section, apply to the recovery of rates.—(He was then stopped.)

Harington, for the appellant.—If the

limitation enacted in Jervis's Act does not apply, there is no limitation at all here, and it can scarcely be that a man is to be subjected to a distress for non-payment of rates years after they have been demanded. But it is submitted the Justices here were acting judicially, and had to exercise a discretion whether, upon a certain state of facts—such as identity of the person summoned, whether he was an occupier, or whether any demand had been made upon him—they would make the order for the warrant. In *Sommerville v. Mirehouse* (2), it was admitted that Justices had a judicial discretion to exercise upon an application for a warrant to enforce a rate.

[*Streeten*.—That was the case of a church-rate, the statute relating to which expressly directs service of an order for payment before the distress warrant can issue.]

COCKBURN, C.J.—In this case the rate is the order; and I am clearly of opinion that in issuing a distress warrant under the circumstances stated in the case, the Justices were acting as ministerial and not as judicial officers. They had not to make an order, and consequently the case is not within the limitation in Jervis's Act.

BLACKBURN, J.—I am of the same opinion. The persons rated have a right of appeal, so that our decision will expose them to no hardship.

MELLOR, J.—I am of the same opinion. I think that where, upon a complaint like this, a question of law arises which might turn out to be against the exercise of the Justices' power to issue the warrant, they may properly state a case to obtain our decision upon such question. It is clear they had the power here.

LUSH, J. concurred.

Judgment for the respondent.

Attorneys—Hancock, Saunders & Hawksford, agents for Henry Saunders, Kidderminster, for appellant; Robinson & Preston, agents for James Morton, Kidderminster, for respondent.

(1) 31 Law J. Rep. (N.S.) M.C. 161.

(2) 1 Best & S. 452.

[IN THE COURT OF QUEEN'S BENCH.]

1868. { BROWN, appellant; BUSSELL, re-
 Jan. 22. { spondent.
 { FRANCOMB, appellant; FREEMAN,
 { respondent.

Nuisances Removal Act (18 & 19 Vict. c. 121), s. 12.—Nuisance caused by one Landowner, but arising on the Premises of Another—Order for Abatement.

By the Nuisances Removal Act (18 & 19 Vict. c. 121), s. 12, in any case where a nuisance (a term which includes ditches and drains injurious to health) is ascertained by the local authority to exist, they shall cause complaint thereof to be made before a Justice of the Peace, and the Justice shall thereupon issue a summons requiring the person by whose act, default, permission or sufferance the nuisance arises or is continued, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two Justices, who shall proceed to inquire into the complaint, and if it be proved to their satisfaction that the nuisance exists, shall make an order on such person, owner or occupier, for the abatement, discontinuance and prohibition of the nuisance. By section 13. the Justices may require the person upon whom the order is made to drain, empty, cleanse, fill up, amend or remove the injurious ditch, drain, &c. The occupiers of a brewery had for upwards of twenty years discharged the refuse from it into a barrel-drain, which, after passing along a turnpike-road, entered land belonging to another proprietor. The proprietor of this land did not get rid of the refuse as his predecessors had done, and it became after it had reached his land a nuisance:—Held, that the occupier of the brewery was a person by whose act, default, permission or sufferance the nuisance was caused, and that an order of Justices directing him to abate the nuisance by cutting off all communication between the drains of his premises and the barrel drain was valid.

The defendant, having obtained the necessary consent, made a drain leading from his own premises through adjoining land. This drain, which received the refuse from several houses and pigsties belonging to the defendant, and let to yearly tenants, polluted the water of neighbouring streams, and became a nuisance:—Held, that the defendant must be

taken to be a person by whose act, &c., the nuisance was caused, and might be ordered to abate and discontinue the nuisance.

BROWN, appellant; BUSSELL, respondent.

CASE stated by Magistrates under 20 & 21 Vict. c. 43.

James Brown (the appellant) is a brewer, residing and carrying on business at Esher, in Surrey, and he was summoned with several of the inhabitants of the parish before the Justices, to answer a complaint made by the respondent (the officer for the committee of the Esher district appointed by the guardians of the Kingston Union), that a ditch or watercourse, situate at Sandown Park, in the parish of Esher, and within the district, under the 'Nuisances Removal Act for England, 1855,' of the complainant, was foul and offensive, and a nuisance injurious to health, and that the nuisance was caused by the act or default of James Brown and others.

The following facts were proved or admitted on the hearing of the summons:

The premises of James Brown are in the village of Esher. The open ditch complained of was proved by the respondent to be a nuisance injurious to health. It is on Ditton Marsh, by the side of the turnpike-road leading from Sandown turnpike-gate to Kingston-upon-Thames. James Brown and his predecessors at the brewery have as of right for upwards of twenty-five years previously and down to the complaint discharged their sewage and refuse water from the brewery into a covered barrel-drain which runs down the turnpike-road from the village of Esher towards Kingston, and turns into and upon the Sandown Park estate, where it discharges itself into an open ditch or watercourse. The then owner or occupier of this estate, for many, but not twenty, years, diverted and used and disposed of the sewage and refuse water by turning or allowing it to run over meadow lands belonging to the estate for the purpose of irrigating and fertilizing the land.

This user and disposal of the sewage and refuse water was afterwards discontinued by the owner or occupier of the estate, and the sewage or refuse water was turned by the owner or occupier into and down certain open ditches on the estate, which ultimately emerged from it at a point

where it has caused the nuisance complained of. The present owner and occupier of Sandown Park estate was no party to the sewage being so used on the estate, and he objects to the same being turned on to or allowed to run over his lands.

No nuisance is complained of as arising from the sewer or drain at any point in its course until after it passes the point where the sewage emerges from Sandown Park estate; but it was proved by the respondent that the offensive matter causing the nuisance complained of came from the premises belonging to and in the occupation of the appellant and the other persons summoned, by means of the barrel-drain or sewer.

The appellant urged before the Justices that, inasmuch as he had by user, as of right, for upwards of twenty years, of the drain or sewer, acquired a prescriptive right amounting to an easement to discharge his sewage and refuse water on Sandown Park estate, and as no nuisance arose from the drain or sewer until it left Sandown Park estate, the nuisance complained of arose, not from the act of James Brown in making use of the sewer or drain, but from the act of the owner or occupier of Sandown Park estate in having (in lieu of using and disposing of the sewage or refuse water as formerly) caused the same to flow down through the open ditches on his estate, and so out on to Ditton Marsh by the turnpike-road, and that the person by whose act, default, permission or sufferance the nuisance complained of arose or continued within the meaning of the 18 & 19 Vict. c. 121. s. 12. (1) was the owner of the Sandown Park

estate, and not James Brown, and that therefore James Brown was not the person liable to abate the same, or otherwise liable in respect of it.

The Justices decided that they would not regard any private rights between the appellant and the owner of the Sandown Park estate, and held that the appellant was the person by whose act or default the nuisance complained of arose, and made an order "requiring the appellant within one week from the service of their order, or a true copy of it, according to the act, to abate the nuisance by cutting off all connexion between the drains of the premises belonging to the appellant used for sewage purposes and the drain or sewer leading to and entering the ditch or watercourse, so that all communication for sewage purposes between the premises of the appellant and the ditch or watercourse should cease, and so that the ditch or watercourse should no longer be a nuisance and injurious to health.

The questions for the opinion of the Court were, first, whether, on the above facts, the order was properly made on James Brown. Secondly, whether the order made by the Justices upon James Brown to cut off the connexion between the drains of his premises and the sewer in question was a valid order.

The case was amended by adding the following facts.

Witnesses were examined on both sides, and it was clearly proved, first, that the appellant's premises formerly drained into a sandpit or sand cave under the garden of

(1) By 18 & 19 Vict. c. 121, "An Act to consolidate and amend the Nuisances Removal and Diseases Prevention Acts, 1848 and 1849" s. 8, "The word 'nuisances' under this act shall include any premises in such a state as to be a nuisance or injurious to health: any pool, ditch, gutter, water-course, privy, urinal, cesspool, drain or ashpit, so foul as to be a nuisance or injurious to health."

By section 11. power is given to the local authority to examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by Justices to be done under the act.

By section 12, "In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisances in their opinion did exist at the time when the notice was given, and, although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated on the same premises or any part thereof,

they shall cause complaint thereof to be made before a Justice of the Peace; and such Justice shall thereupon issue a summons requiring the person by whose act, default, permission or sufferance the nuisance arises or continues, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two Justices, in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint; and if it be proved to their satisfaction that the nuisance exists, or did exist at the time when the notice was given, or, if removed or discontinued since the notice was given, that it is likely to recur or to be repeated, the Justices shall make an order in writing under their hands and seals on such person, owner or occupier for the abatement or discontinuance and prohibition of the nuisance as hereinafter mentioned, and shall also make an order for the payment of all costs

a witness named Isaac. Secondly, that about twenty-two years ago the drain from the appellant's premises was first made through the witness Isaac's garden to join the barrel drain. All the witnesses agreed that the course of the drain before it was diverted was down the left side of the turnpike-road, and the Justices were satisfied from evidence that a culvert existed carrying the drainage under the turnpike-road from the left side to the right side before the drainage was diverted by the occupier of Sandown Park estate into his land.

Field (Pearce with him), for the respondent.—The order made by the Magistrates was a valid and proper one. The nuisance does not actually arise upon the appellant's premises. But that is not necessary. The Magistrates have found that the nuisance is due to a cause for which he ought to be responsible, the flow of refuse from his brewery.

[LUSH, J.—Do you mean to say that under this act an order for the abatement of a nuisance might be made against every one who lets his drainage flow into a large river,—the Thames, for instance?]

Such an order would be good so far as each separate offence was concerned. By section 33. of the act, "where proceedings under this act are to be taken against

incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance."

By section 13. "By their order the Justices may require the person on whom it is made to provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable, or to pave, cleanse, whitewash, disinfect or purify the premises which are a nuisance or injurious to health, or such part thereof as the Justices may direct in their order, or to drain, empty, cleanse, fill up, amend or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain or adit which is a nuisance or injurious to health, or to provide a substitute for that complained of, or to carry away the accumulation or deposit which is a nuisance or injurious to health, or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health, or if it be proved to the Justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance), or to do such other works or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified; and if the Justices are of opinion that such or the like nuisance is likely to recur, the Justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence."

several persons in respect of one nuisance caused by the joint act or default of such persons, it shall be lawful for the local authority to include such persons in one complaint," &c., shewing that proceedings against several persons at once are contemplated.

[BLACKBURN, J.—It may be that the legislature did not mean to try questions of right as between party and party, but only to find out what was the practical cause of the nuisance.]

There is every reason for believing that this was what was meant by the act, and there can be no doubt that, rightfully or wrongfully, the defendant has sent from his premises the refuse which causes the nuisance.

Day, for the appellant.—The appellant cannot be said to have caused this nuisance. The proprietor of Sandown Park estate has brought it into existence by the manner in which he has dealt with the sewage after it has reached his premises.

[LUSH, J.—If any person were by some apparatus to throw refuse into a ditch so that a nuisance arose, might he not be ordered to abate it?]

Not if what was complained of were done in the exercise of a right of drainage.

[COCKBURN, C.J.—It appears from the case that if it were not for the refuse from the brewery there would perhaps be no nuisance at all.]

Still there would be no nuisance if it were not for the new mode of disposing of the sewage on Sandown Park estate. If a sewer in Holborn were to become a nuisance, it could hardly be said that the occupier of a house in Russell Square might be ordered to cut off all communication between his house and the sewer.

[COCKBURN, C.J.—It is always for the Justices to decide who is the person by whose act or neglect the nuisance is caused.]

There is no appeal from the decision of the Justices in matters of fact, and in the present case it would have been more reasonable if the Justices had ordered a fresh sewer to be constructed according to the powers given them by section 22.

FRANCOMB, appellant; FREEMAN, respondent.

CASE stated by Justices under 20 & 21 Vict. c. 43.

At a petty sessions at Abergavenny, in

Monmouth, in March, 1867, an information was preferred by W. C. Freeman, Superintendent of Police, Inspector of Nuisances for the Union (hereinafter called the respondent), against J. Francomb (hereinafter called the appellant), complaining that there was a drain so foul as to be a nuisance and injurious to health upon certain premises at Llanlello Pertholey, in Monmouthshire, caused by the act or default of (the appellant) the owner of the premises, contrary to the statute, &c. Both appellant and respondent and Mr. Warr, the person whose premises the drain especially affected, appeared. From the evidence given on behalf of the respondent, it appeared that there was a drain leading from the defendant's premises into a small watercourse. The drain conveyed the waste water, slops, &c., from five or six houses belonging to the appellant, and from several pigsties, into the stream which flowed into the complainant's premises. At the mouth of the drain there was an accumulation of black, stinking filth, which must be very injurious to persons using the water. The water in the stream was polluted by it; above the drain the stream was pure. The stream between the drain and the plaintiff's premises contained a quantity of filth from the drain; and the water, which had previously been drinkable, was unfit for use. It was a nuisance and injurious to health. There were two wells in Mr. Warr's garden through which the stream ran, the wells being supplied with water solely from the stream. Both of these received filth in large quantities from the stream. The appellant was cautioned when he made the drain in November, 1866, and promised to make a tank instead. On behalf of the appellant, he himself proved that he had ordered the refuse spoken of to be made to carry the refuse complained of under the road into the stream, instead of allowing it to flow over the surface of the road, as it had done for forty years before and upwards. The road was a private one, and not the appellant's property; but he had the consent of the owner to make the drain. The sties which sent refuse into the drain had been built on the site of old farm buildings from which the refuse had flowed over the surface of the road into the stream for forty years and upwards. There were four pigsties and six houses (let to yearly tenants)

and all drained into the stream. It was proved by a sketch admitted by the appellant, that the watercourse into which the drain emptied itself was a natural stream running through the appellant's property; and that the drain joined it at a point a few yards below the houses. The stream, several years ago, had been diverted by Mr. Warr and made to pass through the middle of his property. He had also, by means of the watercourse, constructed two wells, which had supplied water to his tenants for five or six years.

It was objected by the appellant's solicitor that the appellant was neither the owner nor the occupier of the drain, nor of the road in question; and that, assuming the alleged nuisance to exist, the appellant was not the proper person to be summoned, as it was not by his act or default that the nuisance was caused or arose, but by the occupiers of the dwelling-houses and pigsties from which the drain was conducted, and the occupiers were the persons who should have been summoned. The Justices overruled the objection, and being of opinion that the drain running into the stream was a nuisance and injurious to health, and that as the drain had been laid down and constructed by the appellant the nuisance arose and was caused by the act, permission or sufferance of the appellant, ordered him to abate and discontinue the nuisance.

One question for the opinion of the Court was, whether the appellant was the right person to be proceeded against under the 18 & 19 Vict. c. 121. s. 12 (2).

No counsel appeared for the respondent.

Harington, for the appellant.—The appellant was not properly called upon to abate this nuisance. The drain itself is not upon his property, and the refuse is poured into it by his tenants, who are not his servants or agents, and are beyond his control.

[COCKBURN, C.J.—It is true that his right to the use of the drain is only an easement; but it is his duty, and not that of the owner of the servient tenement, to keep the drain in repair.]

The Justices have no power to decide as to the right of the appellant to discharge foul water into a stream belonging to another person; and the present case is one which turns entirely upon private rights.

(2) There were other questions upon which nothing turned in the argument.

COCKBURN, C.J.—I am of opinion that, in both cases, our judgment should be for the respondent. Where a nuisance is caused by the joint contribution of a number of persons, so that what each person contributes is not by itself a nuisance but there is a nuisance in the aggregate, I should have hesitated very much before holding that the Magistrates could have made an order prohibiting any one person from pouring his drainage into the main sewer. But I understand that, in the present instance, independently of the subsequent contributions, a quantity of stuff is poured from the brewery of the appellant which by itself causes a nuisance. This being the case, the question is whether the fact that the nuisance arises upon a spot away from the appellant's premises prevents the Magistrates from making an order against him, and whether the process ought to be against the owner of the soil in which the nuisance exists. I do not think, upon the best consideration that I can give to the statute, that the appellant is protected. The Justices have to consider by whose act or default the nuisance is caused. If they cannot discover who is the person offending, they are directed to ascertain in whose land the nuisance exists. Here it was sufficiently proved that the act of the appellant in discharging refuse from his brewery caused the nuisance.

With regard to the other case, I have no difficulty whatever, and think that the order was quite right; for whether the drain was on the land of the appellant or that of some other person, it is manifestly a drain under his control, and which he is bound to keep in repair.

BLACKBURN, J.—I am entirely of the same opinion. The statute casts upon the Justices the duty of finding out by whose act, default, permission or sufferance the nuisance arises or is continued, and they have found that the appellant is the person by whose act or default the nuisance arose. Now, if it be proved that a man sends from his premises enough refuse to cause a nuisance, it is surely no answer for him to say there are other persons who cause a similar nuisance. He himself causes a nuisance, and may properly be ordered to abate it. It is quite a different case, as my Lord has said, where a number of persons, each doing what by itself is not a nuisance, join in accumulating a mass of refuse which

becomes offensive. The question which would arise in such a case would be rather difficult, and I should like to reserve my opinion. It may well be that a ditch may be in such a condition as that it may be more convenient for the local authorities to proceed under section 22. of the act, which enables them to lay down a fresh sewer; but I think that it is for them to decide as to the section under which they proceed.

In the case of *Francomb v. Freeman* the question is, whether the appellant can be said to be the person who has caused this nuisance, or the owner or occupier of the premises where it arises. He has let the premises which supply the drain to different tenants, and given them permission to use it. Very probably these tenants might be proceeded against under the act; but this would not affect the defendant's liability, for the case is not like that of *Rich v. Bosterfield* (3), where it was held that the owner of premises who had let them was not liable for a nuisance caused by smoke from a chimney which he had erected. Here the drain was used by the appellant's tenants in common, and he had granted to them the privilege of using it. It is just as if the owner of a house had let out part of it in chambers the tenants of which would have the privilege of using the chimneys in their rooms; but if the main chimney became smoky and a nuisance, the owner would be liable. It seems to me, beyond any doubt, that the appellant was the cause of a nuisance over which the Magistrates had jurisdiction.

MELLOR, J.—I am of the same opinion. Under section 12. the Magistrates have to find out the person by whose act, default, permission or sufferance the nuisance arises or continues, or if such person cannot be found, the owner or occupier of the premises on which the nuisance arises. This section clearly does not prevent them from dealing with the person who in their opinion is the very origin of the nuisance.

As for the second case, and the objection that there was a question of title which the Magistrates had no jurisdiction to try, it need only be said that the statute expressly authorizes the Magistrates to decide questions of title, as the primary question is

(3) 4 Com. B Rep. 783; s.c. 16 Law J. Rep. (N.B.) C.P. 278.

always, by whose default was the nuisance caused?

LUSH, J.—I am of the same opinion. The person made responsible by the statute is the person by whose act, default or permission the nuisance arises. This must mean the person who is the proximate cause of the nuisance, and the Justices have to find out who this person is. In the case argued by Mr. Field it appears that although the sewage from other premises flows into the drain, which causes the nuisance, yet that the refuse sent by the brewery is that which is particularly offensive, and that without it there would be, in fact, no nuisance. Whether this be the case or not is of course a question of fact which the statute has directed the Justices to decide.

Judgment for the respondents.

Attorneys—In Brown v. Bussell: Walker & Son, for appellant; E. Reddiah, agent for R. F. Bartrop, Kingston-upon-Thames, for respondent. In Francomb v. Freeman: R. J. Child, agent for Sayce, Abergavenny, for appellant.

[IN THE COURT OF QUEEN'S BENCH.]
1868. } THE MAYOR, ALDERMEN AND BUR-
Feb. 12. } GESSES OF REIGATE v. HUNT.

Penalties, Application of—Payment to Treasurer of County or Borough—Borough without a separate Court of Quarter Sessions.

By 11 & 12 Vict. c. 43. s. 31, the amount of any penalty ordered to be paid by Justices according to the act is to be paid, in the absence of specific directions in the statute on which the information shall have been framed, to the treasurer of the county, riding, division, liberty, city, borough or place for which the Justices shall have acted. A borough formed part of the petty sessional division of the county within which it was situated, but had no separate court of quarter sessions, the Justices for the county acting as Justices for the borough, concurrently with the mayor, according to the Municipal Corporation Act, 5 & 6 Will. 4. c. 76. s. 57, and there was a treasurer of the borough:—Held, that the mayor, while acting as Justice for the borough, was in the nature of a Justice for the county with powers limited to a special locality, and that penalties imposed by the borough Justices must, in the absence

of directions in the penal statute, be paid to the county treasurer.

This was an action brought against the defendant to recover 48l. 12s. 6d. received by him as clerk to the Justices of the Peace for the borough of Reigate. By consent of the parties and an order of Lush, J., according to the Common Law Procedure Act, 1852, the following CASE was stated for the opinion of the Court without pleadings.

By royal charter, dated the 11th of September, 1863, the parliamentary borough of Reigate, in Surrey, was constituted a municipal borough with a corporation under the title of "The mayor, aldermen and burgesses of the borough of Reigate," having all the powers and privileges held and enjoyed by the several boroughs named in the schedules to 5 & 6 Will. 4. c. 76, as fully and effectually as if the borough of Reigate had been one of the boroughs named in the 1st section of Schedule B. to the act; and Her Majesty did thereby extend to all the inhabitants of the borough of Reigate all the powers and provisions of that statute, and of any other acts amending or altering that act, or in anywise relating to it. The borough of Reigate before the 11th of September, 1863, formed part of the petty sessional division of the county of Surrey. There is no separate Commission of the Peace for the borough under 5 & 6 Will. 4. c. 76. s. 98, and there has been no grant of a separate Court of Quarter Sessions of the Peace to the borough. The Justices of the Peace for the county have since the date before mentioned, by virtue of section 111. of the statute, exercised the jurisdiction of Justices of the Peace in and for the borough, and acted concurrently with the mayor for the time being, who, by section 57. of the statute, is *ex officio* a Justice of the Peace in and for the borough, and so continues during the year next succeeding his year of office.

The defendant, previous to the 11th of September, 1863, had been and still is clerk to the county Justices acting out of Quarter Sessions in and for the petty sessional division of Reigate; and since the incorporation of the borough he has acted as clerk to the Justices, both when acting as Justices for the county out of Sessions, and when acting as Justices in and for the borough.

From the time of the incorporation of the borough hitherto there has always been a treasurer of and for the borough.

The defendant has since the incorporation of the borough received divers sums of money, amounting to the sum of 48*l.* 12*s.* 6*d.*, ordered to be paid by the Justices of the Peace acting in and for the borough for fines and penalties, and otherwise for offences committed against certain statutes, which statutes contain no directions for the payment of such moneys to any particular person or persons, and such moneys have from time to time been paid over by the defendant to the treasurer of the county of Surrey, to whom the defendant contends they are payable.

The question for the opinion of the Court is, whether the sums of money so received by the defendant should have been paid by him to the treasurer of the borough or to the treasurer of the county.

Macnamara, for the plaintiff. — The borough treasurer is entitled to the penalties recovered in respect of offences committed within the borough, according to the express words of 11 & 12 Vict. c. 43. s. 31 (1). The defendant comes within the express words "clerk of the division in which the Justice or Justices usually sit," for in receiving the penalties he acts as clerk to the Justices of the borough. The Court of Quarter Sessions for the county might make an order for the payment of

the amount of these penalties to the treasurer of the borough. It is immaterial whether the Justices were county Justices or not if at the time of the conviction they were acting for the borough.

Archibald, for the defendant. — In the absence of direct authority, it would be reasonable that the county which incurs the expenses of the prosecutions should have the benefit of the penalties. But there is strong authority for this view. In *The King v. Amos* (2), where Justices of the borough of Liverpool, which contributed to the rate for the county of Lancaster, had committed prisoners to the county house of correction for offences cognizable within the county, it was held, that the Justices at their borough sessions had a right to order the prisoners to be brought before them for trial there. This case was decided on the principle that those who suffer the burden ought to have the benefit. In the judgment of the Court, Bayley, J. says, that the power of Justices of liberties to commit to county houses of correction to which those liberties contribute, is founded upon the principle that to this extent, and with reference to county offenders within their limits, they are in the nature of and have the powers of county Justices. And in *The Queen v. Dale* (3), upon a conviction under the Alehouse Act, 9 Geo. 4. c. 61, by Justices of a borough which had a separate commission of the

(1) By 11 & 12 Vict. c. 43. s. 31, "In every warrant of distress to be issued aforesaid the constable or other person to whom the same shall be directed shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the clerk of the division in which the Justice or Justices issuing such warrant shall usually act; and if any person convicted of any penalty, or ordered by a Justice or Justices of the Peace to pay any sum of money, shall pay the same to any constable or other person, such constable or other person shall forthwith pay the same to such clerk; and if any person committed to prison upon any conviction, or order as aforesaid for non-payment of any penalty, or of any sum thereby ordered to be paid, shall desire to pay the same and costs before the expiration of the time for which he shall be so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he shall be so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said clerk; and all sums so received by the said clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid, according to the directions of the statute on which the information or complaint in that behalf shall have been framed; and if such statute

shall contain no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the county, riding, division, liberty, city, borough, or place for which such Justice or Justices shall have acted, and for which such treasurer shall give him a receipt without stamp; and every such clerk, and every such gaoler or keeper of a prison shall keep a true and exact account of all such moneys received by him, of whom and when received and to whom and when paid, in the form (T.) in the Schedule to this Act annexed, or to the like effect, and shall once in every month render a fair copy of every such account unto the Justices who shall be assembled at the petty sessions for the division in which such Justice or Justices aforesaid shall usually act, to be holden on or next after the first day of every month, under the penalty of 40*s.* to be recovered by distress in manner aforesaid; and the said clerk shall send or deliver every return so made by him as aforesaid to the clerk of the peace for the county, riding, division, liberty, city, borough, or place within which such division shall be situate, at such times as the Court of Quarter Sessions for the same shall order in that behalf."

(2) 2 B. & Ad. 533.

(3) 22 Law J. Rep. (N.S.) M.C. 44.

peace, but no Court of Quarter Sessions, it was held that the portion of the penalty which by section 126. is to be paid to the treasurer of the county or place for which the Justices are acting, must be paid to the treasurer of the county in which the town is situated, and not to the treasurer of the borough. There the words were "treasurer of the county or place for which such Justices shall then act," and the Court held that the word "place," as used in that section, means a place for which a Court of Quarter Sessions is held, and said that the treasurer of the place meant in this section must clearly be treasurer of a place having a Court of Quarter Sessions, an officer under the control of the Justices making the order with the fund under their control.

Macnamara, in reply.

BLACKBURN, J.—I am of opinion that this case is a very clear one, and that our judgment should be in favour of the defendant. *The King v. Amos* (2), a case respecting the borough of Liverpool, where there was no non-intromittant clause, is an authority in favour of the defendant. It is true that in the case of *The King v. Amos* (2) the county Justices had jurisdiction to try the same offences as the borough Justices; but the question was raised, whether, if the borough Justices had committed prisoners to the county house of correction, they had a right to order these prisoners to be brought before them for trial at the borough Sessions. This case could only be decided on the principle that the borough Justices, in committing those prisoners for trial were in the nature of and had the powers of county Justices. Now, I think that this case, together with that of *The Queen v. Dale* (3), also cited by Mr. Archibald, are ample authorities for what, apart from these, I should have thought a very reasonable proposition, that the mayor of such a place as Reigate, which has no Court of Quarter Sessions, and where there is no non-intromittant clause, is really in the nature of, if not altogether, a Justice for the county, with powers limited to a special locality. He acts as a Justice in and for the county, but his powers are limited to part of the county. Now section 31. of Jervis's Act provides "that in every warrant of distress to be issued the constable, or other persons to whom the

same, shall be directed, shall be thereby ordered to pay the amount of the sum to be levied thereunder to the clerk of the division in which the Justice or Justices issuing such warrant shall usually sit, and if any person convicted in any penalty, or ordered by a Justice or Justices of the peace, to pay any sum of money, shall pay the same to any constable or other person, such constable or other person shall forthwith pay the same to such clerk; and if any person be committed to prison upon any conviction or order as aforesaid for non-payment of any penalty or any sum thereby ordered to be paid, &c., he shall pay the same to the gaoler or keeper of the prison in which he shall be so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said clerk, and all sums so received by the said clerk shall forthwith be paid by him according to the directions of the statute on which the information shall have been framed; and if such statute shall contain no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the county, riding, division, liberty, city, borough or place for which such Justice or Justices shall have acted." Now it seems to be quite plain that the words "county, riding, division, liberty, city, borough or place for which such Justice or Justices shall have acted" must mean county, &c., or place having a court of Quarter Sessions. In *The Queen v. Dale* (3), Jervis, C.J. says: "The treasurer of the place meant in this section must clearly be treasurer of a place having a Court of Quarter Sessions, an officer under the control of the Justices making the order with the fund under their control. It would be strange that the same word should give to one fund, the borough fund, all the penalties for good convictions, and charge upon another fund, the county rate, all the costs for convictions which could not be sustained." The effect of our decision will be to appropriate the penalties so as to prevent any such injustice.

LUSH, J. concurred.

Judgment for the defendant.

Attorneys—Nicol & Son, agents for Clair J. Greco, Reigate, for plaintiff; F. F. Smallpeice, agents for W. H. & M. Smallpeice, Guildford, for defendant.

[IN THE COURT OF QUEEN'S BENCH.]

1868.
April 25.WATKINS, appellant, THE AS-
SESSMENT COMMITTEE OF THE
GRAVESEND AND MILTON
UNION, respondents.*Poor-Rate—Occupation—Moorings—
River Thames—Coal-Hulk.*

The appellant was the owner of a coal-hulk, built for the purpose of being fastened to moorings, which the Thames Conservators undertook to fix in the bed of the river in order that she should be fastened thereto. The Conservators fixed the moorings permanently, and granted to the appellant "liberty and licence to fasten and henceforth keep fastened his coal-hulk or vessel called the Black Prince to the moorings placed by the said Conservators in the said river at Gravesend Reach, until either party shall have given to the other one calendar month's notice in writing to determine and put an end to this licence. In consideration whereof the said William Watkins agrees with the said Conservators to pay towards the expenses of the said Conservators of placing,

*maintaining and repairing the said moorings the annual sum of 30*l.*," &c. The appellant fastened his hulk to the moorings by means of chain cables from the stem, so that she would swing with the tide, and she remained so fastened for several years, although she might have been towed to any other part of the river. She was used as a store for coals for steam-ships in the river:—Held, that the appellant had no such occupation of the land or of the moorings as would make him liable to be assessed to the poor-rate.*

1. Case stated under the provisions of the statute 12 & 13 Vict. c. 45. s. 11, the question for the opinion of this Court relating to the rateability of the appellant to the poor-rates made and to be made for the parish of Milton-next-Gravesend, in the county of Kent.

2. In a valuation list for the parish of Milton-next-Gravesend, made under the provisions of the statutes 25 & 26 Vict. c. 103. and 27 & 28 Vict. c. 39, and in the rate, the name of the appellant, William Watkins, was inserted in the following manner (that is to say):

Name of Occupier.	Name of Owner.	Description of Property.	Name and Situation of Property.	Estimated Extent.	Gross Estimated Rental.	Rateable Value.
Watkins.	Watkins.	Land, and Coal-Hulk thereon.	<i>Black Prince.</i>	1,600 Tons.	300	240

3. The land mentioned in the column headed "Description of Property" was part of the bed of the river Thames within the parish occupied by the moorings herein-after mentioned. By virtue of the Conservancy Acts, 1857 and 1864, hereinafter mentioned, the bed and soil of the river Thames were vested in the Conservators of the said river. The coal-hulk mentioned in the same column was the hulk called the *Black Prince* in the column headed "Name and Situation of Property," and belonged to the appellant, and lay afloat on the river Thames within the boundary of the said parish of Milton. It was an iron-built vessel of 1,600 tons, expressly constructed for the purpose of being fastened

to the moorings thereafter mentioned, and used as a depository for coals.

4. The hulk had not in itself any means of locomotion, either by sails or engines. The coals stored therein are brought in colliers, which can run alongside at all times of the tide and discharge their cargo into it. The coals being thus deposited in the same way as coals are deposited in warehouses or storehouses built on wharfs, are partly sold to the owners of steam-tugs and other steam-vessels, and partly used by the appellant for steam-tugs of his own. In either case the steam-vessel could receive the coal by coming alongside the hulk in the same manner as the collier which previously discharged it; or, if occasion should

require, the hulk itself, with its store of coals, could be loosed from its moorings and towed by a steam-tug to any part of the river where there was sufficient water. It has, however, been at its present moorings since July, 1863, without removal, but in the ordinary course of things will, from time to time, at intervals of four or five years, require removal for repairs.

5. The hulk was fitted with proper apparatus for lifting coals and transferring them from the colliers to its own hold, and from its own hold to any vessel which might be placed alongside, and also with a cabin which was occupied by servants of the appellant, who reside there day and night, and have charge of the hulk and the coals kept there in store.

6. The moorings to which the hulk was secured are permanently fixed in the bed and soil of the river Thames by, and were the property of, the Conservators of the river Thames, incorporated and acting under the provisions of the Thames Conservancy Act, 1857 and 1864, which were to be taken as part of this case, and such moorings were fixed for the use of the hulk of the appellant. They were not provided with buoys, as was usual with moorings which are laid down for the temporary use of vessels in the river.

7. The moorings consist of two large iron fan-shape screws, which were screwed into the soil or bed of the river to a depth of about eight feet, and at a distance of about forty feet from each other. They were connected together by means of two chains which were shackled one to each screw, and both to a central ring; from this ring a third chain, called a "Pennant," was carried up to the surface of the water, where it terminated in another ring, to which ring the hulk was fixed, as therein after mentioned.

8. The whole of these moorings were the property of the Thames Conservators, and they were used by the appellant by virtue of the following document: "We, the Conservators of the river Thames, do grant to William Watkins, of 52, Lime Street, City, and Blackwall, liberty and licence to fasten and thenceforth keep fastened his coal-hulk or vessel called the *Black Prince*, to the moorings placed by the Conservators in the said river, at Gravesend

Reach, until either party shall have given to the other one calendar month's notice in writing to determine and put an end to this licence. In consideration whereof the said William Watkins agrees with the said Conservators to pay towards the expenses of the said Conservators of placing, maintaining and repairing the said moorings, the annual sum of 30*l.*, and the due proportion of 30*l.* for any less period than a year, the first payment to be made on the 29th of September, 1864; and the said William Watkins further agrees that no more than three vessels shall at any one time be fastened or attached to the said coal-hulk, provided that under no circumstances whatsoever shall the said Conservators be liable for any damage or loss arising from or in consequence of the breaking of the moorings, chains or any imperfections or failure of the said moorings. Dated this 3rd day of August, 1863; signed, E. Burstall, secretary."

9. The chain-cables of the hulk itself were shackled to the upper ring of the moorings above described, and were brought on board through the hawse-pipes and secured to a windlass, by means of which the hulk itself was heaved up to or slackened off from the moorings. The hulk was moored entirely by the stem, and swung with the tide, and altered its position according to the set of the current; it never took the ground at any time or under any circumstances.

10. The appellant duly appealed to the Assessment Committee against the valuation list on the following grounds: That the land and coal-hulk thereon were not liable to be rated to the relief of the poor. That the appellant was not the occupier of any land with coal-hulk thereon in the parish. That the appellant, if rateable at all, was overrated both as respects the gross estimated rental and the net rateable value of the property. And upon the appeal he failed to obtain any relief.

11. The appellant thereupon gave due notice of appeal to the Quarter Sessions of and for the borough of Gravesend against a rate for the relief of the poor of the parish of Milton, made in accordance with the valuation list on the 7th of June, 1866; whereupon it was agreed that this case should be stated by consent under the

provisions of the statute firstly above mentioned. It was further agreed that neither party should raise any technical difficulties or objections; and that the case should be decided on the merits. The Court was to be at liberty to draw any inferences of fact if it should think fit so to may do, to order the case to be amended in any way.

12. The question for the opinion of this Court, therefore, was—is the appellant, William Watkins, liable to be rated to the relief of the poor of the parish of Milton in respect of his occupation of the land and hulk under the circumstances stated in this case?

13. If he was so liable, the valuation list and the rate of the 7th of June, 1864, were to be confirmed, so far as to retain the name of the appellant and the description of the property therein; otherwise the same were to be amended by striking the name of the appellant and the description of property out of both. If, however, this Court should be of opinion that the appellant was rateable in respect of any portion of property, then the rate and valuation list were to be amended according to the judgment of this Court, and the amount was to be agreed upon between the parties. And it was further agreed that a judgment in conformity with the decision of this Court, and for such costs as this Court should adjudge, might be entered on motion by either party at the General Quarter Sessions of the Peace for the borough of Gravesend holden next or next but one after such decision should have been given.

Barrow (G. Francis) with him, for the appellant.—The rate is altogether informal, but no objection will be made upon that score. The real point is, whether the appellant is rateable at all in respect of his occupation; it is submitted that he is not. He does not occupy any land which can be said to be enhanced in value by the possession and use by him of the *Black Prince*, which can be towed away altogether and taken to any other part of the river at the pleasure of the appellant. She is only moored by the stem, and swings round at every tide; the Conservators are at liberty to bring up at the moorings by their own boats if they please, the licence giving the appellant no exclusive possession. Suppose

they were to bring up at the moorings or give any one else permission to do so, the appellant would have no right of action against them, for they have the property in them, and have simply licensed the appellant "to fasten and henceforth keep fastened" the *Black Prince* to the moorings which they have constructed until a month's notice is given by either party. Further, the rent of 30*l.* a year is to be paid simply towards the expenses. There is, therefore, no exclusive occupation of the moorings, nor indeed of any specific portion of ground, for the hulk swings with the tide, and can be hauled up close to or further from the moorings at pleasure. There are several decisions strongly in favour of the appellant—*The King v. the Trent and Mersey Navigation Company* (1), *The King v. the Mersey and Irwell Navigation Company* (2). But the fact that the occupation of the appellant is not sufficient to render him liable to assessment is plainly shewn by *The Queen v. Morrish* (3), where the occupation of the appellant was somewhat more conclusively shewn by reason of his having put up the fittings of the refreshment-rooms, while the present appellant has nothing to do with the moorings at all, except to hold on to them. In *The Queen v. Morrison* (4), the appellant was rated in respect of the value of his ship-building yard, as enhanced in value by reason of a floating dock used therewith; the Court held that this was not proper, but it was never even suggested that the appellant was rateable in respect of the land occupied by the dock. In *The Queen v. Forrest* (5), the appellants were held rateable in respect of a landing-pier, but that was because the pier rested at low water on blocks fixed in the bed of the river for that purpose, and was fastened to an iron staple fixed in the stone steps on the shore. That case is no authority against the present appellant, for the moorings do not belong to him, as in *Ladewick*; for the respondent.—The document under which the appellant has the right to use the moorings is more than

(1) 4 B. & C. 87, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

(2) 9 B. & C. 95.

(3) 32 Law J. Rep. (N.S.) M.C. 245.

(4) 1 El. & B. 150; 1 C. 22 Law J. Rep. (N.S.) M.C. 14.

(5) 27 Law J. Rep. (N.S.) M.C. 96.

a licence; it gives him such a right to occupy them as, combined with the facts disclosed by the case, shew that he has an occupation of the moorings and of the ground sufficient to make him liable to pay rates. The hulk was constructed for the purpose of being fastened to the moorings, and has in fact been there since the year 1863; so that he has had the sole and exclusive possession.

[BLACKBURN, J.—But it seems that the Conservators keep the possession of the moorings in themselves, for they have to repair them.]

If the document is a mere licence, still it is sufficient to give possession; see *The Electric Telegraph Company v. the Overseers of the Poor of Salford* (6).

[BLACKBURN, J.—In that case the appellants were the occupiers. The railway company did not erect the posts, and the appellants had the occupation of the land by means of the posts.]

But suppose the railway company had erected the posts, the occupation would have been sufficient, and the appellants equally rateable.

[BLACKBURN, J.—I doubt that. I think, probably, the railway company would be rateable as the occupiers of the land, enhanced in value by the rent which they received from the telegraph company.]

In *The Queen v. Leith* (7), it was held that the appellants were rateable in respect of a floating-pier near Westminster Bridge.

[LUSH, J.—The pier consisted of barges which were annexed to the land.]

The Queen v. Morris (8) does not govern this case, for the appellant was turned out at night, so that he had no occupation by himself or by his servants at that time. In *The King v. the Trent and Mersey Navigation Company* (1) there was no exclusive occupation at all.

Barrow was not called upon to reply.

BLACKBURN, J.—The question here is, whether or not the appellants were rateable. The rate is artificially expressed, no doubt as if the property were the *Black Prince* hulk itself; but in reality the question is, whether the appellants are

occupiers of part of the bed of the river Thames, in such a way as to be rateable for the value of such land in the river; the value being enhanced by the fact that the *Black Prince* is moored and anchored to that portion of the land. The material facts appear to be stated in the 6th, 7th and 8th paragraphs of the case. It appears that the Conservators of the Thames made moorings in the river Thames expressly for the purpose of enabling the hulk of this particular appellant to be attached to them, and that those moorings are fixed to the bed of the river; and there can be no doubt that they do occupy part of the soil. They are described as being what they are, "two large iron fan-shaped screws, secured into the soil, and the chains connected with them"; and I think those moorings are so attached to the part of the soil of the river that if the appellants were made occupiers of the moorings, they would be occupiers of the soil. Then comes the question, are they occupiers of those moorings? The Conservators of the river Thames are the owners of the soil, and are the owners of the moorings also, and they might have demised them to the appellant for the moorings of barges, and having demised them the appellant would then have been the occupier of the land. There is also no doubt they might keep the possession on in themselves so as to be the occupiers of it, and for a sum of money, or for love or pleasure, if they pleased, grant to another person the privilege or easement that he should attach his barge to the moorings, in which case they would themselves still continue to be the occupiers; and unless there be something in the licence to prevent it, one or the other of these might be done; and in the present case the question depends on the terms of the written agreement, which are, "We, the Conservators, do grant liberty and licence"—they do not use the words "and demise," they may in their meaning shew that; but it is, "We, the Conservators, grant liberty and licence to fasten and henceforth to keep fastened his coal-hulk or vessel called the *Black Prince* to the moorings placed by the said Conservators in the said river, at Gravesend Reach, until either party shall have given to the other one calendar month's notice in writing to determine or put an end to this

(6) 11 Exch. Rep. 181; s.c. 24 Law J. Rep. (N.S.) M.C. 143.

(7) 21 Law J. Rep. (N.S.) M.C. 119.

licence. In consideration whereof the said William Watkins agrees with the said Conservators to pay towards the expenses of the said Conservators in placing, and maintaining and repairing, the annual sum of 30*l*." Now, stopping there, without regard to the rest, which I do not think qualifies it, there are no words in express terms saying that the Conservators meant to part with the possession, or to give the appellant a tenancy, either at will or at sufferance. In this case it would be a tenancy at will from month to month. Is there anything to shew that they meant to make a demise? There might be many reasons why it would make a difference, and why the Conservators would not in such a case wish to make a demise. If they did so, and there came to be a quarrel as to the terms of the notice to quit, they could not get back the moorings without bringing an action of ejectment; but if they did not, it would only be a personal contract, and that might be a reason why they should wish not to make a demise; but this much is clear, that they have not in express terms said they would demise, and I rather think it would require something to shew that they intended it. Then, I think, from the terms in which it is said the appellant is to pay the money towards the expenses of maintaining and repairing, it is to be inferred that the Conservators are to maintain and repair; and although maintaining and repairing would not be inconsistent with the terms of a demise, it being possible that a landlord might demise a house with the implied term that he was to repair, yet *prima facie* the person to repair is the person in possession, and in such a case as this, it is more likely that they should repair than that the appellant should; consequently I think *prima facie* it would not be a demise or parting with possession, but merely a licence. Against that it is said there is the sole and exclusive possession. It seems that during the five years the appellant has been the sole person who has used the moorings, and, I think, if any rival hulk were moored there, it would have been contrary to what the parties intended; but his being the sole occupant is far from being conclusive and decisive. There may be a grant of an easement which is conveyed solely to one person and not to any one else, and yet there may

not be any occupation, such as in the case of a wayleave to carry coals from a colliery to the sea-shore, an important right confined to that colliery alone; that does not make the person rateable for a private way over the land, and though he have the sole use of it, it does not make him the rateable landlord; or, in the more familiar case of a lodger who has the sole right to the use of the rooms in the house, but who is not made by that means the sole occupier, if the agreement is that the tenant of the house shall retain the possession, as in the general case of a lodging-house he does, for the purpose of looking after the management of it, the lodger being merely the inmate;—whenever that happens, the person occupying is rateable, although the lodger is the person in possession. So, here, I think the appellant has the exclusive right to moor the barge which is given from month to month, and though there would be a breach of the contract, and an action would lie if another barge were moored there, yet I think that is not decisive; it is a contract and an agreement by which the respondents bind themselves to let the appellant, and him only, use the moorings until they have given him a month's notice, instead of being a demise. That being the result, I come to the conclusion that the appellant is not the occupier, but is merely a person having a licence to use the moorings. This case is analogous to that of a lodger or a person who has the right, and there are a vast number of other cases, all of which have determined that it is only the occupier that is rateable, and not the person who has an easement, although that easement may be exclusive. As I have already said, I come to the conclusion that the appellant is not the occupier; the Conservators are the occupiers; and unless there be something in the Conservancy Act, or some other matter to relieve the Conservators from being rated in respect of the occupancy, the measure of the value of their occupancy would probably be guided by the money they gain by allowing the appellant to moor his barge to those moorings. In the present case, we can only say the wrong person is rated, and consequently there must be judgment for the appellant.

MELLOR, J.—I am of the same opinion. I think the facts of this case shew that the

Conservators have put down the moorings and repair them; and that they *prima facie* would have the control of the repairs of the moorings occupied by this barge. They have given the appellant a liberty or a licence—and it appears to me nothing more than a personal licence—to moor this hulk at this spot; and although no other person can upset that right, and the Conservators would not allow anybody to do it without bringing an action against them, it seems to me to amount to this: “We give you liberty to moor the hulk there, and we will not give the liberty to anybody else.” I do not think it makes any difference when you come to consider what is the nature of the licence, because, although by the arrangement with the Conservators the appellant may have the exclusive use of the moorings during the time the contract remains in existence, it seems to me he has nothing more than a licence personal to himself to moor, and he is not the proper person to be rated.

LUSH, J.—No doubt the soil in the river, into which these moorings are secured, is occupied by some one; the question is, whether the moorings are occupied by the appellant. The soil of the river belongs to the Conservators of the river, and the moorings belong to them; *prima facie* they are the occupants of them, and they were so unless they have demised them to Mr. Watkins; on looking at the only document between the parties, it professes only to grant to him the use of the moorings for a given consideration for the purpose of mooring his hulk there. There is nothing in the circumstances, and no document that at all leads one to suppose there is a demise. Then it says, the Conservators put themselves under the obligation to keep them in repair. That strengthens the idea that they intended to keep them in their own occupation, and only to demise what the instrument itself describes as the mere use of them to the appellant. I think he is, therefore, not liable to be rated.

Judgment for the appellant.

Attorneys—Stevens, Wilkinson & Harries, agents for G. E. Sharland, Gravesend, for appellant; Tufnell, Southgate, agent for Southgate & Son, Gravesend, for respondents.

[IN THE COURT OF QUEEN'S BENCH,
1868. } LAWRENCE, appellant, KING,
April 25. } respondent.

Highway—Animals lying about—Highway Act, 1864 (27 & 28 Vict. c. 101), s. 25.

By section 25. of the Highway Act, 1864, if any horse, mare or sheep is at any time found lying about a highway, the owner shall be liable to a penalty. Held, that this liability may be incurred if sheep are allowed to lie about a highway, although they were under the control of a keeper at the time they were so found lying about.

CASE stated by Justices under 20 & 21 Vict. c. 43.

At a Petty Sessions, holden at Hertford, on the 6th of July, 1867, the appellant appeared to answer a complaint in which it was charged that “on the 17th of January, 1867, at the parish of Hatfield, sixteen sheep and twelve lambs, the property of the appellant, were found lying about the highway there, contrary to the Highway Act, 1864.” The appellant was convicted and ordered to pay 2s. 4d., being at the rate of 1d. per head. The Justices found as a fact, “that the animals were under the control of a keeper at the time they were found lying about the highway.”

It was contended by the appellant that as there was a keeper with the sheep and lambs, when found by the respondent, they could not be said to have been found lying about the highway within the meaning of the 25th section of the Highway Act, 1864; but that in order to render the appellant liable to the penalty, as the owner of the sheep and lambs, the sheep and lambs should have been found “lying about the highway” without a keeper. The Justices thought that inasmuch as the words, “without a keeper,” which appear in the 74th section of the Highway Act, 1835, are omitted from the 35th section of the Highway Act, 1864, the intention of the legislature was to prevent any cattle being allowed to lie about any highway, for the purpose of depasturing or otherwise, whether with or without a keeper, as such practice is very common, and is the cause of considerable damage being done to the hedges, banks and fences of adjoining owners. No right

of pasturage was claimed by the defendant on the sides of the highway.

The evidence was set out in the case, and it was proved that the appellant told a boy to take the animals along the road. The boy did so, and they stopped and grazed on the road from a quarter before ten a.m. until ten minutes past five p.m. Some of them laid down in the middle of the road, some on the sides of the road, some were feeding on the grass, and some nibbling the quicks of the hedges. The boy was part of the time walking about, and part lying about; he was lying down about one hour in the middle of the flock. Sometimes some of them got up, and others laid down. He was there during the whole time. There was no obstruction to any one; but supposing a carriage had passed, there would have been an obstruction.

The question for the opinion of this Court was, whether the Justices were right in their determination or not.

Denman (H. Ludlow with him), for the respondent, in support of the conviction. — The Justices were clearly right in the construction which they have put upon the 25th section. It is found as a fact that the sheep and lambs were lying about on the highway. The conviction must therefore be affirmed. A somewhat similar case, *Morris v. Jeffries* (1), was decided by this Court under the 75th section of 4 Geo. 4. c. 95, where it was held, that horses, under the control of a keeper, could not be said to be "straying" within the meaning of that section, which makes it lawful to seize and impound any horse, &c., which shall at any time be found tethered or wandering or straying or lying about any turnpike-road, &c. But that case was different from the present. The question was, whether the horses could be said to be straying, and the remedy given was to seize and impound. But, further, it is clear that the presence or absence of a keeper is immaterial under the section now in question, for it repeals the 74th section of the Highway Act, 1835, which provides that "if any horse, sheep, &c., be found wandering, straying or lying on any highway without a keeper," &c., the animals may be seized and impounded," and substitutes a new pro-

vision, viz., "if any horse, &c., or sheep is at any time found straying on or lying about any highway," &c., the owner shall be liable to a penalty. The words "without a keeper" must have been intentionally left out, and it must be taken that the legislature intended to prevent such animals being allowed to lie about the highways whether there was any one to look after them or not.

Poland, for the appellant. — The language of the section in question, and of the 4 Geo. 4. c. 95. s. 75, with the exception of the word "tethered" in the latter, are almost exactly the same; and therefore *Morris v. Jeffries* (1) is really decisive of the present case. The Justices have found as a fact that the sheep and lambs were under the control of a keeper.

Denman was not heard in reply.

BLACKBURN, J. — The Justices were quite right in their decision of this case, and also on the ground upon which they have rested that decision. Under the 74th section of the Highway Act, 5 & 6 Will. 4. c. 50, the offence is the allowing the animals to stray or lie about without a keeper. The plain construction to be put upon the Turnpike Act, 4 Geo. 4. c. 95. s. 75, was laid down by *Morris v. Jeffries* (1), that the owner of horses could not be convicted of allowing them to "stray" when they were under the control of a keeper. Under the section now in question, the 35th of the Highway Act, 1864, the legislature deal with the 74th section of the 5 & 6 Will. 4. c. 50, and then make the substituted enactment, leaving out the words "without a keeper," shewing that they meant that if the animals were found lying about on the highway, though a keeper was with them, the owner should be liable to the penalty, the keeper having neglected his duty and having allowed them to lie about the highway. This construction would be pretty clear if the provision had been inserted in this act for the first time; but we find that the 25th section refers to the former 74th section, which contains the words now left out. The Justices find that the sheep were lying about on the highway. There is not much difference between the language of the 25th section of the new act and the 75th section of the 4 Geo. 4. c. 95, on which *Morris v.*

(1) 35 Law J. Rep. (N.S.) M.C. 143 not bns

Jeffries (1) was decided; but there is a great difference in the facts. In that case the horses could not be said to be "straying" when they were under the control of a keeper, while here they were "lying about" although the boy was with them.

MELLOR, J.—I am of the same opinion. I think that the 25th section constitutes two offences; one, the suffering animals to stray upon the highway without any one to exercise a control over them; and the other, the permitting them to be lying about on the highway even although a keeper should be with them. The words "without a keeper" must have been intentionally left out, and the Justices were right in convicting the appellant.

Conviction affirmed.

Attorneys—Wedlake & Letts, agents for J. L. Foster, Hertford, for appellant; G. Beetham Batchelor, agent for W. M. Armstrong, Hertford, for respondent.

[CROWN CASE RESERVED.]

1868. }
April 25. } THE QUEEN v. MARSDEN.*

Wounding with Intent to Resist Lawful Apprehension—Breach of the Peace—Fresh Pursuit.

The prisoner was indicted for wounding W. with intent to resist his lawful apprehension. The prisoner was engaged in a disturbance in the street, when R, a police constable, interfered to prevent it. A struggle ensued between R. and the prisoner. R. retired, and the prisoner went into his father's house, where he lodged, and fastened up the house. After an interval of an hour R. returned with W. and two other constables to the house, which was then fastened and all quiet. The prisoner, from inside the house, refused to admit the constables, who spent ten minutes to a quarter of an hour trying to get in. They then sent for a sergeant of police, and in about another quarter of an hour he came, and they then burst open the door of the house. They found the prisoner on the top of the stairs with a bill-hook in his hand, which he used against the policemen to resist his apprehension, and

with which in so doing he wounded W, one of the policemen:—Held, that the apprehension was not lawful, as the first disturbance was at an end and there was no fear of its renewal; nor was there a fresh pursuit by the constables; and the conviction must be quashed.

The Queen v. Walker (1) followed.

CASE reserved by Montague Smith, J.

The prisoner was tried and convicted before me at the Spring Assizes, 1868, at Warwick, on an indictment which charged him with feloniously wounding George Wesson, a police constable, with intent to resist his lawful apprehension. The facts were that the prisoner lodged at his father's house, in Lower Town Street, Nottingham. About twelve o'clock on the night of Saturday, the 29th of February, the prisoner, suspecting a man called Wormald was listening at the windows of the house, came into the street and used threatening language to him. Raison, a police constable, came up and interfered to put a stop to the altercation, and the prisoner then turned upon him and struck him with his fist, and there was a struggle between them. Raison, the police constable, then went away for assistance, and remained absent for an hour. In the interval he changed his plain clothes for his uniform, and he returned to the house with three other constables, Wesson, Ash and Harabin. The prisoner had then retired into the house, and all was quiet. The door of the house was closed and fastened. Raison asked the prisoner to open the door and he refused. The constables tried the door several times, and after an interval of ten minutes or a quarter of an hour, finding they could not get into the house, they determined to send for a sergeant of police. One of them then went to the police-station, distant about half a mile, and after another interval of fifteen or twenty minutes returned with Sergeant Hind. The sergeant and Harabin went to the back door. Raison, Wesson and Ash remained by the front door. These three constables again demanded admission and were refused, and they then forced open the front outer door and entered the house. The constable saw the prisoner standing on

* Coram Kelly, C.B., Keating, J., Montague Smith, J., Pigott, B. and Lush, J.

(1) 1 Dears. C.C. 358; s.c. 23 Law J. Rep. (N.S.) M.C. 123.

the top of the stairs with a bill-hook in his hand. Raison asked the prisoner to come down. He refused, and threatened to kill the first man who came up. Weason then said, "Here's at him," and the three constables, Weason, Raison and Ash, ran upstairs to lay hold of him. The prisoner then struck Weason with the hook upon the head and wounded him; a struggle ensued in which Raison was also wounded by the prisoner with the hook. The prisoner was overpowered and taken into custody, having himself received severe wounds on the head from the constables in the struggle. It was contended for the prisoner that the apprehension was not lawful; the assault was over; there was no further assault or affray to be apprehended; and no such fresh pursuit as would justify the constables in breaking into the house or apprehending the prisoner,—see *The Queen v. Gardiner* (2) and *The Queen v. Walker* (1). If the apprehension was not lawful, it is to be taken that there was no excess in the resistance offered by the prisoner.

No counsel appeared.

KELLY, C.B. — In this case a police officer hearing a disturbance in the street proceeded to the spot, when a struggle ensued between him and the prisoner, so that he found it necessary to retire. He did so, and at the end of an hour returned with assistance. The prisoner was then inside the house, which was fastened up; but the policemen broke into the house and the prisoner was found on the stairs. The police officers attacked him with a view to his apprehension. The prisoner resisted, and in the struggle one of the police officers received a wound from the prisoner, for inflicting which wound the prisoner was indicted. The question is, whether there was a felonious wounding by the prisoner with intent to resist his lawful apprehension. The answer depends upon whether the apprehension, under the circumstances of the case, was lawful or not; that depends upon whether the attack by the policemen upon the prisoner inside the house was a continuance of the struggle which had previously taken place in the street. But an interval of an hour elapsed between the

time of the policeman retiring from the struggle in the street and his returning to the house with the other policemen. The constables try the door of the house, and then a fresh interval takes place of ten minutes or quarter of an hour. They then send for a sergeant of police, when, after another interval of a quarter of an hour to twenty minutes or so, the house is broken open. It was impossible to say after this lapse of time that the policemen were in fresh pursuit. The hour was not accounted for, and we cannot infer that so long a time was necessarily spent in obtaining fresh assistance. We are of opinion, therefore, independently of authority, that the conviction should be quashed. But, also, it seems to us that the case of *The Queen v. Walker* (1) is a conclusive authority against this conviction.

KEATING, J. concurred.

MONTAGUE SMITH, J.—I agree that this conviction should be quashed. There was nothing in the evidence to shew that any apprehension existed that the previous affray would be renewed, for the prisoner had gone into the house and locked himself in. And I also think there was no evidence of a fresh pursuit by the policeman.

PIGOTT, B. and LUSH, J. concurred.

Conviction quashed.

[CROWN CASE RESERVED.]

1888. }
April 25. } THE QUEEN v. WESTERN.*

Perjury—Description of Justices—Variance—Amendment—9 Geo. 4. c. 15.—14 & 15 Vict. c. 100. s. 1.—Informal Complaint before Justices—Jurisdiction.

Perjury was assigned to have been committed on the hearing of a complaint for trespass in pursuit of game alleged to have been committed in a close in the parish of T, in the borough of T, before certain Justices assigned to keep the peace in and for the said county, and acting in and for the borough of T, in the said county. It appeared in evidence that the Justices were Justices for

* Coram Kelly, C.B., Keating, J., Montague Smith, J., Pigott, B. and Lush, J.

the borough of T. only, and were not Justices for the county. The indictment was amended at the trial by striking out the words "the said county," so as to make the averment be that they were Justices assigned to keep the peace in and for, and acting in and for, the borough of T. in the said county. The complaint alleged that the defendant was in the close for the purpose of destroying game, but omitted to allege that it was for the purpose of destroying game there:—Held, that the amendment was properly made as a variance in the description of a person described in the indictment under 14 & 15 Vict. c. 100. s. 1, and that the complaint was sufficient in form to give the Justices jurisdiction to inquire into it, so as to make false evidence wilfully given on the hearing the subject of an assignment of perjury.

CASE reserved by Blackburn, J.

The prisoner was tried, before me, at the last assizes for Devonshire, for perjury. The indictment alleged that "at a petty session of the peace holden in the parish of Tiverton, in the county of Devon, a certain charge and complaint came on to be heard in due form of law before John Lane, Esq. and Samuel Garth, Esq., then respectively being Justices of the Peace of our Lady the Queen, assigned to keep the peace in and for the said county, and acting in and for the borough of Tiverton, in the said county, against Thomas Martin, for that he, to wit, on the night of the 31st of January, 1863, at Chettercombe Barton, in the parish of Tiverton, in the borough of Tiverton, unlawfully did enter and be on certain land there, called Quarry Down Close, with a certain gun and other instruments, for the purpose of taking and destroying game, contrary to the statute in such case made and provided," and then alleged that the prisoner committed perjury on the hearing of that complaint. On the evidence it appeared that an information or complaint in writing against Martin and the now prisoner Western was laid before a Justice of the borough of Tiverton in 1863. Western was then convicted, but Martin having absconded, a warrant issued against him, and he was not taken till 1868, when the complaint against him was heard before the two gentlemen named in the indictment, who were Justices for the

borough of Tiverton only, and were not Justices for the county. On the hearing of this complaint Western was called as a witness, and swore that Martin was not the person who was with him poaching on that night: and on this the perjury was assigned. It was objected that though the two Justices for the borough had jurisdiction to hear the complaint, yet not being Justices in and for the county, the allegation in the indictment was not proved. To this it was answered, that the fact that they were Justices for the borough, which was within the county, was proof of the averment, or that the words "in and for the county" might be rejected as surplusage. I was, however, of opinion that the averment being descriptive required to be proved as laid. It was then urged that I had power to amend the indictment so as to cure the variance, either under the 9. Geo. 4. c. 15. or the 14 & 15 Vict. c. 100. s. 1. I thought that the 9 Geo. 4. c. 15. did not apply to this case, and doubted whether the variance came within the meaning of the 14 & 15 Vict. c. 100. s. 1, as, though it was a variance in the description of persons in the indictment named and described, it seemed to me doubtful whether those words in the act were not confined to variances *ejusdem generis* with a variance in the name of such persons. I thought, however, that if I had power to make the amendment, it was proper to exercise it, and therefore directed the indictment to be amended by striking out the words "the said county," so as to make the averment be, that they were Justices assigned to keep the peace in and for, and acting in and for, the borough of Tiverton, in the said county," subject to the opinion of the Court of Criminal Appeal as to my power to make such an amendment.

It was further objected, that the *information or complaint in writing* (which was in the same words as those used in the indictment) disclosed no offence, as it did not allege that Martin was in Quarry Down Close for the purpose of destroying game there; and *Fletcher v. Calthorpe* (1) was cited in support of this position.

It appeared on the evidence that the charge actually made and heard before

(1) 6 Q.B. Rep. 880; s. c. 13 Law J. Rep. (Q.B.) 95.

the Justices was for poaching *there*, and I thought that, inasmuch as the Justices had jurisdiction over the complaint, which was, in fact, heard before them, the prisoner, if he wilfully gave false evidence with intent to mislead them, was liable to punishment, even if the written complaint was informal; but having reserved the point as to the variance, I reserved this point also. The case was then left to the jury, and the prisoner was convicted and liberated on bail. Various other objections were made, which I refused to reserve. The opinion of this Court is requested, first, whether I had power to amend as I did, and if I had not such power, whether, as the indictment originally stood, there was a fatal variance; secondly, whether the form of the complaint before the Justices prevented the conviction of the prisoner under this indictment.

No counsel appeared for the prisoner.

Collins, for the prosecution. — The amendment was rightly made, inasmuch as it amended the indictment by correcting a variance between a description of the Justices and the proof. They were described in the indictment as "Justices in and for the county," instead of "in and for the borough." Next, as to the informality in the information, it is submitted that if upon the authority of *Fletcher v. Calthorpe* (1) a conviction would be bad which omitted to allege that the defendant was in the close for the purpose of poaching there, yet the information is good enough without the word "there" for the purpose of giving the Justices jurisdiction to inquire into the charge.

KELLY, C.B.—We think the amendment was a proper one. There was a variance between the statement of the description of the Justices and the proof of it. As to the other point, the Justices had clearly jurisdiction to inquire into the complaint, and to try the offender. Therefore the perjury was well assigned.

The other JUDGES concurred.

Conviction affirmed.

Attorney—Greaves Walker, for the prosecution.

[CROWN CASE RESERVED.]

1868. }
April 25; } THE QUEEN v. ROGERS AND
May 2. } OTHERS.*

Larceny—Indictment—Jurisdiction to try—Constructive Possession—25 & 26 Vict. c. 96. s. 114.—Receiving Stolen Property—No Manual Possession of Stolen Goods—Aiding and Abetting.

A chattel was stolen in L, out of the county of M, and was consigned thence as a parcel by the thief in the ordinary course through a railway company, and was delivered by them to the receiver in the county of M, for the purpose of being sold and disposed of by him there, and there was no evidence of any possession by the thief in the county of M, unless either the possession by the railway company or of the receiver could be deemed his possession:—Held, that the thief retained control over the article in M, was therefore in possession thereof in M, and was liable to be tried in M. under the 24 & 25 Vict. c. 96. s. 114.

Two prisoners were convicted under a count charging them with receiving goods knowing them to have been stolen upon proof that they were present aiding and abetting a third receiver who was found in actual possession of the box containing the goods, but the two former never had manual possession of the box:—Held, that the conviction was right.

CASE reserved by the learned Assistant Judge for Middlesex.

John Rogers, Richard Irwin, Alfred Johnson and Charles Byatt were tried, before me, at the Sessions for Middlesex, on the 3rd of March, 1868, for stealing and receiving a watch, the property of John Shaw. Byatt pleaded guilty; Rogers was found guilty of stealing; and Irwin and Johnson were found guilty of receiving with a guilty knowledge.

John Rogers resided at Liverpool, and forwarded by railway a box containing the watch in question and several other stolen watches to the prisoner Byatt, and the box was delivered in due course to Byatt, in

* Coram Kelly, C.B., Keating, J., Montague Smith, J., Pigott, B. and Hannen, J.

the county of Middlesex. The box was addressed to his house in the handwriting of Rogers, and a similar box, empty, with similar address in Rogers's handwriting, was found at Byatt's. That box was taken by Rogers to the railway office in Liverpool on the 13th of January and booked as a parcel for London. Rogers was asked if he wished to pay the carriage, and he did so. The box was then forwarded in the ordinary manner. The box containing the articles named in the letter set out in the case (and amongst them the stolen watch in question) was sent by railway in the same manner on the 30th of January at ten o'clock in the morning, but the railway clerk could not say by whom it was brought to the office. The watch in question was stolen from the owner at Liverpool on the 29th of January about seven p.m. It was contended that as Rogers was not shown to have left Liverpool, the Court had no jurisdiction to try him. I told the jury that if they believed Rogers to have stolen the watch, his transmission of it into the county by the agency of the railway was sufficient to give the Court jurisdiction, although he did not personally convey it.

It was proved that Rogers had advised Byatt of the transmission of the box by a letter found in Byatt's possession, which letter was as follows :

"Liverpool, Jan. 30th, 1868.

"I send you up the goods this morning, they are as follows :

	£.	s.
13 W. Leavers	15	12
4 W. Genevas	1	12
1 R. Leaver	6	0
1 R. Geneva	1	5
1 Red Case, 1 oz. 2 dwts.	1	5
1 Red Slang, 1 oz. 17 dwts.	2	5
Ditto 1 oz. 2 dwts.	1	7
	29	6

"Try and deal this time without so much wrangling; you did not come down as you promised.

"Dick."

Articles corresponding with this letter were contained in the box found at Byatt's.

Irwin and Johnson were proved to have been at Byatt's house on the arrival of the box, and the jury found that they knew of

the box and the contents having been forwarded by Rogers, and that they were present on its arrival, aiding and abetting Byatt in the receipt of the watch in question, they well knowing it to have been stolen; but it was not proved that either of them had manual possession of it, all the prisoners, Byatt, Irwin and Johnson, having been taken into custody before the box was opened. I have to ask this honourable Court whether, upon the facts here stated, the conviction of Rogers, Irwin and Johnson, or either of them, can in point of law be sustained.

No counsel appeared for the prisoner.

Collins, for the prosecution. — As to the conviction of Rogers, the question is, whether the Middlesex Sessions had jurisdiction to try him for this offence, under the 24 & 25 Vict. c. 96. s. 114. That section enacts, that "if any person shall have in his possession, in any one part of the United Kingdom, any chattel, money, valuable security, or other property whatsoever, which he shall have stolen or otherwise feloniously taken in any other part of the United Kingdom, he may be dealt with, indicted, tried and punished for larceny or theft in that part of the United Kingdom where he shall so have such property in the same manner as if he had actually stolen or taken it in that part." It is submitted that the possession of the watch by the railway company in London for delivery to Byatt was constructively the possession of Rogers. In *The Queen v. Cryer* (1),—where the prisoner had posted half of a stolen bank note at Bath, out of the county of Wilts, directed in a letter to the Bank of Swindon, in Wilts, which had issued it, requesting payment of it, and it arrived in due course at Swindon, and there was no evidence that the stolen half of the note was received by the prisoner in Wilts, or was ever in his possession in that county, unless the bankers at Swindon, to whom the note was transmitted, or the post-office servants in the county, could be regarded as his agents for transmitting the stolen property, and their possession in Wilts be treated as his possession,—the prisoner was convicted of receiving the property in Wilts, under the 7 & 8 Geo. 4. c. 29. s. 56, which

(1) 26 Law J. Rep. (N.S.) M.C. 192.

enacted that a receiver of stolen goods may be tried in any county in which he shall have had the stolen property in his possession; and it was there said by the Court, "It is plain that if he had employed a private agent to give it to the bankers in order to get it cashed, the possession, in point of law, would all along have remained in the prisoner; and why should it less remain so, because it is transmitted through a public agent by means and on behalf of the prisoner?" So, here, it is submitted that the railway company were the agents for Rogers, and the possession remained all along in him. The word "possession" in that statute and the present is to be construed in the same manner. *The Queen v. Jones* (2) was referred to in the above case, and it was there held, that the postmaster became the agent for the prisoner, who was indicted for obtaining money by false pretences so as to render him liable to be tried in the county where the letter containing the money was posted to him by the prosecutor.

[KELLY, C.B.—You say, then, either the possession of Byatt was the possession of Rogers, or else the possession of the railway company was the possession of Rogers as their consignor until delivery to the consignee.]

The case was originally stated without setting out the letter from Rogers to Byatt, found at Byatt's, and it was now adjourned for the learned Assistant Judge to state the terms of that letter.

May 2.—On the case being called on, it was deemed unnecessary to hear Collins farther, and the judgment of the Court was delivered by—

KELLY, C.B.—With regard to the conviction of Rogers, the facts were, that the watch was stolen by him at Liverpool, and forwarded by railway to Byatt in Middlesex, for the purpose of being sold and disposed of by him there. The question is, whether the possession of the watch, in contemplation of law, remained with Rogers. I think the authority cited to us is con-

clusive. Constructive possession is deemed equivalent to actual possession in criminal as well as civil cases; and here Rogers must be deemed to have retained the control over the article. Then, possession being thus retained by him, his conviction must be affirmed. Then, as to Irwin and Johnson, the jury have found that they knew of the box having been forwarded by Rogers, and that they were present on its arrival, aiding and abetting Byatt in the receipt of the watch, they well knowing it to have been stolen. Aiders and abettors in a felony can be indicted, tried and convicted as principals; therefore, as to them, the conviction must also be affirmed.

The rest of the JUDGES agreed.

Conviction affirmed.

Note.—The constructive possession of the watch by Rogers, in Middlesex, in the above case, could be rested on two grounds, viz., that the possession of the railway company was his possession as their consignor until delivery, or that Rogers retained the control over the watch when in Byatt's actual possession as receiver, and therefore continued to be constructively in possession of it. It does not appear quite clearly whether the Court rested their judgment upon both grounds or upon one only, and if so upon which; but inasmuch as they relied pointedly on the case of *The Queen v. Cryer*, if the Court adopted the reasoning of the judgment in that case, it would seem that it was the possession of the railway company which they deemed to be the possession of Rogers. But if it had been necessary, it would have been deserving of consideration, whether Byatt's possession was not also the constructive possession of Rogers. *The Queen v. Smith*, 1 Dears. 494; s. c. 24 Law J. Rep. (N.S.) M.C. 135, was the converse case. There the prisoner was convicted as the receiver of a watch which was never in his actual possession, but was all the time in the possession of another person, who was the probable thief, but who had absconded, and so was never tried. The direction to the jury in that case was, that if they believed "that the watch was in the custody of a person with the cognizance of the prisoner, that person being one over whom the prisoner had absolute control so that the watch would be forthcoming if the prisoner ordered it, there was ample evidence to justify them in convicting the prisoner for feloniously receiving the watch." The jury then found the prisoner guilty, and stated that they believed that though the watch was in the hand or pocket of H, it was in the prisoner's absolute control. The above direction was deemed by the Court unexceptionable, and Lord Campbell said, "It has been held in decided cases, including *The Queen v. Wiley*, 2 Dears. 37, that there may be a joint possession in the receiver and the thief; that is the *ratio decidendi* on which the judgment in that case proceeds." And afterwards, "we have instances in real life that persons are employed to commit larcenies, and so deal with

(2) 1 Den. C.C. 551; s. c. 19 Law J. Rep. (N.S.) M.C. 162.

the stolen goods that they may be under the control of the employer. In this case H. may have been so employed by the prisoner, and the watch may have been under the prisoner's control; and if so, there was evidence of possession both by H. and the prisoner." And Mr. Justice Crowder says, "There was sufficient evidence that H. was the thief. The question is then put to the jury, was the watch under the control of the prisoner? And they say that it was. That finding is sufficient to support their verdict." So in the present case, if the letter from Rogers to Byatt were to be construed to shew that Byatt was acting under the control of Rogers, who was able to require the production of the watch if he had so chosen, it would seem, by analogy, that the possession of Byatt would be the possession constructively of Rogers. But perhaps the jury ought then to have found that Byatt was acting under the control of Rogers, which they were not required to do.

Attorneys—C. & J. Allen & Son, for the prosecution.

[CROWN CASE RESERVED.]

1868. } THE QUEEN v. BRACKENRIDGE
May 2. } AND ANOTHER.*

Forgery—Engraving Part of Bank Note of Scotch Bank—24 & 25 Vict. c. 98. ss. 16, 55.

To engrave upon a plate part of a note purporting to be a note of a Scotch banking company, is an offence within the 24 & 25 Vict. c. 98. s. 16, and that effect of the section is not prevented by section 55, which provides that nothing in the act contained shall extend to Scotland.

CASE reserved by Montague Smith, J.

The two prisoners were tried and convicted, before me, at the Spring Assizes for Warwickshire, 1868, on an indictment which charged them with feloniously, and without lawful authority and excuse, engraving upon a plate part of a promissory note purporting to be a part of a bank note of the British Linen Company, carrying on the business of bankers, for the payment of 5*l.*, contrary to the form of the statute, &c.—see 24 & 25 Vict. c. 98. s. 16. The evidence shewed that the prisoners had engraved upon a plate part of a bank note for

5*l.*, purporting to be a note of a Scotch banking company called the British Linen Company, and had made arrangements with a printer for printing a large number of notes from the plate when engraved. It was proved that the British Linen Company was a Scotch banking company carrying on the business of bankers at Edinburgh and at other places in Scotland, and not carrying on the business of bankers out of Scotland. It was objected, on behalf of the prisoners, that they were not indictable under the statute 24 & 25 Vict. c. 98, inasmuch as that act did not apply to the engraving, &c., of the plates of notes of Scotch banks; and sections 19 and 55. of the act were referred to.

No counsel appeared for the prisoner.

Overend and Beasley, for the prosecution.

—The 24 & 25 Vict. c. 98. s. 16, under which provision the conviction took place, applies to engraving in England upon a plate a bank note of a Scotch company. That section is as follows: "Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall engrave or in anywise make upon any plate whatsoever, or upon any wood, stone, or other material, any promissory note, bill of exchange, or bank post bill, or part of a promissory note, bill of exchange, or bank post bill, purporting to be a bank note, bank bill of exchange, or bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland, or of any other body corporate, company, or person carrying on the business of bankers, or to be a blank bank note, blank promissory note, blank bank bill of exchange, or blank bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland, or of any such other body corporate, company, or person as aforesaid, or to be a part of a bank note, promissory note, bank bill of exchange, or bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland, or of any such other body corporate, company, or person as aforesaid, or any name, word or character resembling or apparently intended to resemble any subscription to any bill of exchange or promissory note issued by the Governor and

* Coram Kelly, C.B., Keating, J., Montague Smith, J., Pigott, B. and Hannen, J.

Company of the Bank of England or the Governor and Company of the Bank of Ireland, or by any such other body corporate, company, or person as aforesaid, or shall use any such plate, wood, stone, or other material, or any other instrument or device, for the making or printing any bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, or part of a bank note, bank bill of exchange, or bank post bill, or knowingly have in his custody or possession any such plate, wood, stone, or other material, or any such instrument or device, or shall knowingly offer, utter, dispose of, or put off, or have in his custody or possession, any paper upon which any blank bank note, blank bank bill of exchange, or blank bank post bill of the Governor and Company of the Bank of England, or of the Governor and Company of the Bank of Ireland, or of any such other body corporate, company, or person as aforesaid, or part of a bank note, bank bill of exchange, or bank post bill, or any name, word, or character resembling or apparently intended to resemble any such subscription, shall be made or printed, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.” It is submitted that *prima facie* the Bank of the British Linen Company, which is a Scotch bank, would be within the words, in the first part of the section, “of any other body corporate, company, or person carrying on the business of bankers.”

[KELLY, C.B.—The cognate term “such” is introduced in the repetition in the subsequent part of the section.]

A Scotch banking company would be “such” another company. But section 55. of the same act enacts that “nothing in this act contained shall extend to Scotland except as otherwise hereinbefore expressly provided.” The only operation, however, that can be given to this section is by referring it to section 1, where it is made an offence to forge the seal of England and

Scotland, appointed under the Article of the Union to be kept, used and continued in Scotland, which is the only section where Scotland is mentioned, unless it can be explained to refer to Scotch banks as included under the general words in the 16th and other sections where banks are referred to. The present act is an act to consolidate the law relating to forgery, and is framed on 11 Geo. 4. & 1 Will. 4. c. 66; and the analogous provision in that statute was section 29, which enacted that “this act shall not extend to any offence committed in Scotland or Ireland.” The framers of the Consolidated Statute probably meant to express the same thing, by providing that the act should not extend to Scotland. The 19th section of the present act makes it an offence to engrave upon any plate a bill, promissory note, &c., purporting to be the bill, note, &c. of any foreign prince or state, or of any person or company of persons resident in any country not under the dominion of Her Majesty, so that if the 16th section does not extend to a Scotch banking company, there will be this great anomaly, that the forgery of a foreign note will be punishable, whilst the forgery of a Scotch note will not be an offence; for there is nowhere any other enactment to protect Scotch banks against the forgery of their notes in England. In *The Queen v. Hannon* (1) an indictment framed on the 18th section of the 11 Geo. 4. & 1 Will. 4. c. 66. for having a plate for engraving the notes of the Bank of Upper Canada was upheld, on the ground that the words of that section, upon which the present one is founded, were large enough and intended to include the colonies. And in *The Queen v. Keith* (2), an indictment also framed upon the 18th section of 11 Geo. 4. & 1 Will. 4. c. 66, for engraving part of a note purporting to be a note of the very company in question, namely, the British Linen Banking Company, was upheld; but certainly this point was not taken. On these grounds it is submitted that the conviction was right.

KELLY, C.B.—This case raises a very important question, but we think it free

(1) 9 Car. & P. 11.

(2) 1 Dears. 486; s. c. 24 Law J. Rep. (N.S.) M.C. 110.

from difficulty. The indictment appears to have been framed on the 16th section of the 24 & 25 Vict. c. 98. [His Lordship read the section].—The question turns on the words, “or of any other body corporate, company or person carrying on the business of bankers,” following on the mention of the Bank of England and the Bank of Ireland. In a subsequent part of the section, upon a similar collocation, the phraseology is changed by the introduction of the word “such.” Then, are these general words, after the specifying of the Banks of England and Ireland, intended to include Banks of Scotland? We are all of opinion that a bank in Scotland or in any of the colonies is intended to be included by them. Such is their literal construction; but we think it not merely the literal construction, but the substantial meaning and actual intention of the legislature; and the only doubt is raised by the 55th section. It would be of serious import if that section were to exclude Scotland from the operation of the statute, for it would be a felony to forge a note of the Bank of England, Ireland or Wales, or of any foreign country, whilst it would leave bankers in Scotland and in the colonies without protection, so that any one might with impunity forge in England notes of any such bank. We cannot suppose that the legislature could have intended any such thing as that. The words “nothing shall extend to Scotland” merely mean nothing shall extend to offences committed in Scotland, which was the express enactment in 11 Geo. 4. & 1 Will. 4. c. 66. The mode of procedure in Scotland is different from that of England, and therefore Scotland was excluded from the act; but the legislature meant no more than to exclude from the operation of the act offences committed in Scotland, which would be dealt with and punished according to that procedure. We find in the 1st section a provision relating to the Great Seal of Scotland, and we do not find any enactment in which Scotland is expressly mentioned; therefore the words in the 55th section, “except as otherwise hereinbefore expressly provided,” seem to have been introduced *ex majore cautela*, and have, in effect, no operation.

The other JUDGES concurred.

Conviction affirmed.

Note.—The great anomaly that would exist if the notes of a Scotch bank might be forged with impunity in England, while those of foreign states are protected, has probably induced the Court to cast aside the 55th section, which excluded Scotland from the operation of the act, somewhat summarily. But had the case been argued by counsel for the prisoner, it would have probably been brought to the notice of the Court that this anomaly has existed before, but had been remedied by legislation, which was prior to and repealed by the late Consolidated Statute. In *The Queen v. M'Kay, B. & R. 71*, a conviction of uttering a note of this same company, the British Linen Company, was held wrong under the 2 Geo. 2. c. 25, containing similar general words, which were, however, restrained by the 4th section of that act, which provided “that nothing in this act contained shall extend or be construed to extend to that part of Great Britain called Scotland.” Now, it is to be observed that the words there used are in substance the precise words used in the present act, but the effect of them was in that case deemed to be to exclude Scotch bankers from the protection of the act. This was, however, remedied in the 41 Geo. 3. c. 57, which was expressly enacted with reference to Great Britain and Ireland. Then, by the subsequent act, 46 Geo. 3. c. 89, Scotch banks were again included by section 8, which expressly enacted that “all and every the clauses and provisions in this act contained shall extend to every part of Great Britain.” Then, under the 11 Geo. 4. & 1 Will. 4. c. 66, Scotch banks were still protected, because the excepting clause, viz., section 29, provided that “this act shall not extend to any offence committed in Scotland or Ireland.” Therefore there was nothing in that clause to limit the effect of the general words describing bankers in the 18th section of that act, and so *The Queen v. Keith* was rightly decided. But now that act is repealed, and in place of the excepting clause in that act, is inserted one changing that language, and returning to the words of the 2 Geo. 2. c. 25. s. 4, under which *The Queen v. M'Kay* was decided. To deprive Scotch banks of their protection would seem to be a great anomaly; but if the legislature have so expressed themselves as to effect that result, it may be questioned how far it is advantageous for the Court to refuse to give effect to their enactments. It is to be observed, that there is no enactment in the act to prevent its operation to the Colonial bankers, and therefore the observations of the Court with reference to such banks would seem to be beside the point of the case; for all the cases seem to agree that the general words describing bankers would include Scotch as well as Colonial banks, and the difficulty is caused by the language of the section excluding Scotland only from the act.

Attorneys—Young, Maples, Teesdale & Nelson, agents for Whateleys & Whateley, Birmingham, for the prosecution.

[IN THE COURT OF QUEEN'S BENCH.]
 1868. } THE QUEEN v. HICKLIN AND
 April 29. } ANOTHER.

Obscene Book—Publication with intent to expose Errors of Religious Sect—Misdemeanor "proper to be prosecuted as such"—Lord Campbell's Act (20 & 21 Vict. c. 83).

By 20 & 21 Vict. c. 83, an act "for the more effectually preventing the sale of obscene books, pictures, prints and other articles," it is enacted that upon complaint before two Justices of the Peace, that any obscene books, papers, prints, &c., are kept in any place within their jurisdiction "for the purpose of sale or distribution, exhibition for purposes of gain, lending upon hire, or being otherwise published for purposes of gain," and upon the Justices being satisfied that any of the articles so kept are of such a character that the publication of them would be a misdemeanor and proper to be prosecuted as such, they may cause such books, &c. to be seized and destroyed in the manner provided by the act.

A society of persons called "The Protestant Electoral Union,"—(whose objects were stated to be, amongst others, "to protest against those teachings and practices of the Romanist and Puseyite systems which are un-English, immoral and blasphemous"; to "maintain the Protestantism of the Bible and the liberty of England," and "to promote the return to parliament of men who will assist them in these objects; and particularly will expose and defeat the deep-laid machinations of the Jesuits, and resist grants of public money for Romish purposes")—exposed for sale at their office a pamphlet entitled, "The Confessional Unmasked, shewing the depravity of the Romish priesthood, the iniquity of the confessional, and the questions put to females in confession." This pamphlet consisted of extracts from the works of theologians on the doctrines and discipline of the Church of Rome, and particularly on the practice of auricular confession. On the side of the page were printed passages in the original Latin, correctly extracted from the works of these writers, and opposite each extract was placed a free translation of it into English. The pamphlet also contained a preface and notes, and comments con-

demnatory of the tenets and principles of the authors of the works from which the extracts were made. About one-half of the pamphlet related to casuistical and controversial questions which were not obscene, but the remainder of the pamphlet was obscene, relating to impure and filthy acts, words and ideas. A member of the society kept and sold these pamphlets with the purpose of promoting the objects of the society, and exposing what he deemed to be errors of the Church of Rome. Two Magistrates, purporting to act under the above-mentioned statute, ordered a number of these pamphlets while in his possession to be seized and destroyed:—Held, that, notwithstanding the object of the defendant was not to injure public morals, but to attack the religion and practice of the Roman Catholic Church, this did not justify his act nor prevent it from being a misdemeanor proper to be prosecuted, as the inevitable effect of the publication must be to injure public morality; and although he might have had another object in view, he must be taken to have intended what was the natural consequence of his act, and had therefore been guilty of an offence within the meaning of the statute.

This was a SPECIAL CASE stated by the Recorder of Wolverhampton for the opinion of this Court.

At the Quarter Sessions for the borough of Wolverhampton, held on the 27th of May, 1867, Henry Scott appealed against an order made by two Justices of the borough, under 20 & 21 Vict. c. 83 (1),

(1) By 20 & 21 Vict. c. 83, after reciting that it is expedient to give additional powers for the suppression of the trade in obscene books, prints, drawings and other obscene articles, it is by section 1. enacted—"It shall be lawful for any Metropolitan Police Magistrate, or other stipendiary Magistrate, or for any two Justices of the Peace, upon complaint made before him or them on oath, that the complainant has reason to believe and does believe that any obscene books, papers, writings, prints, pictures, drawings or other representations are kept in any house, shop, room, or other place within the limits of the jurisdiction of any such Magistrate or Justices, for the purpose of sale or distribution, exhibition for purposes of gain, lending upon hire, or being otherwise published for purposes of gain, which complainant shall also state upon oath that one or more articles of the like character have been sold, distributed, exhibited, lent, or otherwise published as aforesaid, at or in connexion with such place, so as to satisfy such

whereby the Justices ordered certain books which had been seized in the dwelling-house of the appellant within their jurisdiction to be destroyed, as being obscene books within the meaning of the statute.

The appellant is a metal-broker, residing in the town of Wolverhampton, and a person of respectable position and character. He is a member of a body styled "The Protestant Electoral Union," whose objects are, *inter alia*, "to protest against those teachings of the Romish and Puseyite systems which are un-English, immoral and blasphemous," to "maintain the Protestantism of the Bible and the liberty of England," and "to promote the return to parliament of men who will assist them in these objects, and particularly will expose and defeat the deep-laid machinations of the Jesuits and resist grants of money for Romish purposes." In order to promote the objects and principles of the society, the appellant purchased from time to time, at the central office of the society in London, copies of a pamphlet entitled "The Confessional Unmasked, shewing the depravity of the Romish priesthood, the iniquity of the confessional and the questions put to females in confession," of which pamphlets he sold between two and three thousand copies at the price he gave for them, viz., 1s. each, to any person who applied for them.

A complaint was thereupon made before two Justices of the borough by a police officer, under the direction of the watch committee of the borough, and the Justices issued their warrant under the above-named statute, by virtue of which warrant 252 in number of such pamphlets were seized on the premises of the appellant, and ordered by the Justices to be destroyed as above mentioned.

The pamphlet (a copy of which accompanies and is to be taken as part of this case) consists of extracts taken from the works of certain theologians who have

Magistrate or Justices that the belief of the said complainant is well founded, and upon such Magistrate or Justices, being also satisfied that any of such articles so kept for any of the purposes aforesaid are of such a character and description that the publication of them would be a misdemeanor and proper to be prosecuted as such"—power is given to the Magistrate or Justices to order any of the articles above mentioned to be seized and destroyed.

written at various times on the doctrines and discipline of the Church of Rome, and particularly on the practice of auricular confession. On the side of the page are printed passages in the original Latin, correctly extracted from the works of those writers, and opposite to each extract is placed a free translation of such extract into English. The pamphlet also contains a preface and notes, and comments condemnatory of the tenets and principles laid down by the authors from whose works the extracts are taken. About one-half of the pamphlet relates to casuistical and controversial questions which are not obscene, but the remainder of the pamphlet is obscene in fact, as relating to impure and filthy acts, words and ideas.

The appellant did not keep or sell the pamphlets for purposes of gain nor to prejudice good morals, though the indiscriminate sale and circulation of them are calculated to have that effect; but he kept and sold the pamphlets as a member of the "Protestant Electoral Union," to promote the objects of that society and to expose what he deemed to be errors of the Church of Rome, and particularly the immorality of the confessional.

I was of opinion that under these circumstances the sale and distribution of the pamphlets would not be a misdemeanor, nor, consequently, be proper to be prosecuted as such, and that the possession of them by the appellant was not unlawful within the meaning of the statute. I therefore quashed the order made by the Justices, and directed the pamphlets seized to be returned to the appellant; but at the request of the parties I have stated this case for the opinion of the Court of Queen's Bench. If the Court shall be of opinion upon the facts stated that the sale and distribution of the pamphlets by the appellant would be a misdemeanor and proper to be prosecuted as such, the order of the Justices for destroying the pamphlets so seized is to be enforced; if not, the order is to be quashed.

Kydd, for the respondent.—The decision of the Recorder was right. In order to make out that the publication of this pamphlet is a misdemeanor, the appellant must shew that it was published with an intention contrary to morality. But this cannot

be shewn. The fact that the book is, first, controversial; secondly, that it is published with the object of enlightening the community as to the practices of the Romish Church, is conclusive evidence against any such intention. In *The King v. Woodfall* (2), Lord Mansfield says, "Where an act is in itself indifferent, if done with a particular intent it becomes criminal; then the intent must be proved and found: but where the act is in itself unlawful (as in this case), the proof of justification or excuse lies on the defendant, and in failure thereof the law implies a criminal intent." In their answers to questions put to them by the House of Lords on Mr. Fox's Libel Bill, the Judges said, "The crime consists in publishing a libel; a criminal intention in the writer is no part of the definition of the crime" — 22 *State Trials*, 229. But in *Atton's case* (3), although Lord Mansfield told the jury that the publication of Junius's celebrated Letter to the King was a libel, and the guilt of publishing it an inference of law from the act of publication, his Lordship admitted that the publication of a libel might be justified as legal or excused as innocent, by circumstances to be established by the defendant's proof. In *Starkie on Evidence*, 3rd edit. p. 1450, reference is made to a case of *The King v. Dodsworth* (4), where the defendant was indicted under the Reform Act for a false statement at the poll, that he had the same qualification for which his name was originally inserted on the register, and it appeared that he had ceased to occupy the tenement, but did at the time of the poll occupy another of the same value; it was held, that the jury to convict him must be satisfied that he was stating what he knew to be false. In *The King v. Lambert* (5), Lord Ellenborough, while stating that in his opinion it was doubtful whether the writing in question was meant as a calumny upon the Sovereign, allowed the jury to draw a conclusion favourable to the defendant from other parts of the work. In *Buckmaster v. Reynolds* (6), where the question was whether an intentional obstruction of the voting at

(2) 5 Burr. 2667; and see *no other*
 (3) Ibid. 2688, *resemblement* a *et* *et*
 (4) 2 Moo. & R. 72.
 (5) 2 Campb. 398.
 (6) 13 Com. B. Rep. N.S. 62, 100.

an election of vestrymen by actual violence, was an offence within the meaning of section 21. of the Metropolis Local Management Act, Chief Justice Erle says, "A man cannot be said to be guilty of a delict unless to some extent his mind goes with the act. Here it seems that the respondent acted in the belief that he had a right to enter the room, and that he had no intention to do a wrongful act." In Dr. Johnson's 'Lives of the Poets,' vol. 2, he states that Savage lampooned the clergy in a poem entitled 'The Progress of a Divine,' for which an information was moved against him on the ground that it was an obscene libel; but it was urged "that obscenity was criminal when it was intended to promote the practice of vice, but that Mr. Savage had only introduced obscene ideas with the view of exposing them to detestation;" and the plea was admitted by Sir Philip Yorke, who dismissed the information. In Mr. Murray's Standard Edition of Lord Byron's works, p. 317, mention is made of *Murray v. Benbow* (7), an application to Lord Eldon for an injunction to restrain a piratical edition of Lord Byron's 'Cain'; and his Lordship, in refusing the injunction, said, "You have alluded to Milton's immortal work. It appears to me that the great object of the author was to promote the cause of Christianity. There are, undoubtedly, passages in it which, if that were not its object, it would be very improper by law to vindicate the publication; but taking it altogether, it is clear that the object and effect was, not to bring into disrepute, but to promote the reverence of our religion."

[BLACKBURN, J.—In the present case the Recorder has found that the object and effect of the work are of a very different kind.]

In *Starkie on Slander and Libel*, 2nd edit. 147, it is said, speaking of the criminal liability of an author in respect of the publication of his opinions, "A malicious and mischievous intention is in such cases the broad boundary between right and wrong."

[BLACKBURN, J.—Do you contend that the mere fact of having a legitimate object justifies the insertion of any matter, however improper or mischievous? LUSH, J.—

(7) See Petersdorff's *Alldrig*. vol. 6, p. 558.

Could you justify the sale of this pamphlet to boys in the streets?]

The defendant is bound to answer these questions in the affirmative. In many published works passages quite as objectionable as those in 'The Confessional Unmasked' may be found. For example, the modern edition of Clarkson's 'Practical Divinity of Papists,' published at Edinburgh.

[COCKBURN, C.J.—I suppose that this work is for circulation among a limited class of persons.]

Chaucer's works, Savage's 'Poem on Valentine's Day,' Jeremy Collier's 'English Stage,' Bayle's Dictionary, and a certain picture at Dulwich Gallery, might, on the same grounds, be objected to.

[LUSH, J.—It does not follow that, because such picture is exhibited, a photograph of it might be handed about in the streets.]

At the trial of Mr. MORON for blasphemy (8), Lord DENNEN, in directing the jury, said; "It was not sufficient that mere passages of such an offensive character should exist in a work in order to render the publication of it an act of criminality. It must appear that no condemnation of such passages appear in the context." In the case of *The King v. Gathercole* (9), Alderson, B. laid down the law respecting a libel on a religious institution, saying "The defendant has a right to entertain his opinions, to express them, and to discuss the subject of the Roman Catholic religion and its institutions; but he has no right to say of any particular body of persons (e.g. the inhabitants of a nunnery) that the place they inhabit is a brothel of prostitution, for in doing that he is attacking the individual characters of the body of whom the nunnery consists." In a case before the House of Lords, reported by Dr. Philip Farrer, and noticed in *Campbell's Lives of the Chief Justices*, vol. 2, p. 513, Lord Mansfield says, "The essential principles of revealed religion are part of the common law; so that any person reviling, subverting or ridiculing them, may be prosecuted at common law. But it cannot be shown from the principles of natural or revealed religion that, independent of positive law, temporal punishments ought to be inflicted for mere opinions with respect to particular

modes of worship." He also cited *Lawrence v. Smith* (10), and *The Queen v. Reed* (11).

A. S. HILL, for the appellant.—The question is whether, looking at the words of the statute, the fact that it was the object of the defendant to promote the interests of the society to which he belonged makes the misdemeanor of which he has been guilty one which it is not proper to prosecute. This question involves two others: first, need any criminal intent be specified in the indictment? secondly, if this is the case, is not the intent necessarily implied from the publication of the book? With regard to the first question, the case may be illustrated by *The King v. Vandonillo* (12), where it was held that a person might be indicted for carrying along a public highway a child infected with the small-pox, although no particular intention of doing mischief was suggested. The publication of an indecent book is indictable, although it was once doubted, in *The Queen v. Reed* (11), in the sixth year of Queen Anne; but, from a note to this case, it appears that the authority of it was destroyed by *The King v. Carl* (13), which was an indictment for printing and publishing a libel called 'The Nun in her Smock.' In *The King v. Dixon* (14), where the defendant was indicted for supplying loaves of bread with which alum had been mixed to a military asylum, Lord Ellenborough said that it was a universal principle that when a man is charged with doing an act of which the probable consequence may be highly injurious, the intention is an inference of law resulting from the doing of the act; and the indictment alleged that the defendant delivered the loaves for the use and supply of the children, which could only mean for the children to eat. The publication is therefore *prima facie* indictable, and it lies on the defendant to excuse himself—*The King v. Topham* (15).—(He was then stopped.)

COCKBURN, C.J.—We have considered this matter, and we are of opinion that the judgment of the learned Recorder of Wolverhampton must be reversed, and the

(10) Jacob, Rep. 471.

(11) Fortesc. 100 n.

(12) 4 M. & S. 73.

(13) 2 Str. 788.

(14) 3 M. & S. 11.

(15) 4 Term Rep. 426.

(8) 2 Mod. St. Tri. 356.

(9) 2 Lewin's Crown Cases, 237, 254.

decision of the Magistrates be affirmed. This was a proceeding under the act of the 20 & 21 Vict. whereby it is enacted that, in respect of obscene books sold or distributed, Magistrates may order the seizure of such publications, in case they are of opinion that the works in question would have been the subject-matter of an indictment at law, and that such a prosecution ought to be instituted in the particular case, and they have power to order a destruction of the works. Now it is found here, as a fact, that the work which is the subject-matter of the present proceeding was, to a considerable extent, an obscene publication; and, by reason of the obscene matter in it, calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it might come. The Magistrates were of opinion that the work was indictable, and that the publication of it was a fit and proper subject for indictment. We must take the first finding of the Magistrates to have been adopted by the learned Recorder, because it is not upon that ground he reversed their decision; he leaves that ground untouched; but he reversed their decision upon the ground that, although this work was an obscene publication, and although its tendency upon the public mind was that suggested upon the part of the information, yet that the immediate intention of the respondent was not so to affect the public mind, but to expose the practices and errors of the confessional system in the Roman Catholic Church. And we must take it upon the finding of the learned Recorder that such was the motive of this publication; that its intention was honestly and *bona fide* to expose the errors and practices of the Roman Catholic Church in the matter of confession. Upon that ground the learned Recorder thought an indictment could not have been sustained, inasmuch as, to the maintenance of the indictment, it would have been necessary that the intention should be alleged; namely, that of corrupting the public mind by the obscene matter in question. In that respect, I differ from him. I think that, if there be an infraction of the law and an intention to break the law, the criminal character of such publications is not affected or qualified by there being

some ulterior object, which is the immediate and primary object of the parties in view, of a different and of an honest character. It is quite clear that the publishing an obscene book is an offence against the law of the land. It is perfectly true, as has been pointed out by Mr. Kydd, that there are a great many publications of high repute among the literary productions of this country, and many other works, the tendency of which is innocent and, it may be said, immoral; and possibly there might have been subject-matter for public indictment and prosecution in many of these works. But it is not to be said that, because there are in many standard and established works objectionable passages, that therefore the law is not as alleged on the part of this prosecution, namely, that obscene works are the subject-matter of indictment; and I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. Now, with regard to this work, it is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character. The very reason why this work is put forward, to expose the practices of the Roman Catholic confessional, is the tendency of questions involving practices and propensities of a certain description to do mischief to the minds of those to whom such questions are addressed, by suggesting thoughts and desires which otherwise would not have occurred to their minds. If that be the case, as between the priest and the person confessing, it manifestly must equally be so when the whole is put into the shape of a series of paragraphs, one following upon another, each involving some impure practice, some of them of the most filthy, and disgusting and unnatural description it is possible to imagine. I take it, therefore, that, apart from the ulterior object which the publisher of this work had in view, the work itself is, in every sense of the term, an obscene publication, and that, consequently, as the law of England does not allow of any obscene publication, such publication is indictable. We have it, there-

fore; that the publication itself is a breach of the law. But then it is said, "Yes; but the respondent's purpose was not to deprave the public mind; his purpose was to expose the errors of the Roman Catholic religion, especially in the matter of the confessional." Be it so. But then the question presents itself in this simple form: may you commit an offence against the law in order that thereby you may effect some ulterior object which you have in view, which may be an honest and even a laudable one? My answer is emphatically, No. The law says you shall not publish an obscene book. An obscene book is here published; and a book the obscenity of which is so clear and decided that it is impossible to suppose that the man who published it must not have known and seen that the effect upon the minds of many of those into whose hands it would come would be of a mischievous and demoralizing character. Is he justified in doing that which clearly would be wrong, legally as well as morally, because he thinks that some greater good may be accomplished? In order to prevent the spread and progress of Catholicism in this country, or, possibly, to extirpate it in another, and to prevent the state from affording any assistance to the Roman Catholic Church in Ireland, is he justified in doing that which has necessarily the immediate tendency of demoralizing the public mind wherever this publication is circulated? It seems to me that to adopt the affirmative of that view would be to uphold something which, in my sense of what is right and wrong, would be most reprehensible. It appears to me the only good that is supposed to be accomplished is of the most uncertain character. This book, we are told, is circulated at the corners of streets and in all directions, and of course it falls into the hands of persons of all classes, — young and old, — and the minds of those hitherto pure are exposed to the danger of contamination and pollution from the impurity it contains. And for what? To prevent them, it is said, from becoming Roman Catholics; when the probability is, that 999 out of every 1,000 into whose hands this book would fall would never be exposed to the chance of being converted to the Roman Catholic religion. I think the old, sound and honest maxim, that you shall not do evil that good may come, is applicable in

law as well as in morals; and here we have a certain and positive evil produced for the purpose of effecting an uncertain, remote and very doubtful good. I think, therefore, the case for the Magistrate's order is made out; and although I quite concur in thinking that the motive of the parties who published this book, however mistaken, was an honest one, yet I cannot suppose but that they knew perfectly that this book must have the tendency which in point of law makes it an obscene publication; namely, the tendency to corrupt the minds and morals of those into whose hands it might come. Though the mischief of it can scarcely be exaggerated, it is not upon that that I found my judgment. I take it, where a man publishes a work manifestly obscene, he must be taken to have had the intention which is implied from that act, and that as soon as you have an illegal act thus established *quoad* the intention and *quoad* the act, it does not lie in the mouth of the man who does it to say, "Well, I was breaking the law, but I was breaking it for some wholesome and salutary purpose." The law does not allow that. You must abide by the law, and if you accomplish your object, you must do it in a legal manner or let it alone. You must not do it in a manner which is illegal. I think that the Recorder's judgment must be reversed, and the conviction must be allowed to stand.

BLACKBURN, J. — I am of the same opinion. The question arises under the 20 & 21 Vict. c. 83, an act for "the more effectually preventing the sale of obscene books," and so forth; and the provision in the 1st section is — (the learned Judge read section 1: at length). Now, what the Magistrate or Justices are to be satisfied of is this, — that the belief of the complainant is well founded; and also "that any of such articles so published for any of the purposes aforesaid are of such a character and description," that is to say, of such an obscene character and description, "that the publication of them would be a misdemeanor and proper to be prosecuted as such"; and having satisfied themselves in respect of those things, they may proceed to order the seizure of the work. So that the Justices are to be satisfied of three things: first, that the

articles, complained of, have been, and are published; secondly, that they are of such a character that it would be a misdemeanor to publish them; and lastly, that it would not only be a misdemeanor to publish them, but a misdemeanor proper to be prosecuted as such. Then, and then only, are they to issue their warrant to seize them. I think, with respect to the last clause, that the object of the legislature was to guard against the vexatious prosecution of publishers of old and recognized standard works, in which there may be some obscene or mischievous matter. In *Moxon's case* (8) the publication of Shelley's 'Queen Mab' was found by the jury to be an indictable offence. I hope I may not be understood to agree with what the jury found, namely, that the publication of 'Queen Mab' was sufficient to make it an indictable offence; I believe that it was a prosecution instituted merely for the purpose of vexation and annoyance. I think the legislature put in that provision as to the propriety of the prosecution to guard against such a case.

It appears that the Magistrates in petty sessions were satisfied that the work was a proper subject for indictment. There was an appeal to Quarter Sessions to reverse their decision, which was successful. The learned Recorder, in stating the grounds on which he reversed their decision, says, "About one-half of the pamphlet relates to casuistical and controversial questions, which are not obscene; but the latter half of the pamphlet is obscene in fact, as containing passages which relate to impure and filthy acts, words and ideas. The appellant did not keep or sell the pamphlet for purposes of gain, nor to prejudice good morals, though the indiscriminate sale and circulation of it is calculated to have that effect; but he kept and sold the pamphlet as a member of the Protestant Electoral Union to promote the objects of that society, and to expose what he deemed to be errors in the Church of Rome, and particularly the immorality of the confessional. I was of opinion that the sale and distribution of the pamphlet would not be a misdemeanor, nor be proper to be prosecuted as such;" and upon that ground he quashed their decision, leaving to us the question whether he was right or not. Upon that I under-

stand the Recorder to find the facts as follows: he finds that one-half of the book was in fact obscene, and he finds that the effect of it would be such that the sale and circulation of it was calculated to prejudice good morals, but he decides that it would not be indictable at all as a misdemeanor, and consequently; that it would not be proper to prosecute it as a misdemeanor; and his reason is this, that the object of the person publishing it was not to injure public morality, but to expose the errors of the Church of Rome, and particularly the immorality, as he thought it, of the confessional. I have come to the conclusion that the Recorder was wrong, and that it would be indictable. I take the rule of law to be as stated by Lord Ellenborough in *The King v. Dixon* (14). He says, "It is a universal principle that when a man is charged with doing an act," that is, a wrongful act without legal justification, "of which the probable consequence may be highly injurious, the intention is an inference of law resulting from the doing the act." And although the respondent may have had another object in view, he must be taken to have intended that which is the natural consequence of the act. If he does an act which is illegal, it does not make it legal because he did it with some other object. That is not a legal excuse, unless the object was something which rendered the particular act he did lawful. That is illustrated by *The King v. Dixon* (14). There a contractor supplied bread to a Military Asylum, which was unwholesome and deleterious; and although it was not shewn or suggested that he intended to make the children suffer, yet Lord Ellenborough held, that he had done an unlawful act in giving them bread which was deleterious, and that an indictment could be sustained. So in a case in which a person carried another who was suffering from a contagious disease, along a public road, to the danger of the health of all those who happened to be in that road, it was held to be a misdemeanor, without its being said that he intended that anybody should catch the disease. If a person carried anybody suffering from small-pox through a crowd, that would be an indictable offence, although he might be perfectly innocent of

any wish to infect anybody in that crowd. If, on the other hand, the Small Pox Hospital was on fire, and an individual in endeavouring to save the infected inmates from the flames, took some of them into the crowd, although some of the crowd would be liable to catch the small-pox, yet, in that case he would not be guilty of a wrongful act, and he would not do it with a wrong intention. Now, in the present case the Recorder has found that one-half of this book is obscene, and nobody who looks at the pamphlet can for a moment doubt that, and that the indiscriminate circulation of it in the way in which it appears to have been circulated, must be calculated, and is calculated, to prejudice the morals of the people. The object was to expose and attack the Roman Catholic religion, or practice rather, and particularly the Roman Catholic confessional, and it was not intended to injure public morals; but that would be no excuse whatever for the act. I do not think there is anything wrong in taking the view that the Roman Catholics are not right; any Protestant may say that, without saying anything illegal. Any Roman Catholic may say, if he pleases, that Protestants are altogether wrong, and that Roman Catholics are right; there is nothing illegal in that. But I think it never can be said that in doing that you may do something contrary to public morality; that you may publish obscene publications, and distribute them amongst every one, schoolboys and every one else, when the inevitable effect must be to injure public morality, on the ground that you have an innocent object in view, that is to say, that of attacking the Roman Catholic religion, which you have a right to do. If the book is an obscene publication, then, notwithstanding that the wish was not to injure public morality, but merely to attack the Roman Catholic religion and practice, still, I think its publication would be an indictable offence. The question, no doubt, will be a question for the jury, but I do not think you could construe this act by saying, that whenever there is a wrongful act of this sort committed, that you must take into consideration the intention and object of the party in committing it, and if a laudable one, that that would deprive the Justices of jurisdiction. The Justices must

themselves be satisfied that the publication, such as the publication before us, would be a misdemeanor on account of its obscenity, and therefore that it would be indictable if it was such a misdemeanor. The Recorder has found that it is obscene, and he supports the Justices in every finding, except in what he has reversed it upon. He finds the object of the appellant in publishing the work was not to prejudice good morals, and consequently he thinks it would not be indictable at all. But I do not understand him for a moment to say that if he had not thought there was a legal object in view, it would not have been a misdemeanor at all, and that therefore it would have been vexatious or improper to indict the seller of such a book, nor do I think that anybody who looks at it would for a moment have a doubt upon the matter. I have come to the conclusion that the publication is a misdemeanor, and that an indictment would lie; and consequently the Recorder's decision is quashed, and the conviction is affirmed.

MELLOR, J.—I confess that it is with some difficulty, and with some hesitation, that I have arrived very much at the same conclusion as that at which my Lord and my learned Brothers have arrived. My difficulty was mainly whether or not this case was, having regard to the finding of the Recorder, within the act with reference to obscene publications. I am not certainly in a condition to dissent from the view which my Lord and my Brothers have taken as to this question; and if it be answered in the affirmative, then I agree with what has been said by my Lord and my Brother Blackburn. The subject itself, if it is a subject which may be discussed at all, and I think it undoubtedly may, is one which cannot be dealt with without, to a certain extent, producing authorities for the assertion that the confessional would be a mischievous thing to be introduced into this kingdom, and therefore the offence, it appears to me, is very much a question of degree, more or less, and proper for the jury. Now I take it for granted, that the Magistrates themselves were perfectly satisfied that this pamphlet went far beyond anything which was necessary or legitimate for the purpose of attacking the confessional, and I think that on looking at this

book myself, I cannot question the finding either of the Recorder or of the Justices. It does appear to me that there is a great deal here which there cannot be any necessity for, in any legitimate argument on the confessional and the like; and in this view, I certainly am not in a condition to dissent from my Lord and my Brother Blackburn. Therefore, with the expression of hesitation I have mentioned, I agree in the result at which they have arrived.

LURK, J.—I agree entirely in the result at which the rest of the Court have arrived, and I adopt the argument and the reasoning of my Lord Chief Justice and my Brother Blackburn.

Judgment for the appellants.

Attorneys—J. Needham, for appellants; Bassett & Marsh, for respondent.

[CROWN CASE RESERVED.]

1868. } THE QUEEN v. M'KALE.*
April 25. }

Larceny — Inchoate Transaction — Obtaining Money by False Pretences.

A. and B. went into a shop, and A. bought a pennyworth of sweets, and gave a florin in payment. The prosecutrix put the florin into the till and took out of the till one shilling and sixpence in silver, and five-pence in copper, and put the change on the counter. A. took up the change; B. said to A. that he need not have changed, and threw down a penny. A. took up the penny and then put down sixpence in silver and sixpence in copper, and asked the prosecutrix to give him a shilling in change. She took a shilling from the till and put it on the counter beside the sixpence in silver and sixpence in copper. A. then said to the prosecutrix that she might as well give him the florin and take it all. She took the florin from the till and put that on the counter, expecting she was to receive two shillings of the prisoner's money. The prisoner went away with the florin. The prosecutrix did not discover her mistake till she was putting the change into the till, but at the same moment B. distracted her attention by ask-

ing the price of some sweets:—Held, that the transaction was inchoate when the prosecutrix discovered her mistake, and that she never intended finally to part with her property in the florin till she received two shillings of the prisoner's money, and that the offence was larceny, and not obtaining money by false pretences, and that the conviction was right.

CASE reserved by the Chairman of Quarter Sessions for Nottinghamshire.

At the Sessions holden at Nottingham in December last, Patrick M'Kale was indicted and tried before me for feloniously stealing two shillings, the moneys of Elizabeth Pickering.

At the trial, it was proved that Mrs. Pickering kept a shop for the sale of small articles; that on the 25th of October the prisoner and another man, not in custody, both strangers to Mrs. Pickering, went into her shop, and the prisoner asked Mrs. Pickering for a pennyworth of peppermints (sweetmeats), which she served, and prisoner put on the counter a two-shilling-piece in payment. Mrs. Pickering took up the two-shilling-piece and put it into the money-drawer, and took out of the same drawer a shilling and a sixpence in silver, and five-pence in copper, and put these moneys (one shilling and elevenpence) on the counter as the proper change for the two shillings, after deducting the penny for the sweetmeats. The prisoner took up the one shilling and elevenpence, and the other man said to prisoner "What was it you gave her?" Mrs. Pickering replied, "A two-shilling-piece"; the other man said to the prisoner, "You need not have changed," and at the same time threw down a penny on the counter. The prisoner took up the penny and put a sixpence in silver and sixpence in copper on the counter, and said to Mrs. Pickering, "Here, mistress, give me a shilling for this." Mrs. Pickering then took a shilling out of the money-drawer and put that shilling on the counter, and prisoner said to her, "You may as well give me the two-shilling-piece and take it all." Mrs. Pickering then took from the money-drawer the same two-shilling-piece she had received from the prisoner, and put that on the counter, expecting she was to receive two shillings of the prisoner's

CORAM, Kelly, O.B., Keating, J., Montague Smith, J., Pigott, B. and Lamb, J.

NEW SERIES, 37.—MAG. CAS.

O

money in exchange for it. The prisoner took up the two-shilling-piece and Mrs. Pickering took up the silver sixpence and the sixpence in copper put down by the prisoner, and also the shilling put down by herself, and was putting them into the money-drawer, when she saw she had only got the silver sixpence and sixpence in copper of the prisoner's money, and the shilling of her own money in exchange for the two-shilling-piece, but at the same moment the prisoner's companion pointed to some twist sweetmeats, and said to her, "How do you sell that?" and before she could speak the prisoner pushed his companion by the shoulders and said, "You don't want any of that," and both went out of the shop, the prisoner taking the two-shilling-piece.

Corroborative evidence was given, and the prisoner denied being in the shop.

In answer to a question, Mrs. Pickering said she did not intend parting with the two-shilling-piece without getting full change for it.

Upon this evidence it was contended by the counsel for the prisoner, first, that upon the facts proved the prisoner could not be convicted of larceny upon the present indictment. Secondly, that Mrs. Pickering parted not only with the possession of the two-shilling-piece, but also with the property in it, and therefore there was no larceny.

Upon these objections counsel for the prisoner called upon me not to let the case go to the jury. I refused to stop the case, and directed the jury, first, that Mrs. Pickering was deprived of a shilling in value, for that the prisoner, taking the two-shilling-piece, left her in exchange only one shilling of his money. Secondly, that although Mrs. Pickering did put down the two-shilling-piece on the counter, intending to part with it in exchange for two shillings, yet that, if the jury believed she intended only to part with it in exchange for two shillings of the prisoner's money, the parting with it by her under the circumstances stated would not be a parting with the property in it, if the jury believed those circumstances to be fraudulently contrived by the prisoner and his companion.

I left it to the jury to say whether the taking away of the two-shilling-piece under the circumstances was an error or mistake,

and unintentional on the part of the prisoner, or whether they believed that the prisoner and his companion went into the shop intending to defraud Mrs. Pickering; and that they did obtain from her by fraud the two-shilling-piece, meaning to steal from her a shilling in value; and if they should be of the latter opinion, I directed them that that was larceny.

Upon this direction, the jury found the prisoner guilty; and a case being demanded, I state this case for the opinion of the Court of Criminal Appeal.

If the Court shall be of opinion that the facts proved do not amount to larceny, and that my direction was wrong, the prisoner is to be discharged; but if the Court think the facts proved do amount to larceny, and that I directed the jury right, the prisoner is to be brought up for sentence.

John Mellor, for the prisoner.—The property in the two-shilling-piece was parted with by Mrs. Pickering when she put it down on the counter. She may have been under a mistaken impression that the money on the counter was all of it the prisoner's money; but if she intended to part with her property in the two-shilling-piece at that moment, the prisoner cannot be convicted of larceny, for there would be no trespass committed by him in taking it. This constitutes the distinction between larceny and obtaining money by false pretences. In 2 *Rus. on Crimes*, 196, 4th edit. by Greaves, it is laid down that "if the owner part with the property in goods taken, there can be no felony in the taking, however fraudulent the means by which such delivery was procured." So in *The Queen v. Nicholson* (1), cited at length in 2 *Rus. on Crimes*, 198, it was held that the property in the post-bills and cash was parted with by the prosecutor under the idea that it had been fairly won, and that a conviction for larceny was wrong, and there the prosecutor was under the mistaken impression that the gambling transaction was a real one, whilst in truth it was a preconcerted scheme to deprive the prosecutor of his money.

[*KELLY, C.B.*—But here the transaction was not complete. Mrs. Pickering discovered her mistake before she had passed the pro-

perty in the money. The whole transaction was *in fieri* when the prisoner went off with the money.]

In the ring-dropping case, the prosecutor never intended to part with the property in the watch, &c., but always intended to get it back again—*The Queen v. Patch* (2).

[MONTAGUE SMITH, J.—Here the prosecutrix parted with the two-shilling-piece on condition that she should have two shillings of the prisoner's money, but this she never got.]

No; she parted with the florin under the mistaken impression that she had got two shillings of the prisoner's money on the counter.

[KELLY, C.B. — But she discovers her mistake while she is putting the money into the drawer, and before she has finished putting it away.]

Case, for the prosecution.—The conviction for larceny is right, for the prosecutrix never had parted with her property in the florin. The transaction is still inchoate and incomplete when she discovers her mistake, and would have rectified it but for the act of the prisoner's companion in drawing off her attention to some sweets, and the prisoner's leaving the shop. In *The Queen v. O'neer* (3), the prisoner was indicted for stealing 35*l.* He had obtained a quantity of gold, went to a public-house, and the prosecutor came into the house, having a quantity of notes. The prisoner shewed his gold, the prosecutor asked him to give him some of the gold in change for notes. This was done to a small amount, and afterwards the prisoner offered to accommodate the prosecutor in a similar manner. The prosecutor put down notes to the amount of 35*l.*, which the prisoner took up and went out, promising to return immediately with the gold, which he never did. And this was held to be larceny, and the question turned upon the intention of the prisoner. It was there said, "As to what had been said with regard to parting with the property, it had in truth never been parted with at all. That could only be done by contract, which required the assent of two minds, but here was not the assent of

the mind either of the prosecutor or the prisoner. The prosecutor only meant to part with his notes on the faith of having the gold in return, and the prisoner never meant to barter, but to steal." *The Queen v. Williams* (4) is on all-fours with the present case. There the prisoner went to the shop of the prosecutor and asked the prosecutor's son, who was a boy, to give him change for a half-a-crown. The boy gave him two shillings and six penny pieces, and the prisoner held out a half-a-crown, of which the boy caught hold of the edge, but never got it. The prisoner then ran away, and it was held to be a larceny. *The Queen v. Rodway* (5) is in point to the same effect.

[PIGOTT, B. referred to *The Queen v. Jackson* (6), where it was held not to be larceny when the chattel had been parted with under the impression that the prisoner had returned a parcel containing diamonds, which in fact he had not done.]

Mellor, in reply, referred to *The Queen v. Bunce* (7), decided by Mr. Baron Channell and Mr. Justice Crompton, and the note thereon in 2 *Rus. on Crimes*, 202, in which it is said that wherever the prosecutor parts with the property without expecting it to be returned, the indictment ought to be for false pretences.

KELLY, C.B.—This case has been very ably argued on both sides. The question is whether a larceny has been committed by the prisoner. The distinction is well settled between obtaining a chattel by means of a fraud and stealing it. If the property in the chattel is parted with by the prosecutor, though the possession is obtained by a fraud, that would not be a larceny; but then the transaction must be complete. Then the question is, had the prosecutrix parted with the property in the florin when the prisoner carried it off? I think not. Mrs. Pickering kept a shop for the sale of sweets; the prisoner came in; the florin is taken out; the money is put on the counter; the shilling belonging to Mrs. Pickering is also there. The prisoner says, "You may as

(4) 6 Car. & P. 390.

(5) 9 Ibid. 784.

(6) 4 Moo. C.C. 119.

(7) 1 F. & F. 523.

(2) 1 Leach, 233; s. c. 2 Rus. on Crimes, 226.

(3) MS. case, cited in *The Queen v. Walsh*, 4 Trant. 274; s. c. 2 Leach, 1072.

well give me the two-shilling-piece and take it all." Mrs. Pickering then took the same two-shilling-piece and put that on the counter, expecting she was to receive two shillings of the prisoner's money. The prisoner wishes to have the two-shilling-piece, and he is to give a shilling and sixpence in silver and sixpence in copper for it. Did the prosecutrix part with the property in the two-shilling-piece at the moment she put it on the counter? Clearly not. She expected to receive two shillings of the prisoner's money; and if her attention had not been distracted, she would have stopped the prisoner before he left the shop. The placing of the money on the counter was only one step in the transaction. The taking up of the two-shilling-piece by the prisoner could not affect the question whether the prosecutrix intended to part with the property in the money, and would not make the transaction complete. Nor, again, would the taking up of the other money by the prosecutrix affect that question or complete the transaction. She is putting it into the drawer when she discovers her mistake; the transaction is not then completed, and she has not received the change which she expected to receive when her attention is taken off and the prisoner quits the shop. I think her property in the florin continued until she received what she expected to receive. It appears to me to be the same case as if the prisoner, with 18s. in his hand, had asked her to give him a sovereign in change, and she lays the sovereign on the counter and he the silver: he takes up the sovereign and leaves the shop before she has counted the silver; and then she counts the silver, and discovers that she has only 18s. instead of 20s. I think that would be larceny. The cases cited by the counsel for the prosecution bear out this view of the case. Then, as to *The Queen v. Jackson* (6), referred to by my Brother Pigott, that was a case of a pawnbroker's servant who delivers a chattel to the prisoner, receiving in exchange what he believes to be a parcel of diamonds, does not open the parcel at the time, and does not discover that they are not diamonds, then the accused leaves the shop, and the parcel is put away. There the transaction is complete; all took place and was done before the chattel was delivered over,

with the knowledge that the prisoner was about to depart with it. But no such distinction as that between larceny and obtaining property by means of false pretences exists in this case. The putting the money on the counter was no final delivery to the prisoner of the coin. I think, therefore, this conviction should be sustained.

KEATING, J., and PIGOTT, B., concurred.

MONTAGUE SMITH, J.—I have felt some doubt, but now think that the conviction is right. The prosecutrix thought that she would get 2s. of the prisoner's money when she put down the two-shilling-piece expecting to receive it. She did not get that money.

LUSH, J.—Upon the construction of the facts that the prosecutrix put down the two-shilling-piece expecting to receive 2s. from the prisoner,—that is to say, two shillings from the prisoner's pocket as well as the shilling of her own on the counter,—I think the conviction right; but I was in doubt for a long time, for I thought that she parted with the two-shilling-piece thinking that the two shillings on the counter were the prisoner's money.

Conviction affirmed.

Attorneys—De Gex & Harding, agents for T. F. A. Burnaby, Newark, for the prosecution; Wright, Bonner & Wright, agents for W. Briggs & Co., Nottingham, for the prisoner.

[IN THE COURT OF QUEEN'S BENCH.]

1868. } THE QUEEN v. THE GUARDIANS
May 9. } OF THE MEDWAY UNION.

Pauper Lunatic—Order of Adjudication—Order of Maintenance—Party to Appeal
—16 & 17 Vict. c. 97. s. 97.—24 & 25 Vict. c. 55. s. 6.

By an order of Justices, dated the 29th of September, 1865, the last legal settlement of a pauper lunatic was adjudged to be in the parish of A, in the union of F, and the guardians of F. were ordered to pay certain costs of maintenance to the guardians of the Medway Union, who had obtained the order, and certain other costs to the treasurer of the asylum in which the lunatic was confined:—Held, that the overseers of A. had, by

16 & 17 Vict. c. 97. s. 108, a right to appeal against the order, and that there was nothing in 24 & 25 Vict. c. 55. to deprive them of such right.

This was an appeal by the churchwardens and overseers of the poor of the parish of Aldershot, to the General Quarter Sessions of the county of Kent, held on the 5th of July, 1866, against an order adjudicating the settlement of one Henry Wilson, a pauper lunatic, and ordering certain expenses of his maintenance to be paid as therein mentioned, when the order was quashed, subject to the following

CASE.

The order appealed against was made by two Justices of Kent, dated the 29th of September, 1865, and directed to the Guardians of the Medway Poor Law Union, hereinafter called the respondents, and the Guardians of the Farnham Poor Law Union, whereby the Justices did adjudge the last legal settlement of Henry Wilson, then confined in the Lunatic Asylum, at Barming Heath, in the county of Kent, to be in the parish of Aldershot in the Farnham Poor Law Union, and whereby the Justices did order the guardians of the poor of the Farnham Union to pay to the respondents certain sums which had been expended by the respondents as in the order mentioned, and also weekly and every week from the date of the order to pay to the treasurer of the asylum a certain further sum as in the order set forth.

A copy or duplicate of the order, together with the statements required by the statute 16 & 17 Vict. c. 99. s. 107, setting forth the grounds of adjudication, including the particulars of the settlement relied on in support thereof, and addressed to the guardians of the poor of the Farnham Poor Law Union, and to the churchwardens and overseers of the parish of Aldershot, was sent by the respondents to the guardians and the churchwardens and overseers respectively on the 5th of October, 1865.

Against this order the churchwardens and overseers of the poor of the parish of Aldershot entered an appeal to the above-mentioned sessions. Upon the appeal coming on to be heard, it was objected on the part of the respondents that the appeal ought

to have been brought by the guardians of the poor of the Farnham Poor Law Union, and not by the churchwardens and overseers of the poor of the parish of Aldershot, and it was contended that the churchwardens and overseers had no right to appeal against the order, inasmuch as they were not parties to the order or proceedings before the Justices, and the expenses of maintaining the lunatic were under the statute, 24 & 25 Vict. c. 55. ss. 6. and 7, thrown upon the common fund of the Farnham Poor Law Union. The Court overruled the objection, heard the appeal upon the merits, and quashed the order.

The question for the decision of this Court was, whether the churchwardens and overseers of the poor of the parish of Aldershot had a right to appeal against the order.

If the Court should answer this question in the affirmative, the order of Sessions was to be confirmed; but if in the negative, the order of Sessions was to be quashed.

Barrow and Jephson, for the appellants.—This is an order made under 16 & 17 Vict. c. 97. s. 97, and by section 108. it is provided that if the guardians of any union or the overseers of any parish feel aggrieved by any such order, they may appeal against the same. In *The Queen v. the Justices of the West Riding* (1) it was held that this section expressly gave a right of appeal to the overseers, and that decision is binding upon the question now before the Court. It will be said that a difference is made by 24 & 25 Vict. c. 55. s. 7, which provides that the guardians may appeal, and that inasmuch as by section 6. the costs as to lunatic paupers are thrown upon the common fund of the union, it was intended that the overseers should no longer have any right to appeal. But it is submitted that that is a mistake. The overseers of the parish in which the lunatic is adjudged to be settled had, at the time this order was made, an interest in the question whether the order was right or not, because the order would, if unappealed against, have been conclusive as to the settlement of the pauper, and of others deriving their settlement from him.

(1) 26 Law J. Rep. (n.s.) M.C. 41.

Again, the overseers of this parish would have a peculiar knowledge, which neither the guardians nor the overseers of any other parish in the union would possess. The family of the lunatic would be chargeable to the parish. The 24 & 25 Vict. c. 55. does not touch the right of appeal given by 17 & 18 Vict. c. 97. s. 108. There is no express repeal of that section, and there is no repugnancy or contrariety which, according to the ordinary rule laid down in *Dwarris on Statutes*, 674, would amount to an implied repeal. The appeal given by section 7. is *ex abundanti cautela*.

Prentice and Biron, for the respondents.
—The provision in section 7. of 24 & 25 Vict. s. 55. is entirely useless if the contention of the appellants is correct; for according to that argument, the guardians as well as the overseers had an undoubted right of appeal existing in them under section 108. of 17 & 18 Vict. c. 97. But this order is made under 24 & 25 Vict. c. 55; and when it is found that a right of appeal is expressly given to the guardians, and none at all to the overseers, it follows that the legislature must have intended that there should be no longer any right of appeal in the latter. The order is not directed to the overseers, though it is true that notice was given to them of the order being made.

[HANNEN, J.—This order is in exactly the same terms as it would have been in, supposing it had been made under section 97. of 17 & 18 Vict. c. 97. Can you say that the two acts are so inconsistent as to amount to a repeal of the 108th section?]

That act may be disregarded altogether now. The expenses are thrown upon the common fund, so that the guardians are the proper parties to appeal against the order.

LUSH, J.—I am of opinion that the Sessions were right. Under the 16 & 17 Vict. c. 97. it was decided, in *The Queen v. the Justices of the West Riding* (1), that either the overseers or the guardians or both had a right of appeal; and then the question arises whether there is anything in the 24 & 25 Vict. c. 55. which shews that the overseers have no right of appeal against this order. Under

the former statute the guardians, upon whom the order had been made, would charge expenses against the parish in which the lunatic had been adjudged to be settled; that is now altered by the 24 & 25 Vict. c. 55. s. 6, which throws the costs of maintenance, &c., upon the common fund instead of upon the individual parish. But the order is still made under the 16 & 17 Vict. c. 97, and the same meaning must be put upon the statute as was decided in the case already referred to. The costs of maintaining the family of the lunatic might still be thrown upon the parish of settlement, and I can hardly suppose that the legislature intended to take away the right of appeal from the overseers. It is said that by implication, section 7. has that effect; but I am of opinion that section 108. of the first act and section 7. of the second may well stand together. I do not see that it has the effect contended for. It says, the guardians "may appeal against or defend any orders in respect of any lunatic paupers hereby made chargeable upon the common fund of the union, in like manner and subject to the same incidents and provisions as are contained in the said last-cited act in respect of lunatic paupers chargeable to any parish in such union, provided that any appeal now pending may be continued and determined as though this act had not been passed." I do not know why it should have been enacted that the guardians might appeal; the legislature seem to ignore the provision in the former act, but there is nothing inconsistent in the two enactments, and there is nothing to shew that the 108th section is repealed by implication.

HANNEN, J.—I am of the same opinion.
Judgment for the appellants;
Order of Sessions affirmed.

Attorneys—Richard Eve, for the prosecutors;
Nickinson, Prall & Nickinson, agents for Prall
& Son, Rochester, for respondents.

(1) 26 Law J. Rep. (N.S.) M.C. 41.

[IN THE COURT OF QUEEN'S BENCH.]
 1868. } BRUNSKILL, *appellant*, WATSON,
 May 9. } *respondent*.

Turnpike Act (3 Geo. 4. c. 126), s. 32.
 —*Exemption from Toll—Curate—Parochial Duties.*

The curate of a parish was engaged by the rector of a neighbouring parish of C. to discharge his clerical duties during his temporary absence through illness. There was no licence from the bishop or other authority by which the curate was empowered to perform the duties. He rode through a turnpike-gate on his way to the parish church of C. to perform the ceremony of marriage :—Held, that he was not entitled to the exemption from toll given by 3 Geo. 4. c. 126. s. 32. to the curate of a parish on parochial duty within his parish.

CASE stated by Justices under 20 & 21 Vict. c. 43. for the opinion of this Court.

At a petty sessions holden at Hackthorpe in and for the division of West Ward, in the county of Westmorland, on the 2nd of September, 1867, an information and complaint preferred by the Rev. Joseph Brunskill, hereinafter called the appellant, against Sarah Watson, herein-after called the respondent, under 4 Geo. 4. c. 95. s. 30, charging for that she, the said Sarah Watson, on Saturday the 6th of July, 1867, at the parish of Clifton, in the county of Westmorland, then being the collector of the tolls at a certain turnpike-gate there called the Clifton Turnpike-Gate, on a certain turnpike-road, there situate, called "The Eamont Bridge and Heronsyke Turnpike Road," unlawfully did demand and take from Joseph Brunskill the sum of twopence, as and for the toll of a horse on which he was then riding, he being exempt from the payment of such toll by reason of his being *de facto* curate of the parish of Clifton, and going on his parochial duty within his said parish of Clifton, and then and there duly claiming the exemption, contrary to the form of the statute in such case made and provided, was heard and determined by the Justices, the parties being then present; and upon such hearing the information and complaint were dismissed.

Upon the hearing, it was proved on the part of the informant, the appellant, that he was a clergyman of the Church of England, and curate of the parish of Askham, which adjoins the parish of Lowther, and was resident at Hackthorpe, in the parish of Lowther, in the county of Westmorland, distant about two miles and a half from the rectory of the parish of Clifton, in the same county, but was not a beneficed clergyman having the cure of souls; that shortly prior to the 6th of July, the rector of the parish of Clifton, through ill health, was obliged to leave his parish and go to the sea-side, and he engaged the appellant to discharge the clerical duties of the parish of Clifton during his absence.

The appellant admitted, first, that the arrangement or engagement between himself and the rector of Clifton was not communicated to the bishop of the diocese; secondly, that the appellant was not licensed as the curate of the parish of Clifton *de facto*, or otherwise by the bishop of the diocese during the rector's absence; thirdly, that the appellant had no written or verbal permission or authority from the bishop authorizing him to perform the duties of curate or other clerical duties, of or for the parish of Clifton during the rector's absence. On Saturday, the 6th of July, 1867, the appellant was riding on the turnpike-road from Hackthorpe, in the parish of Lowther, where he resides, into the parish of Clifton, for the purpose of performing a marriage ceremony in the parish church of Clifton, which was to take place on that day. On arriving at the Clifton turnpike-gate, situate within the parish of Clifton, at which the respondent was collector, toll to the amount of twopence was demanded by the respondent; the appellant claimed exemption, telling the respondent that he was the acting clergyman of the parish of Clifton, and that he was then going on the parochial duties of the parish, namely, to perform the marriage service. The appellant paid the toll, and summoned the collector as herein-before mentioned.

It was contended by the appellant, on the authority of *Temple v. Dickinson* (1), that he was *de facto* curate of the parish of Clifton, and at the time of demand made

(1) 2 El. & El. 34; s.c. 28 Law J. Rep. (N.S.) M.C. 10.

he was actually going to the Clifton parish church for the purpose of discharging clerical duty therein, and was therefore entitled to the exemption claimed.

It was contended by the respondent's counsel that the appellant was not legally entitled to exemption from the toll under the statute 3 Geo. 4. c. 126. s. 32, on the ground that he was not curate of the parish of Clifton within the meaning of the exemption, he having no permission or sanction whatsoever from the bishop of the diocese to perform the duties of curate of that parish.

The Justices being of opinion that the appellant was merely the officiating minister for the time being of the parish of Clifton, at the request of the rector of Clifton during his absence, and not *de facto* or otherwise curate of the parish of Clifton, with the permission or sanction of the bishop of the diocese to act in that capacity, decided that he was not entitled to the exemption claimed, and dismissed the information and complaint as hereinbefore stated.

The opinion of this Court was requested as to whether they were right in point of law.

Crompton Hutton, for the appellant.—The facts stated in the case shew that the appellant was *de facto* the curate of Clifton, and therefore it follows that he was exempt from the payment of toll. It is not necessary that he should have been licensed or appointed by the bishop—see *Temple v. Dickinson* (1), where Lord Campbell, C.J. said, "There seems to me no doubt that the respondent was within the exemption of the act. He was *de facto* curate, though not perhaps legally so for want of a formal licence; but it was not for the turnpike-man to question the legal title." The fact that he had not obtained a licence from the bishop is immaterial, and does not prevent him from being curate *de facto*, the officiating minister of the parish.

[LUSH, J.—If a clergyman goes away for a single Sunday, and employs a neighbouring clergyman to bury a single corpse for him on that day, could it be said that the latter would be exempt under this section?]

Yes, the section exempts any clergyman going to perform parochial duties in the absence of the clergyman of the parish.—He also referred to *Rogers's Ecclesiastical*

Law, 274, and to *Arthington v. the Bishop of Chester* (2).

H. James, contra, was not heard.

LUSH, J.—We need not trouble you, Mr. James, to argue this case. I am of opinion that our judgment must be for the respondent. By the 32nd section, "no toll shall be demanded or taken from any rector, vicar or curate going to or returning from visiting any sick parishioner, or on other his parochial duty within his parish." The question is, whether this gentleman could be said to have been a curate within the meaning of those words at the time he passed the gate. I am clearly of opinion that he could not, and therefore that he is not within the exemption from toll. Take the case of a neighbouring clergyman going on a mission for the purpose of giving temporary assistance in conducting a funeral service in the temporary absence of the rector of a parish. I think that he could not be said to be in the exercise of his parochial duty as a curate within his parish. The argument must go the length that he would be exempt from toll if he was invited by another clergyman to do his duty in his parish simply for one day. The intention of the legislature was to give the benefit of the exemption to the rector, vicar or curate actually performing the parochial duties within his parish. *Temple v. Dickinson* (1) was a very different case from the present. There was an interregnum after the resignation of the vicar, and Mr. Dickinson had been appointed by the churchwardens, and authorized by the bishop's secretary, to officiate as curate until the new incumbent should come into residence. He was therefore responsible for the performance of the duties of the benefice. The Court held that he was *de facto* curate, although he was not possessed of a regular licence; but that decision does not touch the present case.

HANNEN, J.—I am of the same opinion.
Judgment affirmed.

Attorneys—Gray, Johnston & Mounsey, agents for W. B. & C. N. Arnison, Penrith, for appellant; Westall & Roberts, agents for Moser, Arnold & Moser, Kendal, for respondent.

[IN THE COURT OF EXCHEQUER.]

1868. } SHAW, appellant; MORLEY,
 April 22. } respondent.

Betting-Houses—Act for the Suppression of—16 & 17 Vict. c. 119. ss. 1, 3.—“Office or Place.”

Upon a slip of land adjoining a race-course during the races was erected a temporary wooden structure, five feet high, without a roof. Over it a board was exhibited, upon which was the name of the proprietor and betting lists containing the odds upon and against each horse which he was willing to bet. The structure had two frontages, and boards used as desks fronting each way. At each desk within a man sat with a book for the purpose of recording the bets made with persons outside. Persons betting deposited money and received a card containing the terms of the bet:—Held, that this was an “office or place” within the meaning of the Act for the Suppression of Betting-Houses.

CASE stated by Justices of Doncaster under 20 & 21 Vict. c. 43, the material facts of which were as follows:

On the 19th of September, 1867, at Doncaster petty sessions, an information was preferred against the appellant by the respondent under the 16 & 17 Vict. c. 119. s. 3, for having the care and management of and assisting to conduct the business of a certain office and place within the limits of the borough of Doncaster, being then and there opened, kept and used for the purpose of betting with persons resorting thereto, and for the purpose of money being received by and on behalf of the occupier and keeper of the said office and place as and for the consideration for an assurance, undertaking, promise and agreement, express or implied, to pay money on certain events and contingencies of and relating to a certain horse-race, contrary to the form of the statute, &c.

The corporation of Doncaster, as lords of the manor, are owners of the soil of the Doncaster Town Moor, commonly called the Race-Course. Upon a portion of this ground have been built certain race-stands, and the ground upon which they are built and that adjoining and in front is inclosed

by iron railings, and called the Inclosure.

On the east side of the inclosure, at a distance of 6 feet, is a permanent wooden palisade, and the space so formed, about 44 yards long by 6 feet deep, was up to the year 1866 not employed during the races except for the purposes of police.

In 1867, previously to the race meeting of that year, the committee of the town council that managed the race meetings let to one William Nicholl the use of the said strip of land at the east end of the grand stand inclosure for the four race days of the race-meeting of September, 1867, for the purposes of betting and exhibiting betting lists.

On the race day of the 10th of September, 1867, the said strip of land so let to the said William Nicholl as aforesaid was partitioned, and upon each plot of land so partitioned a wooden structure was erected, five feet high: the iron palisades above mentioned being at one side and the wood fence above mentioned on the other. These structures presented two frontages, and the structure of which the appellant was charged with having the care and management was covered with green baize and had boards used as desks fronting each way. There was a book on each desk, and a man sat at each desk who acted as clerk and recorded the proceedings in the books. Over this structure on a board fronting both ways was the name and address, “William Nicholl, of Nottingham.” There were papers, partly written and partly printed, on it, with the names of races, horses and betting prices. The betting list exhibited on it the odds upon and against each horse in each race which the proprietor of the structure, William Nicholl, was willing to bet. The appellant [Shaw] transacted the betting business at one frontage of this structure; he betted the odds, six half-sovereigns to one against a horse called Knight Errant in the Great Yorkshire Handicap, received a deposit of half-a-sovereign, and called out the transaction to the clerk at the desk, who entered it in the book and gave to the taker of the odds a card on which were a number and the following words: “William Nicholl, Nottingham. All in, run or not. All bets paid immediately the winner has passed the

scale. No objection afterwards will on any consideration be entertained." Other similar transactions by the appellant took place on the same day. It was contended, *inter alia*, on the part of the appellant, that the structure on the race-common was not a "house, office, room or place" within the meaning of the act.

The Justices, however, being of the contrary opinion, convicted the appellant.

The questions for the opinion of the Court were, first, whether the structure was a "betting office" within the meaning of the act 16 & 17 Vict. c. 119; secondly, whether the structure was a "place" within the meaning of the same act (1).

Manisty (*Merevether* with him), for the appellant.—The structure in respect of which the appellant was convicted was not an "office or place" within the 16 & 17 Vict. c. 119. s. 3. The act was aimed against betting-houses and places of a

(1) The 16 & 17 Vict. c. 119. ss. 1, 3. enacts as follows:

Section 1. "No house, office, room or other place shall be opened, kept or used for the purpose of the owner, occupier or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof, betting with persons resorting thereto; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper or person as aforesaid as or for the consideration for any assurance, undertaking, promise or agreement, expressed or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse-race or other race, fight, game, sport or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid; and every house, office, room or other place opened, kept or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance and contrary to law."

Section 3. "Any person who being the owner or occupier of any house, office, room or other place, or a person using the same, shall open, keep or use the same for the purposes hereinbefore mentioned, or either of them; and any person who

permanent character—*Doggett v. Cattermoss* (2). This structure was open at the top and perfectly movable. The legislature did not mean to interfere with persons making bets on a race-course, but to put down a certain well-known class of establishments which was considered to be of a pernicious character. All the town council have here done is to confine to a certain appointed spot what people might otherwise do in every part of the inclosure. How does this really differ from betting under a tree in Hyde Park, which was held not to be within the statute?

Sleigh, for the respondent, was not called upon.

KELLY, C.B.—I am of opinion that the decision of the Magistrates in this case was right, and that the respondent is entitled to the judgment of the Court. The question arising upon this statute is, whether this "structure," as it is called in the case, was "a house, office, room or other place opened, kept or used" for the purposes against which the act was intended to provide? Now, let us see how it is described in the case itself.—[His Lordship here read the description of the structure as set forth in the case.]—Now, to suppose that this is not an office or place used for the purpose of betting, is really to suppose that the act is of no avail whatever. If we were to determine that this was not an office or place within the meaning of the act, hereafter, whenever it was intended to erect betting-offices in contravention of the intention of the act, it would only be necessary to follow the description of the structure here employed in order to set the act at defiance. It does not seem to me to matter whether this structure had a roof or not, or whether it was fastened by some

being the owner or occupier of any house, room, office or other place shall knowingly and wilfully permit the same to be opened, kept or used by any other person for the purposes aforesaid, or either of them; and any person having the care or management of or in any manner assisting in conducting the business of any house, office, room or place opened, kept or used for the purpose aforesaid or either of them, shall, on summary conviction thereof," &c.

(2) 34 Law J. Rep. (N.S.) C.P. 46, 159.

means or other into the earth or not; it was a structure in which the business of betting could be and was conducted, as appears by the terms of this case; and in my opinion clearly came within the meaning of the words, "office or place," as used in this act. That being so, it further appears that the purpose to which the building was applied was plainly contrary to the provisions of the act. The act recites, "Whereas a kind of gaming has of late sprung up tending to the injury and demoralization of improvident persons, by the opening of places called betting offices or houses, and the receiving of money in advance by the owners or occupiers of such houses or offices, or by other persons acting on their behalf, on their promises to pay money on events of horse-races and other contingencies." Does not that exactly correspond with the business which was here carried on? Let us see how the betting was in this case effected.—[His Lordship here read that part of the case which described the use made of the structure.]—Thus a deposit is made, and a card is given which is an undertaking to pay if the event shall occur. That is what is stated, and it is clearly a receiving of money in advance for the sole purpose of paying money on the event of a horse-race, the very thing which the act was passed to prevent. I am thus of opinion that this was an office or place within the meaning of the act of parliament, and that the business there conducted was the very betting or gaming in respect of horse-races which the act of parliament contemplated and was intended to prevent.

MARTIN, B.—I am of the same opinion. I think that this was an "office" or "place." There are many offices moving on wheels in the docks at Liverpool, where merchants have structures of that kind for the purpose of transacting the business of unloading and loading ships; and there is no doubt a structure of that sort, in which a clerk sat for the purpose of doing business, would be an "office" or "place." But there is more than that here. The place here is not movable; the person owning it is confined to one piece of ground, and he does there exactly what the legislature has declared to be illegal, and wished to prevent.

PICOTT, B.—I am of the same opinion.

The arguments for the appellant really come to this, that the fact that this place is of wood instead of brick is to affect the construction of the act of parliament, the object of the act being to prevent betting-offices in towns. The enacting clause is larger than the preamble, and appears to me clearly to include the present case. I do not agree with Mr. Manisty that, by giving this construction to the act of parliament, we shall circulate the betting over the whole course, because this mode of betting only goes on by one man's having a temporary office or place with the necessary fittings, and in which there may be clerks to take account of the bets that are made with persons outside. The act of parliament was intended to put an end to all these injurious and demoralizing proceedings.

Conviction affirmed.

Attorneys—Brookesbank & Gallard, agents for Shirley & Atkinson, Doncaster, for appellant; Wright & Bonner, for respondent.

[CROWN CASE RESERVED.]

1868. }
May 30. } THE QUEEN v. GLYDE.*

Larceny—Lost Property—Finding—No Reasonable Means of knowing the Owner.

The finder of a sovereign in the high road who, at the time of finding, had no reasonable means of knowing who the owner was, but who at that time intended to appropriate it even if the owner should afterwards become known, and to whom the owner was speedily made known, when he refused to give it up, was held not guilty of larceny upon the authority of The Queen v. Thurborn (1).

CASE reserved by Cockburn, C.J.

William Glyde was convicted before me at the last assizes for the county of Sussex, on an indictment for larceny, in which he was charged with having stolen a sovereign,

* Coram Cockburn, C.J., Martin, B., Willes, J., Bramwell, B., and Blackburn, J.

(1) Den. C.C. 387; s. c. 18 Law J. Rep. (N.S.) M.C. 140.

the property of Jane Austin. It appeared that, on the evening of the 16th of January last, the prosecutrix, being on her way from Robertsbridge, where she had been to pay some bills, to her home at Brightling, and having some money loose in her hand had occasion, owing to the dirty state of a part of the road, to hold up her dress, and in doing so let fall a sovereign. It being then dark, she did not stop to look for the sovereign, but on the following morning she started to go to the spot, in the hope of finding the lost coin. In the mean time the prisoner, coming from Robertsbridge towards Brightling in company with a man named Hilder and his son, and seeing, at the spot where the prosecutrix had dropped her sovereign, a sovereign lying in the road, picked it up and put it in his pocket, observing that it was a good sovereign and would just make his week up. Proceeding onwards the men soon afterwards met the prosecutrix, then on her way to the spot where the sovereign had been dropped. According to her statement, on meeting the men she addressed Hilder, whom she knew, and asked, in the hearing of the prisoner, "if he had stumbled on a sovereign," stating that she had lost one and was going to look for it, to which inquiry Hilder answered in the negative. She was, however, contradicted by Hilder and his son, who were called as witnesses for the prosecution, as to any such conversation having taken place. But it was clear that the fact of the sovereign thus picked up by the prisoner being one which had been lost by the prosecutrix was speedily brought to the prisoner's knowledge. The fact of the prosecutrix having lost a sovereign and of the prisoner having found one having come to his master's ears, the master asked him if he had found a sovereign, to which he answered that he "was not bound to say." The master further asked if he had not heard that Mrs. Austin had lost one, to which the prisoner made the same reply. On the master asking whether it would not be more honest to give the sovereign up to her, he answered that "he could just manage to live without honesty." Being asked by a police constable whether he remembered going up the Brightling Road and picking up a sovereign, he answered, "I don't know that I did." On the officer saying, "I have

been informed by witnesses that you did so; and if you did, it did not belong to you, more particularly as you know to whom it belonged." The prisoner said he did not want to have anything more to say to the officer, and went into his house. On a subsequent occasion, however, he admitted to the same witness that he had picked up the sovereign. The witness Hilder also stated that the prisoner afterwards came to him and asked him if he could say that he (prisoner) had picked up a sovereign? and on receiving an answer in the affirmative, said that if that was so he must go to and see the prosecutrix, who had applied to him several times about it. In summing up to the jury on this state of facts, I told them that where property was cast away or abandoned, any one finding and taking it acquired a right to it, which would be good even as against the former owner, if the latter should be minded to resume it. But that when a thing was accidentally lost, the property was not divested, but remained in the owner who had lost it, and that such owner might recover it in an action against the finder. As to how far larceny might be committed by a person finding a thing accidentally lost, it depended on how far the party finding believed that the thing found had been abandoned by its owner or not. That where the thing found was of no value, or of so small value that the finder was warranted in assuming that the owner had abandoned it, he would not be guilty of larceny in appropriating it; or if, not knowing, or not having the means of discovering the owner, the finder, from the inferior value of the thing found, might fairly infer that the owner would not take the trouble to come forward and assert his right, so that practically there would be an abandonment, and so believing appropriated the thing found as virtually abandoned by the owner, he would not be guilty of larceny. So, although the value of the article might render it impossible in the first instance to presume abandonment by the owner, yet if, from the fact of no owner coming forward within a sufficient time, the finder might reasonably infer that the owner had abandoned and given up the thing as lost, there would be no criminality in an appropriation of it by the latter.

On the other hand, I pointed out that there were things as to which it could not be supposed that they had been intentionally abandoned, or the owner be supposed to have given up his property; thus, *ex. gr.*, a purse of gold, or a pocket-book containing bank notes, found in the road, could not possibly be supposed to have been intentionally placed there; or a diamond ornament, found outside the door of an assembly room, to have been intentionally dropped by the lady who had worn it; or a box or parcel left in a public conveyance or a hack cabriolet, to have been left with the intention of abandoning the property. That in all these cases, as the property remained in the owner, and the presumption of abandonment was plainly negatived by the circumstances, a person finding such an article and appropriating it to himself with an intention of wronging the owner, if he knew who the owner was, or had the means of finding the owner—as where the name and address of the owner were on the thing found—or had the means of ascertaining the owner, as in the case of a cabman who knew the house at which he had taken up or set down a person by whom an article must have been left in the carriage, would clearly be guilty of larceny. And even where the finder did not know the owner, if the nature of the thing found precluded the presumption of abandonment, and gave every reason to suppose that the owner would come forward and assert his claim, and the finder nevertheless determined to appropriate the chattel and to keep it, though he should afterwards become aware who the owner was, this too, if done with the intention of wrongfully depriving the unknown owner of property, which the finder knew still to belong to him, would be larceny, provided such intention was contemporaneous with the original taking of possession.

I told the jury that while, to constitute larceny in appropriating an article thus found, there must be a guilty intention of taking that which was known to belong to some one else, and which the party appropriating knew he had no right to treat as his own, this intention might be gathered from the value of the article and the other circumstances of the case, especially the conduct of the party accused, as to con-

cealment or otherwise. In this respect, I told them they might properly take into account the conduct of the prisoner Glyde in maintaining silence when he heard the question put by the prosecutrix to Hilder, if they believed that portion of her evidence; or, at all events, in refusing to say whether he had found a sovereign or not, and only acknowledging it when Hilder had told him he was prepared to speak to the fact. As the result of this reasoning, I left it to the jury to say whether the prisoner, on finding the sovereign, believed it to have been accidentally lost, and nevertheless with a knowledge that he was doing wrong, at once determined to appropriate it to himself, and to keep it, notwithstanding it should afterwards become known to him who the owner was. I told the jury, if they were of that opinion, to find the prisoner guilty. But, inasmuch as there was nothing to shew that the prisoner, on appropriating the sovereign on finding it, had any reason to suppose that the owner would afterwards become known to him, I doubted whether an intention on his part of keeping it, even if the owner should become known to him—he not believing that the latter event would come to pass—would amount to larceny. I therefore thought it right to take the opinion of this Court whether the conviction can be sustained on the facts I have stated.

No counsel appeared for the prisoner.

Lumley Smith, for the prosecution.—In this case the prisoner at the time of his picking up the sovereign, though he had not the means at that time of ascertaining the owner, nevertheless intended to deprive the owner of it, whoever he might be, and to convert it to his own use, and therefore is guilty of larceny; and, secondly, upon the evidence, he could not have supposed that it had been abandoned: therefore, also, he would be guilty. *The Queen v. Moore* (2) is an authority in favour of this conviction. There the prosecutor dropped a ten pound note in the prisoner's shop, where he had made purchases, and the prisoner found it there. The next morning the prosecutor told the prisoner of his loss, and

(2) L. & C. 1; s. c. 30 Law J. Rep. (N.S.) M.C. 77. In *The Queen v. Moore*, as in *The Queen v. West*, 1 Den. C.C. 402, s. c. 24 Law J. Rep. (N.S.) M.C. 4, the property was mislaid, and not lost.

after that the prisoner converted the note to his own use by changing it, and the jury found that though the prisoner did not know who the owner was when he picked it up, nor had the reasonable means of knowing, yet he believed that the owner could be found, and intended when he picked it up to deprive the owner of it, whoever he might be; and it was held that he was rightly convicted.

[MARTIN, B.—The prisoner could not have supposed that a person had intentionally abandoned a sovereign; and that seems to be the essence of the crime. BLACKBURN, J.—The question seems to me to be whether it is necessary to go on to say that the prisoner had a present reason to believe that the owner could be found.]

The jury have found that he made up his mind at the time when he found it to appropriate it to himself, whether the owner should afterwards appear or not; therefore, there is here a felonious taking at the time when the prisoner picked up the sovereign, and this distinguishes the case from *The Queen v. Preston* (3).

[BLACKBURN, J.—In *The Queen v. Moore* (2), Wightman, J. points out three ingredients in that case: first, a felonious intention of appropriating a chattel at the time of finding it; secondly, a belief at the time of finding that the owner could be found; thirdly, a subsequent appropriation after the owner has been discovered. In this case the second ingredient is not found to have existed. Is not the question now whether those first and third ingredients will do without the second?]

In *The Queen v. Peters* (4) the prisoner was convicted of the larceny of some jewelry which he had found in the garden of a house where he had been at work, and the only two questions left by Rolfe, B. were, whether the prisoner picked up the things, and with what intention he took them home. *The Queen v. Christopher* (5) was similar to the present case, except that here the jury have found that the prisoner at the time of finding had the felonious intention, whilst in that case it was left to them that if he subsequently had such

intent he was guilty, and the conviction was quashed on that ground; and probably if the jury had found in that case, as here, upon that point, the conviction there would have been affirmed. In that case the Court felt that they were bound by *The Queen v. Thurborn* (1), but Williams, J. said, that though he agreed with the decision in that case, he had never been able to agree with some of the principles there laid down. In *The Queen v. Thurborn* (1) the marginal note is, that if A. find the chattel of another and instantly appropriate it *animo furandi*, that is, with the intent of usurping the entire dominion over it, but under such circumstances as to warrant a jury in finding that at the time of the appropriation he really believed that the owner could neither find the chattel nor be found himself, such appropriation is not larceny. In that case a note had been accidentally dropped on the high road. There was no name or mark on it, nor had the prisoner when he found it any reason to believe that the owner knew where to find it again. The prisoner meant to appropriate it when he picked it up. The day after, and before he had disposed of it, he was informed that the prosecutor was the owner, and had dropped it accidentally. He then changed it and appropriated the money taken to his own use. There Parke, B. thought that the original taking was not felonious, and in the subsequent disposal of the note there was no taking. Parke, B. in his judgment refers to and relies on a passage in Lord Coke, in 3 *Inst.* 108; where he says, that "If one lose his goods and another find them, though he convert *animo furandi* to his own use, it is not larceny, for the first taking is lawful. So if one find treasure-trove or waif or stray, and convert them *ut supra*, it is no larceny, both in respect of the finding and that *dominus rerum non apparet*." But it is submitted that is too broadly laid down.

[COCKBURN, C.J.—It is impossible that Lord Coke could have meant that if the thing lost had the name and address of the owner, that the finder would not be guilty of larceny.]

A passage in Lord Hale (6) is also relied on, where it is said, "If A. find the purse

(3) 2 Den. C.C. 363; s. c. 21 Law J. Rep. (N.S.) M.C. 4.

(4) 1 Car. & K. 245.

(5) Bell, (C.C.R.) 27.

(6) 1 Hale, P.C. 506.

of B. in the highway, and take and carry it away, and hath all the circumstances that may prove it to be done *animo furandi*, as denying or secreting it, yet it is not felony." This is also too broadly laid down. *Merry v. Green* (7) is also referred to, and there the subject of the finding of marked articles is discussed.

[MARTIN, B. referred to *Archbold's Crim. Plead.* (16th edit.), 304, where it is said that "in all cases of larceny, one of the questions for the jury is, whether the defendant took the goods knowingly." COCKBURN, C.J.—But here the question is, whether, when the finder of an article, not knowing who the owner is, determines at the time to keep it, whether the owner could be found or not, is guilty of taking it knowingly? BLACKBURN, J.—If the finder does not know at the time who the owner is, he has a perfect right to it against the whole world but the true owner, and then he does not know who is the true owner. I think Lord Wensleydale (then Baron Parke) intended to treat *Thurborn's case* (1) in the light of the one put by the Lord Chief Justice. COCKBURN, C.J.—I am inclined to think that if it is present to the mind of the finder, at the time of the finding, that there is a possibility that the owner may be discovered, that is a felonious taking. But the jury have here found only that at the time of the finding the prisoner intended to keep the sovereign if the owner should at any time be found.]

According to *Bracton*, the definition of larceny is, "Furtum est contrectatio rei alienæ fraudulenta cum animo furandi, invito illo domino cujus res illa fuerit"—*Bracton*, lib. 3. c. 32. f. 150. In Mr. Greaves's note upon *Thurborn's case* (8) that case is much criticized.

COCKBURN, C.J.—I think that the facts in this case do not make out a case of larceny. The question is raised as to how far a person who finds a thing is warranted in supposing that it is abandoned by the owner. The value may be such that whilst no one can suppose it to have been intentionally abandoned, yet a person may at the same time believe that it is very

doubtful whether the owner will ever take steps to recover it. If the property belonged to a poor man he probably would take the trouble to reclaim it, but if to a rich man he would not. Then, if the finder does not know, nor has any reasonable means of knowing, who the owner is, he cannot resolve that doubt. The finder may say, I do not believe the owner will be found, but whether or no I intend to keep it. But if from the value of the article or other circumstance the finder must know that it cannot be abandoned, and he says to himself, Though I do not think the owner will come forward yet I will appropriate it, that I think is larceny. I do not think that the rule laid down in *Thurborn's case* (1) goes the length of saying that that is not larceny. Here I think there was no evidence to shew that, when the prisoner picked up the sovereign, he had any reason to believe that the true owner would come forward. This case is not, I think, of sufficient importance to have *Thurborn's case* (1) reconsidered before all the Judges, and I think this conviction must be quashed.

MARTIN, B.—If there were no authority on the point I should have said that this was a felony. There was a taking, and the circumstances shew that the sovereign was not abandoned. Then, I think there was evidence of a taking and evidence that the taking was felonious, upon the authority of *The Queen v. Christopher* (5). I think *Thurborn's case* (1) was rightly decided, but the reasons given for that decision have not been acquiesced in. The second point there decided is, that to justify a conviction for larceny the finder must have reasonable means at the time of the finding of knowing who the owner is, but I doubt whether that is right. But the present case is concluded by authority.

WILLES, J.—I think that *Thurborn's case* (1) is in point.

BRAMWELL, B. concurred.

BLACKBURN, J.—I might wish the law to be as my Brother Martin does, but *Thurborn's case* (1) is in point. And I am inclined to think we should have to adhere to it if it were to be re-considered. And I do not think that, without the interference of the legislature, where the original taking is innocent and the conversion only unlawful, we could hold the crime of larceny to

(7) 7 Me. & W. 623; s. c. 10 Law J. Rep. (N.S.) Exch. 425.

(8) 2 Russ. on Crimes, 4th edit. 180.

be completed. Then, we are bound to act on *Thurborn's case* (1), and here it is clear that there was no evidence that the prisoner had any means of finding the owner at the time of picking up the sovereign, and the jury were not asked that question. Therefore, I think the conviction should be quashed.

Conviction quashed (9).

Attorney—James Philcox, Burwash.

[CROWN CASE RESERVED.]

1868. }
May 30. } THE QUEEN v. SHAW.*

Lunatic—8 & 9 Vict. c. 100.—*Interpretation Clause*—"Of Unsound Mind."

By the 8 & 9 Vict. c. 100. s. 90, "every person who shall receive into an unlicensed house, not being a registered hospital nor an asylum, or take the care or charge of any person therein as a lunatic," without having such order and medical certificates as are mentioned in the section, shall be guilty of a misdemeanor. By section 114, "lunatic" shall mean every insane person and every person being an idiot or lunatic, or of unsound mind:—Held, that imbecility arising from natural causes, such as intemperance, or from the natural decay of the faculties through old age, would constitute the patient affected thereby a person of unsound mind within that section.

Edward Charles Shaw was convicted before me, at the last Spring Assizes for the county of Hertford, on an indictment, under the statute 8 & 9 Vict. c. 100. s. 90, charging him with having taken charge of and received to board and lodge, in a house not being a duly registered hospital or licensed asylum, one John Clode, a lunatic or alleged lunatic; as also with having done so without the other conditions and formalities required by the statute having been complied with. All the facts necessary to support the indictment (assuming the said John Clode to have been a lunatic) were fully established. But a question arose

whether the said John Clode was a lunatic within the meaning of the act; the term "lunatic" being by the interpretation clause declared to mean "every insane person, and every person being an idiot or lunatic, or of unsound mind."

It appeared that Mr. Clode, a man of fifty-five years of age, having had, after indulging for some time in habits of intemperance, three attacks of paralysis, had been placed with the defendant, a medical man, not as a lunatic, but as an invalid whose memory had become greatly impaired by bodily weakness and infirmity. It did not appear that he laboured under any delusions or mental aberration; neither was he subject to fits of frenzy or violence. But it was clear that his mental faculties had fallen into a state of exceeding weakness and imbecility, as will appear from the following facts: He was insensible to the calls of nature, and utterly regardless of all cleanliness, and was satisfied to remain in a most revolting state of filthiness. It appeared that he had been visited, by order of the Lord Chancellor, by two physicians, Drs. Blandford and Bennett, thrice by the former and once by the latter. Dr. Blandford proved that on visiting defendant's establishment on the 31st of October last, he found Mr. Clode, at between six and half-past six in the afternoon in bed, in a room about twelve feet square and six and a half feet high. He was lying on the remains of two old mattresses covered over with a piece of old carpet, with no other bed-clothes whatever, and without pillow or bolster. The mattresses, one of which was of flock, the other of straw, were soaked with fæces and urine, which was dripping through on to the floor, and were quite rotten. The walls of the room were filthy, having marks of fingers, dirty with fæces, having been smeared on them, as was also the case with a post which supported the ceiling. The smell in the room was, in the words of the witness, "most abominable." The room was without carpet of any sort. There was an old wash-stand with a basin and jug, but no water, soap or towel. Not far from the bedstead was a heap of ashes and on it two chamber-utensils, one full of fæces. Mr. Clode's trousers were wet with urine, and a pair of drawers lying there were dirty with fæces. He was lying in a

(9) See *The Queen v. Dixon*, 1 Dears. C.C. 580; s. c. 25 Law J. Rep. (N.S.) M.C. 39.

* Coram Cockburn, C.J., Martin, B., Willes, J., Bramwell, B. and Blackburn, J.

flannel shirt, the tail of which was gone. He was very wet with filth, as was the piece of carpet with which he had been covered. Emma Coughtree, a witness, proved that, since the month of May, she had been employed to clean out Mr. Clode's room once a week; that his bed consisted of two rotten mattresses and a piece of old carpet, and an old coat: there were no sheets or blankets. She stated that, on first going there, she had to remove a pail, as well as two chamber utensils, full of excrement, which was all flowing over on to the floor, while under the bed there was "quite a pond drained from the mattresses."

It appeared that after the first visit of Dr. Blandford a slight improvement in the attention to the comforts of Mr. Clode took place. According to the evidence of the witness Emma Coughtree, on the 1st of November the two old mattresses were removed, and carried to a dunghill, having fallen to pieces from rottenness in the course of removal. A straw bed and palliasses were substituted, and two straw pillows supplied.

On the 25th of November, which was after the improvement just referred to had taken place, Mr. Clode was visited by Dr. Bennett. This witness stated that, having desired to see Mr. Clode's room, he was conducted to it by the defendant; but on entering the room the stench was so intolerable that he proceeded no further. Nevertheless, he saw Mr. Clode's bed, which he described as having a very miserable, dirty-looking mattress on it. The room itself also looked miserable and dirty. Chloride of lime had evidently been recently used, but though the smell of it was very strong, it was not sufficient to overpower the stench of the room.

It appeared that Mr. Clode was not dissatisfied with, and was probably insensible to, the disgusting state in which he was thus suffered to remain. He, indeed, said, in answer to a question from Dr. Blandford, how he came to be in such a room? that it was in a very disgraceful state; but on being asked by Dr. Bennett, on going to his apartment, whether he liked his room, he answered "Yes"; and on being asked whether he was comfortable in it, answered "Oh, very comfortable," and on being

further asked whether his bed was comfortable, his answer was "Oh, very."

This insensibility to filth in so revolting a form was strongly insisted upon by the two medical witnesses for the prosecution as a marked indication of the utter decay of the intellectual faculties of the patient. But there was also striking proof that Mr. Clode's mental faculties in general, and more especially his memory, had become very seriously impaired. According to the evidence of the medical witnesses, it was extremely difficult to fix his attention on any subject, or to get him to converse. "He did not seem," said Dr. Bennett, "to take interest in anything," and he gave only "monosyllabic answers." He remembered, however, that he had lived in Park Street, Windsor, and, in his interview with Dr. Blandford, kept saying, "I'm John Clode of Windsor," in a silly way. He remembered, said Dr. Bennett, that he had taken part in elections for Windsor, but could not remember the names of the candidates, or on which side he had acted. On being asked if he had any family, he remembered he had a wife, and a daughter married, but on no occasion of his being visited by the medical witnesses could he remember, though frequently asked, the name of his daughter. Neither could he remember the name of the people with whom he was then living. When asked on each occasion how long he had been where he then was, his answer was "five months," though in fact he had been there as many years. This mistake he made twice during the same interview, though corrected by the defendant, who refused, after the first interview with Dr. Blandford, to allow the patient to be seen alone. When asked on more than one occasion why he remained at the defendant's, his answer was "that he intended to leave next week, when the railway would be open." Both Dr. Blandford and Dr. Bennett declared their positive opinion that there was decided unsoundness of mind in Mr. Clode in respect of the general decay of mental power, as well as of loss of memory and insensibility to the ordinary instinctive repugnance to filth. They agreed that there was an absence of active *dementia* or morbid delusion, and ascribed the existing symptoms to a decay of the intellectual and

moral faculties, whether proceeding from paralysis, softening of the brain, or any other cause from which such decay could arise. Two medical witnesses, called on behalf of the defendant, stated that there were no symptoms of insanity in Mr. Clode, and had given certificates to that effect; but one of them admitted that there was unsoundness of mind in respect of loss of memory arising from softening of the brain.

I directed the jury, if they believed the evidence for the prosecution, to find the defendant guilty, which they accordingly did; and looking on the case as an aggravated one, in consequence of the neglect with which the patient had been treated,—more especially as the defendant had insisted on having his pay doubled in consideration of extra comforts to be afforded,—I sentenced the defendant to a fine of 100*l.* and six months' imprisonment; but deeming it worthy of consideration whether imbecility and loss of mental power, arising either from natural decay, or from paralysis, softening of the brain or other supervening cause, if unaccompanied by frenzy or delusion of any kind, constituted unsoundness of mind, so as to be lunacy within the meaning of the act on which this indictment was framed, I reserved that question for the decision of this Court. If the Court shall be of opinion that John Clode was a lunatic within the meaning of the 90th section of the 8 & 9 Vict. c. 100, the verdict is to stand, otherwise not.

Woollett (*Griffin* with him), for the prisoner.—The conviction cannot be supported. The 8 & 9 Vict. c. 100. s. 90. enacts as follows: "That no person (unless he be a person who derives no profit from the charge, or a committee appointed by the Lord Chancellor) shall receive to board or lodge in any house, other than an hospital registered under this act, or an asylum, or a house licensed under this act or under one of the acts hereinbefore repealed, or take the care or charge of any one patient as a lunatic or alleged lunatic, without the like order and medical certificates in respect of such patient as are hereinbefore required on the reception of a patient (not being a pauper) into a licensed house; and that every person (except a person deriving no profit from the charge, or a committee appointed by the Lord Chancellor,) who shall

receive to board or lodge in any unlicensed house, not being a registered hospital or an asylum, or take the care or charge of any one patient as a lunatic or alleged lunatic, shall, within seven clear days after so receiving or taking such patient, transmit to the secretary of the Commissioners a true and perfect copy of the order and medical certificates on which such patient has been so received, and a statement of the date of such reception, and of the situation of the house into which such patient has been received, and of the christian and surname and occupation of the occupier thereof and of the person by whom the care and charge of such patient has been taken; and every such patient shall at least once in every two weeks be visited by a physician, surgeon, or apothecary not deriving, and not having a partner, father, son, or brother who derives, any profit from the care or charge of such patient; and such physician, surgeon or apothecary shall enter in a book to be kept at the house or hospital for that purpose, to be called 'The Medical Visitation Book,' the date of each of his visits, and a statement of the condition of the patient's health, both mental and bodily, and of the condition of the house in which such patient is, and such book shall be produced to the visiting Commissioner on every visit, and shall be signed by him as having been so produced; and the person by whom the care or charge of such patient has been taken, or into whose house he has been received as aforesaid, shall transmit to the secretary of the Commissioners the same notices and statements of the death, removal, escape and recapture of such lunatic, and within the same periods, as are hereinbefore required in the case of the death, removal, escape and recapture of a patient (not being a pauper) received into a licensed house; and that every person who shall receive into an unlicensed house, not being a registered hospital nor an asylum, or take the care or charge of any person therein as a lunatic, without first having such order and medical certificates as aforesaid, or who, having received any such patient, shall not within the several periods aforesaid transmit to the secretary of the Commissioners such copy, statement and notices as aforesaid, or shall fail to cause such patient to be so visited by a

medical attendant as aforesaid, and every such medical attendant who shall make an untrue entry in the said medical visitation book, shall be guilty of a misdemeanor." First, Clode was received and taken charge of and kept as an invalid, and not as a lunatic or person of unsound mind—under an advertisement in that form inserted by his friends; and he had no knowledge that Clode was of unsound mind, and without such knowledge he ought not to be convicted.

[COCKBURN, C.J.—Surely the fact of his friends choosing to advertise in that way does not prevent his being received as a lunatic. BLACKBURN, J.—Was not the treatment he was allowed to receive treatment which could only be applied to a person of unsound mind? and is not that evidence of knowledge of his unsoundness of mind?]

There was evidence given at the trial that Clode was allowed free egress and ingress to the house at all times alone, and had been a boarder there for five years.

[COCKBURN, C.J. said that it might be taken that those facts were in evidence.]

Then such treatment is evidence on the other hand that he was not treated as a lunatic.

[COCKBURN, C.J.—In many places where lunatics are kept they are allowed to walk about the country without restraint and unattended, but the point I intended to reserve is, whether a case of imbecility, aggravated by intemperance and other natural causes, which I was inclined to think would be lunacy in the usual acceptation of the term, was not unsoundness of mind within the meaning of the interpretation clause by which the term lunacy is interpreted; in other words, is the imbecility of old age from the mere natural decay of the faculties within it?]

The physicians had given certificates of soundness of mind.

[COCKBURN, C.J.—That was in reference to lunacy in the strict sense.]

In the Schedules to the 16 & 17 Vict. c. 26, the forms of medical certificates are given, and they always refer to the person of unsound mind as a proper person to be taken charge of and detained under care and treatment.

[COCKBURN, C.J.—That does not mean to be shut up in a house, but merely kept and lodged.]

It is submitted that here Clode's condition was nothing more than the natural result of the acts of intemperance in which he had indulged during a long time.

[COCKBURN, C.J.—But is not such a case an object of the care of the legislature as intended to be applied by this statute? Put the case of an old man who had fallen into a state of imbecility from extreme old age and his relations had put him in Shaw's charge, ought he legally to have been allowed to undergo this treatment?]

It is submitted such a case is not within the statute.

Parry, Serj. (Poland with him) appeared to support the conviction, but was not called upon.

COCKBURN, C.J.—The case is within the mischief of the statute. Upon the facts there was evidence of unsoundness of mind. Then the interpretation clause provides that a lunatic shall mean a person of unsound mind, and therefore, I think, the conviction should be confirmed.

MARTIN, B.—I concur, for I think there was evidence here of unsoundness of mind analogous to idiocy, and Clode's condition was the state of an inferior animal.

The other learned Judges concurred.

Conviction affirmed.

Attorneys—J. L. Pulling, for prisoner; Vandercom, Law & Co., for prosecution.

[IN THE COURT OF QUEEN'S BENCH.]

1868. } THE QUEEN v. THE JUSTICES
April 30. } OF WESTMORLAND.

Quarter Sessions—Power of Adjournment—Alteration of Prison—Notice under Prisons Act, 1865 (28 & 29 Vict. c. 126), s. 24.

By the Prisons Act, 1865, s. 24, the consideration of a presentment of the necessity for the alteration or enlargement, or for rebuilding of an existing prison, or for the building of a new prison, "shall not be

entertained by the prison authority, unless not less than three weeks' previous notice has been given in some one or more public newspaper or newspapers circulating within the district of the prison authority, of their intention to take the same into consideration, at a time and place to be mentioned in such notice," &c. In the county of W. presentments had been made that the house of correction and the gaol in the county were insufficient, and that it was necessary that alterations should be made, or that a new gaol should be built for the county. Notice was duly given, as required by the above section, that at the Easter Sessions the presentments would be taken into consideration. That was done, and a committee of Justices was appointed to consider the question, to consult the Government, and to report at the Michaelmas Sessions in the same year. The proceedings were specially adjourned to the Michaelmas Sessions. The committee made their report, and the Justices at the Michaelmas Sessions made an order that the gaol should be altered and adapted, &c. : Held, that, due notice having been given for the Easter Sessions, and the proceedings having been specially adjourned in order that the committee should consider and make a report, the Justices had jurisdiction to make the order, although no fresh notice had been given that the presentments would be taken into consideration at the Michaelmas Sessions.

This was a rule calling upon the Keepers of the Peace and Justices in and for the county of Westmorland to shew cause why a *certiorari* should not issue, directed to them to remove into this Court an order of Sessions made at a General Quarter Sessions of the Peace, held on the 17th of October, 1867, ordering that the gaol at Appleby be altered and adapted in accordance with the provisions of the New Prisons Act; and that sufficient cells be provided for the reception of the whole of the prisoners within the county.

It appeared from the affidavit upon which the rule nisi was granted, that the usual notice was given by advertisement in the local newspapers that the sessions would be holden at Kendal on the 17th of October, but that it did not appear from the said notice, contained in the advertisements in the newspapers, that the subject-matter of

the above-mentioned order was intended to be considered at the said sessions, nor was there any mention of reference to the same, and no other notice was given of the holding of the said sessions, or of its being intended to consider the subject-matter of the said order thereat, or make any order with reference thereto.

It appeared from the affidavits in opposition to the rule that, at an adjourned Epiphany Sessions holden at Kendal on the 22nd of January, 1867, six of the Visiting Justices of the House of correction at Kendal presented that "the provisions of the Prisons Act, 1865, cannot be carried out at the above prison according to the existing arrangement thereof; and that it is necessary either to build a new prison for the county, or to materially alter the above prison; and they recommended that the above prison should be altered according to the plan prepared by the county surveyor, so as to contain thirty-four separate cells for males and twelve cells for females, with the other requisites of the act; and in such other way as shall be approved by the Court." At the same sessions, four of the Visiting Justices of the gaol at Appleby presented "that the provisions of the Prisons Act, 1865, cannot be carried out at the above prison according to the existing arrangement thereof, and that it is necessary to materially alter the above prison according to the existing arrangement thereof, and that it is necessary to materially alter the above prison in order to comply with the provisions of the Prisons Act, 1865."

At the same sessions the following order was made:—"That the said presentments be taken into consideration at the Easter General Quarter Sessions, to be holden at Kendal on Thursday, the 11th of April next, at 11.30 a.m.; and that the said presentments be duly advertised by public notice in pursuance of the provisions of the Prisons Act, 1865, section 24, stating that it is intended to take the subjects therein mentioned into consideration at the time and place above mentioned."

Notice was accordingly given by the clerk of the peace by advertisement in the local newspapers, and at the Easter Sessions on the day mentioned the consideration of the two presentments was taken and entertained, and it was resolved, "That a com-

mittee be appointed to consider the gaol question, to consult the Government, and to report to the Michaelmas Quarter Sessions, 1867, upon the expediency of having one or two gaols; and that the committee consist of" [here followed the names of seven Justices]. The proceedings and resolutions were then and there by special adjournment continued to the Michaelmas Quarter Sessions, 1867; but such special adjournment was not substantively recorded, as such a substantive record was not customary at those sessions, when a report was to be made. At the Michaelmas Sessions the committee made their report, and the matter was considered by the Justices assembled, who made the order above set out and now complained of. A gaol committee was also appointed to settle with the Home Secretary the plans, &c. for the necessary alterations in the gaol at Appleby.

Maule and Hawcutt shewed cause against the rule.—The Court will see that no fault can be found with the proceedings of the Justices. It is said that the 24th section of 28 & 29 Vict. c. 186. requires that not less than three weeks' previous notice shall be given of the intention of the prison authorities to take the matter into their consideration, and that such notice has not been given. In truth, it had been given for the Easter Sessions, when the matter was to be brought on for consideration, so that the prison authorities at that sessions were perfectly competent to deal with the question. It was then thought better that a committee should be appointed to make a report; and as some time must elapse before the report could be made, it was considered expedient that the further consideration should stand over until the Michaelmas Sessions. The three weeks' notice was equally good for that sessions. A special presentment had been made, the notice had been given, and the Justices assembled at the sessions had ample powers to order the special adjournment of the proceedings. The report made by the committee and the acts done by them became the acts of the Sessions, and any Court of Quarter Sessions may lawfully delegate such powers to a committee—see *The King v. the Justices of Glamorganshire* (1). Lord Kenyon said
(2) 5 Term Rep. 279.

in that case, "With regard to the appointing of the committee, it was proper that the information should be acquired out of the sessions; and the act of the committee was afterwards confirmed by the Sessions, so that it was the act of the Sessions." Again, the Sessions may adjourn a particular case without adjourning the sessions—*Keen v. the Queen* (2).

Manisty and A. S. Hill, in support of the rule.—It is submitted that the requirement of the 24th section has not been complied with. If the matter was to be taken into consideration at the Michaelmas Sessions three weeks' notice ought to have been given previous to that time, and after the Trinity Sessions, or, at any rate, after the Easter Sessions. The Court of Quarter Sessions are a varying body, and it might well be that many Justices might be altogether unaware that the matter was to be taken into consideration at the Michaelmas Sessions; the public have a right to claim that all the Justices should have notice. Again, there cannot be such an adjournment as has been made here, but only from one sessions to the next—see *The King v. Grince* (3) and *The King v. Hedingham Sible* (4), and other cases collected in the same book.

[BLACKBURN, J.—I know of no case in which it has been held that business may not be adjourned to the next sessions but one, as well as to the next. If there be any reason for such a rule, one would think that it would apply as well to this Court as to the Quarter Sessions. When we grant a mandamus to the Sessions to hear an appeal, we order that continuances should be entered. MELLOR, J.—That seems to me to shew that the jurisdiction of the Sessions is not gone after the particular sessions are over; but that for the sake of order and convenience we command that continuances should be entered, so that it may appear that the appeal has been adjourned from sessions to sessions. COCKBURN, C.J.—*The King v. the Justices of Sussex* (5) is very applicable to the present case.]

(2) 10 Q.B. Rep. 928; s. c. 16 Law J. Rep. (N.S.) M.C. 180.

(3) 2 Bott, par. 874.

(4) Ibid. par. 878.

(5) Ibid. par. 902.

The whole practice of the Quarter Sessions, as established throughout England, is against such a power of adjournment as has been exercised in this case.

COOKBURN, C.J.—I think that the rule must be discharged. It appears that due notice had been given, as required by the 24th section, that the consideration of the presentment would be entertained at the Easter Sessions. When it was brought on for consideration, it was resolved that it should be referred to a select committee, who were to consult with the Government, and report to the Michaelmas Sessions upon the expediency of having one or two gaols in the county. Now, it is said that inasmuch as the Michaelmas Sessions would not be those which would be holden next after the Easter Sessions to which the notice was applicable, it was necessary that new notices should be given that the question would come on at the Michaelmas Sessions, because each of these Courts of Quarter Sessions is a separate and independent Court. But I think it would lead to most grievous inconvenience, if there was not in such a Court an inherent power to adjourn the consideration of business, which had been properly brought before them, to such a time as they may consider they will be in a better position to decide upon it. As good an illustration as any of that view is this: that whereas the act of 17 Geo. 2. c. 28 s. 4. provides that an appeal against a poor-rate must be to the next General or Quarter Sessions of the Peace, we all know that the practice established from that time to the present, and sanctioned by all the Courts of Quarter Sessions and by this Court is, that if the grievance arises before the holding of the Court of Quarter Sessions to which according to the statute the appeal must be made, and if there be not time to give the necessary notice of appeal, the Court of Quarter Sessions always enters the appeal and adjourns or respites it to the next Quarter Sessions, at which the Court becomes seised of it, and deals with it, although the act of parliament has expressly enacted that the appeal must be to the next Court of General or Quarter Sessions after the cause of grievance has arisen. It is clear that when the matter is brought before the Court it

may be adjourned; but it is said that although it may be that the Court has a right to adjourn the consideration of a particular matter from one sessions to the next, there is no power to adjourn to the next but one; but I think that it does not matter to which of such sessions the adjournment is made. If the Court of Quarter Sessions did it improperly, this Court would control their action; but when once a matter is properly before them, there must be a power of adjournment. *The King v. the Justices of Sussex* (5) is a decision strongly in point. In that case, upon an appeal against an order of removal, the Justices at the sessions ordered that a special case should be stated for the opinion of this Court. Before it was stated, the Court adjourned, and "the cause was neither retained nor ended." Upon these facts an application was made to this Court for a mandamus to compel the Justices to proceed with the appeal. It was held that the mandamus must go unless the respondents would consent to a case being stated; and that by ordering that a special case should be stated, they had virtually ordered that the appeal should be adjourned till the case was stated, and that the want of an adjournment or a respite was only the omission of the clerk, and might at any time be supplied. I think that when the Justices of Westmorland determined at the Easter Sessions to refer the consideration of the presentment to a committee to report at the next Michaelmas Sessions, it really amounted to an adjournment of the whole matter to those sessions. All the Justices who were present at the Easter Sessions had notice that the whole matter was virtually adjourned to the Michaelmas Sessions; and as the requisite notice had been given previously to the Easter Sessions, all has been done that the law requires.

BLACKBURN, J.—I am of the same opinion. By the 24th section the prison authorities have no power to entertain the consideration of the presentment, unless not less than three weeks' previous notice has been given as required. Here the prison authorities are the Court of Quarter Sessions, and notice, as required, was given in the first instance for the Easter Sessions. The matter was then entertained, but was

not disposed of, by that Court. It is obvious that if that Court had adjourned the matter for two or three days, continuing the consideration during the same sitting, it would certainly have not been necessary to give fresh notice. The adjournment would have been a sufficient notice to come to any adjournment of the Court, and the notice originally given would have been sufficient to give jurisdiction. The Court of Quarter Sessions is one Court under one commission; and holding its sittings four times a year, and the first Court, although it may adjourn, is simply continued. In *Kear v. the Queen* (2) Patteson, J. said, "The Sessions have only one commission, so it is quite correct for the Justices to adjourn a case from one session to another, because they are not advised what judgment to give"; and Erle, J. says, "I think that the Sessions are a continuing Court, and that they have power to adjourn a case from one session to another; and it is most important that they should have such power." He also says that the case of *Bodnia v. Warlingen* (6) is no authority to shew that the Sessions cannot adjourn a case without also adjourning the session; and Coleridge, J. says, "The practice of this Court in issuing writs of mandamus to the Sessions to enter continuances and hear an appeal illustrates the point. Our writ does not give the authority to the Sessions to continue process, but merely directs them to exercise the authority which they already possess, and to do that which they ought to have done in furtherance of the ends of justice. We issue our writ to them for this purpose after they have completely disposed of a case. This we could not do if each session were a distinct Court. We deal with the Justices as one Court sitting from session to session." Then I can see no reason why the prison authorities sitting at the Easter Sessions should not be able to adjourn the consideration of the presentment until the Michaelmas Sessions. If they had allowed the consideration to drop, they ought to have given a new notice, but they did not do so; they appointed the committee and virtually adjourned the matter to the Michaelmas Sessions, when the report would be presented. It comes

exactly within *The King v. the Justices of Sussex* (5); all the Justices who were present at the Easter Sessions must have been aware that this was done, and therefore the notice was as good for the Michaelmas Sessions as for those holden at Easter. Mr. Manisty says that the Justices have no power to adjourn to any sessions except the next; but I see no principle upon which such a proposition can be supported, nor do I know of any enactment or decision to support it. In general it would be desirable to adjourn to the next sessions, but in some cases, especially when the report of a committee is to be received, it may be very prudent and proper to adjourn for six months. If it be a continuing Court, I see no reason why there should not be a *bona fide* adjournment to the next sessions but one.

MELLOR, J.—I do not think that we ought to exercise our jurisdiction to quash this order of Sessions. It is conceded that the jurisdiction to make it attached at the Easter Sessions, the notice being then sufficient. At that time the prison authorities did enter upon the consideration of the presentment, but found that it was expedient that a committee should be appointed to make inquiry into the whole matter. This was a course most convenient and proper, and they also passed a resolution directing that the report should be presented at the Michaelmas Sessions. There were obvious reasons for doing this, and in substance it was a proper adjournment, for they were seized of the jurisdiction to consider the matter, and if so, they had necessarily jurisdiction to adjourn it. In point of fact, was there not an adjournment of the further consideration of the matter to the Michaelmas Sessions? I should be very unwilling to interfere with the proceedings of the Justices unless I saw clearly that there had either been some excess of jurisdiction, or that the matter had been allowed to drop by an omission to do something which was necessary to keep it up. I find neither authority nor principle for the objection which has been taken.

HANNEN, J.—I am of the same opinion. The section only requires that the notice should be given three weeks before the consideration of the presentment is to be entertained, that is, entertained in the first

instance, and no further notice is required when the matter is once fairly under consideration. In no sense can it be said to have been dropped, for it was resolved that it should be referred to a committee, who were to report at the Michaelmas Sessions, and while it was under their consideration it was under the consideration of the prison authorities. I know of no authority which supports Mr. Manisty's contention, that there is no power to adjourn over an intermediate sessions, nor can I see any principle upon which such a proposition can be maintained. There is no real objection to the order being made.

Rule discharged.

Attorneys—Gray, Johnston & Mounsey, agents for Harrison & Little, Penrith, for prosecution; J. Kynaston, agent for G. R. Thompson, Appleby, for defendants.

[IN THE COURT OF QUEEN'S BENCH.]

1868. } CARR, *appellant*; STRINGER,
May 2. } *respondent*.

Weights and Measures—Scales “incorrect or otherwise unjust”—Adjustment not Part of Machine—5 & 6 Will. 4. c. 63. s. 28.

A shopkeeper made use of a pair of scales which had a hollow brass ball hanging upon the weight-end of the beam. These balls were constructed with a neck which could be unscrewed, so as to allow shot to be placed in the interior, and, although hung by a stout brass wire hook upon the beam, were easily removable from it by merely lifting them off. When one of these balls had been removed and replaced, after the shot with which it was partly filled had been removed, it was found that the scale was unjust and against the purchaser:—Held, that there was evidence upon which the Magistrates might reasonably find that these scales were weighing machines incorrect or otherwise unjust, within the meaning of 5 & 6 Will. 4. c. 63. s. 28 (1).

CASE stated by Justices according to 20 & 21 Vict. c. 43.

(1) By 5 & 6 Will. 4. c. 63. s. 28, “in England and Ireland it shall be lawful for every Justice of the Peace of any county, riding, or division, or of any city or town, and in Scotland for every Sheriff,

At a petty session, at Tunbridge Wells, in Kent, on the 17th of September, 1867, before two Justices, on information preferred by John Stringer, hereinafter called the respondent, against Josiah Carr, hereinafter called the appellant, under section 28. of the 5 & 6 Will. 4. c. 63, charging for that he the respondent, inspector of the weights and measures of and for the district known as No. 16, in the division and county aforesaid, on the 27th of August, 1867, at the parish of Tunbridge, as such inspector as aforesaid, being then and there duly authorized in writing, under the hands of two of Her Majesty's Justices of the Peace in and for the county, did enter a certain shop within his jurisdiction as such inspector, and wherein goods were then exposed for sale, and that he did then and there examine all weights, measures, steelyards, and other weighing machines, then and there being, and did then and there compare and try the same with the copies of the imperial standard weights and measures authorized to be provided under the act of parliament passed in the 6th year of his late Majesty William the Fourth, intituled, ‘An act to repeal an act of the 4th and 5th years of his present Majesty relating to weights and measures, and to make other provisions instead thereof,’ and that the said shop was then and

Justice, or Magistrate of any borough or town, or for any inspector authorized in writing under the hand of any Justice of the Peace in England and Ireland, or of any Sheriff, Justice or Magistrate in Scotland, at all seasonable times to enter any shop, store, warehouse, stall, yard or place whatsoever within his jurisdiction, wherein goods shall be exposed or kept for sale, or shall be weighed for conveyance or carriage, and there to examine all weights, measures, steelyards or other weighing machines, and to compare and try the same with the copies of the imperial standard weights and measures required or authorized to be provided under this act; and if, upon such examination, it shall appear that the said weights or measures are light or otherwise unjust, the same shall be liable to be seized and forfeited; and the person or persons in whose possession the same shall be found shall on conviction forfeit a sum not exceeding 5*l.*; and any person who shall have in his or her possession a steelyard or other weighing machine which shall on such examination be found incorrect or otherwise unjust, or who shall neglect or refuse to produce for such examination, when thereto required, all weights, measures, steelyards or other weighing machines which shall be in his or her possession, or shall otherwise obstruct or hinder such examination, shall be liable to a like penalty.”

there kept or used by the appellant, and that upon such examination it did then and there appear that three pairs of scales then and there found, and then and there in the possession of the appellant, were unjust, contrary to the form of the statute in such case made and provided, was heard and determined by us, the Justices, and upon such hearing we convicted the appellant.

The appellant, being dissatisfied with the determination, upon the hearing of the information, as being erroneous in point of law, applied to the Justices to state a case, which was stated as follows:

At the hearing of the information it was proved before the Justices, and admitted by the appellant, that the respondent on the 27th of August, 1867, visited the shop of the appellant, and there found three pairs of scales which were correct as to balance in the way they then were, but the respondent found hanging upon the weight end of the beam of each pair of scales a hollow brass ball. These brass balls are constructed with necks which can be unscrewed so as to allow shot to be placed in the interior; and they were hung by stout brass wire hooks upon the beams of the scales, and were easily removable therefrom by merely lifting them off. The respondent took one of these balls off a pair of scales, and having unscrewed the neck he removed the shot with which it was partly filled; and then replaced the ball in its former position, and on testing the scale found the latter to be then unjust and against the purchaser. It was admitted by the respondent that similar balls were very generally used by tradesmen for the purpose of adjustment.

It was contended by the respondent that this brass ball was not part of the scales, and was easily detached therefrom; that if the ball could be considered part of the scales, yet the shot with which the same was loaded could not be so considered, as it could be removed at any time without apparent alteration in the scales, and consequently the scales themselves were unjust. On behalf of the appellant, it was contended that the brass ball with its load of shot was a mere instrument of adjustment attached to and forming part of the scales; that the scales were from time to time corrected by

adding to or removing shot therefrom; and as the scales in question were correct at the time they were used by the appellant and first examined by the respondent, and were only rendered incorrect by the respondent removing the ball or the shot, the appellant could not be convicted of any offence.

The Justices, however, were of opinion that the ball was not part and parcel of the scales, inasmuch as it merely hung thereon by its own weight, and could be detached in an instant. They were further of opinion that as the shot could be removed from the ball and replaced at pleasure, it could not be considered a proper instrument of adjustment. They therefore found that the scales were unjust, and accordingly convicted the appellant of having in his possession an unjust scale.

The questions of law, if any, arising on the above statement therefore are: first, whether the Justices were correct in their view of the case, that the ball referred to being hung loosely on the beam of the scale did not form part of the scales; secondly, whether the shot in the ball being entirely removable was or was not a proper instrument of adjustment, or could be considered a part of the scales or otherwise.

Anderson, for the respondent.—The brass balls formed no part of the scales.

[BLACKBURN, J.—This information seems to treat of the offence as if it came within the provision in the section against "weights or measures light or otherwise unjust," in which case there is both a forfeiture of the article and a penalty. But the offence proved is, having "a steelyard, or other weighing machine incorrect, or otherwise unjust," for which a penalty only is imposed.]

It does not appear that the scales were ordered to be forfeited.

[BLACKBURN, J.—The statement in the information that the scales were unjust contrary to the statute &c., is sufficient.]

He was proceeding to argue,—but the Court called upon

Cohen, for the appellant.—There is nothing illegal in this mode of adjusting the scales.

[BLACKBURN, J.—What is there to distinguish these scales from scales which are

incorrect, and made right by means of a weight placed in one of them?]

In *The London and North-Western Railway Company v. Richards* (2), the marginal note is,—Upon the conviction of a railway company under 5 & 6 Will. 4. c. 63. s. 28. for having in their possession a weighing machine which, upon examination thereof, duly made by the inspector of weights and measures, was found to be incorrect, held, that a machine which, from its construction, was liable to variation from atmospheric and other causes, and required to be adjusted, was not incorrect upon examination within the meaning of the statute if examined by the inspector before it had been adjusted, Wightman, J. saying in his judgment, "This weighing machine before adjustment is false, but in the true state of adjustment for weighing it is correct. It is too much to say that because the machine requires adjustment before it is used it is an incorrect or otherwise unjust machine."

[BLACKBURN, J.—In the case cited the scales were perfectly just in themselves, but liable to get out of repair from the effect of the atmosphere. I do not say that the scales in the present case would be necessarily unjust if the balls were screwed firmly into the scales. COCKBURN, C.J.—And it would appear that in the case cited the mode of adjustment was an integral part of the machine.]

In *The Great Western Railway Company v. Bailie* (3), where a railway company kept a weighing machine, which for a fortnight had been so out of repair that, when anything was weighed in it, the weight appeared to be four pounds more than was really the weight, it was held that they were liable to be convicted. If the shot were fraudulently removed, and the inspector were suddenly to enter the shop it could not be replaced in time to prevent the fraud from being discovered. It would be just as easy to take off the scales and substitute new ones. The Magistrates have not found any fraudulent intention.

[BLACKBURN, J.—Such a finding would, in a legal sense, have been impertinent.]

COCKBURN, C.J.—I am very clearly of opinion that this conviction must be affirmed. There was some difficulty at first in consequence of a doubt whether the Justices had not convicted the appellant for having unjust weights instead of an unjust weighing machine; but I think that it is sufficiently clear that the conviction was for having unjust scales. Now, I am very far from saying that where, as in *The London and North-Western Railway Company v. Richards* (2), weighing machines become so affected as to require adjustment, and anything which is part of the machine is made use of to remedy the loss which it may from time to time sustain, that this contrivance ought not to be taken into account as affecting the justness of the scales. But when you find the instrument in itself imperfect and unjust, and only to be perfected and properly adjusted by the introduction of some temporary contrivance, which at any time may be attached to or taken from it, then I think that the weighing machine becomes unjust. Here there is only something to rectify an original defect in the balance, and there is no doubt that it can be used and is used, in many instances, for the purposes of fraud. It may at any moment be taken off, and although Mr. Cohen has argued that the sudden arrival of the inspector cannot be guarded against, yet as this officer cannot be everywhere at once it would be quite easy in selling goods to make use of these scales when they were unjust as against the purchaser. I think that the Magistrates were quite right.

BLACKBURN, J.—I am of the same opinion. Two offences are mentioned in the section, that of having weights or measures light or otherwise unjust, and that of having steelyards or weighing machines incorrect or otherwise unjust. I at first imagined that the information was for having unjust weights or measures, which would not have been proved; but looking more closely at the information, I see that it is for having unjust scales, and the question arises, is there evidence to justify the Magistrates in finding that these scales were incorrect or otherwise unjust? Now, it appears that these scales by themselves, and without the brass balls and the shot inside them, are incorrect and against the

(2) 2 Best & S. 326.

(3) 34 Law J. Rep. (N.S.) M.C. 31.

purchaser. Do the balls and the shot prevent the scales from being incorrect? This turns upon the question whether they are an integral part of the machine, and if they are and bring out a correct result the machine would not be incorrect. In the case of *The London and North-Western Railway Company v. Richards* (2), Mr. Justice Crompton says, "The great beauty of the machine is, that when an inaccuracy may, or rather must, constantly occur, the machine has in itself an appliance by which that inaccuracy may be remedied. Unless that appliance, which is an integral part of the machine, is used the instrument cannot be said to be properly tested." In that case the contrivance for adjusting the machine was an integral part of it. I do not say that if these balls had been fastened firmly to the scales that this circumstance might not have been taken into account in deciding whether there was evidence of fraud. But from the description given of the scales—(the learned Judge read the description)—I think that the Justices might well draw the conclusion of fact that the brass balls were no more part of the machine than a half-ounce weight placed in one of the scales. The fact that the balls can be easily lifted off does not necessarily prevent them from being part of the machine, but it is strong evidence of fraud, and not easily rebutted. If scales must have some adjustment, the owners must take care to screw on the adjustment so that it may be permanently fixed to the machine and not removable from it, and the machine must not be against the purchaser when it is removed, or the Justices will be right in drawing an inference against them.

Judgment for the respondent.

Attorneys—Thomas Kipping, agent for W. C. Cripps, Tunbridge Wells, for appellant; Philip Wood, agent for Stone, Wall & Simpson, Tunbridge Wells, for respondent.

[IN THE EXCHEQUER CHAMBER.]
(Appeal from the Court of Queen's Bench.)

1868. { THE QUEEN, on the prosecution
June 13. { of THE VESTRY OF ST. GEORGE'S,
 HANOVER SQUARE, v. M'CANN
 AND ANOTHER.*

Poor-Rate—Commissioners of Works and Public Buildings incorporated for Constructing Public Works—Servants of the Crown—Consolidated Fund—Beneficial Occupation—Chelsea Bridge—Mandamus.

*The Commissioners of Her Majesty's Woods and Forests were, by act of parliament, incorporated for the purpose of making a bridge over the Thames, which had been recommended by the Commissioners for Improving the Metropolis, and the plans of which had been approved of by the Commissioners of the Treasury. Power was given to obtain an advance of money from the Consolidated Fund, such advance to be repaid out of the money collected by way of tolls which the corporation were authorized to take by means of toll-houses and collectors to be established on the bridge. These tolls were to be applied, first, in payment of all expenses of management and collection of the tolls; secondly, in maintaining the bridge; thirdly, in repayment of the money advanced; and the surplus, if any, was to form a fund for such metropolitan improvement as the legislature should determine. By a subsequent act this provision as to the surplus was repealed, and it was provided that when a sum of 80,000*l.* and interest had been paid off no toll should be demanded of foot-passengers. The bridge was built, and vested in the Commissioners, and the tolls taken exceeded the cost of maintaining the bridge. 13,500*l.* of the 80,000*l.* advanced had been repaid, and not more than 2,500*l.* towards the said sum of 13,500*l.* was received from the tolls and proceeds of the bridge. The Commissioners were assessed in a rate for the relief of the poor of the parish in which part of the bridge and of its approaches was situate:—Held, by the Court of Exchequer Chamber, affirming the decision of the Court below, that they were not liable, the only occupation being by the Crown or by*

* Coram Kelly, C.B., Bramwell, B., Channell, B., Byles, J. and Montague Smith, J.

the Commissioners, as servants of the Crown, acting for and on behalf of the Crown.

This was an appeal against a decision of the Court of Queen's Bench upon a demurrer to the return to a writ of mandamus.

The writ and return are set out at length in the report of the case when in the court below, *ante*, page 25.

It will be sufficient here to state shortly that this was a mandamus to the defendants, Justices of Middlesex, ordering them to issue a warrant to levy by distress and sale upon the goods and chattels of the Commissioners of Works and Public Buildings, the amount due from them in respect of a rate for the relief of the poor of the parish of the prosecutors. The Commissioners were by act of parliament incorporated for the purpose of making what is now called Chelsea Bridge. Power was given to them to take tolls, which were to be applied, first, in payment of expenses of management and collection of the tolls; secondly, in maintaining the bridge; thirdly, in repayment of the money advanced out of the Consolidated Fund. When the money advanced was paid off, no tolls were to be demanded in respect of foot-passengers, but the other tolls were to remain. Only a portion of the sum advanced had been repaid when the Commissioners were assessed to a poor's rate in respect of the bridge and its approaches, alleged to be in their occupation. They refused to pay the rate, and the defendants refused to issue a warrant to distrain upon their goods and chattels.

Upon a demurrer to the return to a writ of mandamus, the Court of Queen's Bench gave judgment for the defendants.

Keane (F. T. Streeten with him), for the appellants. His argument was substantially the same as in the court below, and the following cases were referred to—*Jones v. the Mersey Docks* (1), *The King v. Hurdis* (2), *Eckersell v. Briggs* (3), *De la Beche v. the Vestry of St. James* (4), *The Queen*

v. Temple (5), *The Queen v. St. Martin's, Leicester* (6), *The Queen v. Sherford* (7), *The Governors of the Bristol Poor v. Waite* (8), and *The Queen v. the Guardians of the Wallingford Union* (9).

The Attorney General (Sir J. D. Karslake with him), for the defendants, was not called upon.

KELLY, C.B.—In this case a rate has been made upon the Commissioners of Her Majesty's Works and Public Buildings, in respect of certain tolls received upon a bridge which has been constructed by the Commissioners, who are made a corporation for that purpose, under certain acts of parliament.

It appears that the Commissioners for the Improvement of the Metropolis having reported to the Crown in favour of certain improvements in or near the metropolis, among others, reported that a bridge should be constructed upon or near the spot in question. For the purpose of constructing that bridge an act of parliament was passed, authorizing a fund to be provided by the Crown to bear the expense of the construction of the bridge in question, and to receive the tolls, which were to be, in the first place, devoted to certain expenses connected with the works; and, finally, to keeping the bridge in repair, and doing the other acts which are necessary to be done by reason of the undertaking, and to be applied in repayment of some very large sums to be advanced by the Treasury out of moneys in the hands of the Crown, which were granted to the Crown by parliament, and which were applicable to public purposes; and whenever those sums should be repaid, then towards the diminution of the tolls; but no provision was made for any surplus moneys arising from the receipt of the tolls which were to be in the hands of the Commissioners.

Now, these are the facts of the case

(5) 2 E. & B. 160; a. c. 22 Law J. Rep. (N.S.) M.C. 129.

(6) 36 Law J. Rep. (N.S.) M.C. 99.

(7) 36 Law J. Rep. (N.S.) M.C. 113.

(8) 3 Ad. & E. 1; a. c. 5 Law J. Rep. (N.S.) M.C. 113.

(9) 10 Ibid. 259; a. c. 8 Law J. Rep. (N.S.) M.C. 89.

(1) 35 Law J. Rep. (N.S.) M.C. 1.

(2) 3 Term Rep. 397.

(3) 4 Ibid. 6.

(4) 4 E. & B. 385; a. c. 24 Law J. Rep. (N.S.) M.C. 74.

which were authorized by the acts of parliament. The question is, whether these Commissioners are rateable in respect of these tolls to the poor-rates of the parish in which the bridge, or a portion of the bridge, is situate? I am of opinion that they are not; and, upon this plain and simple ground, that the occupation of this bridge is not a beneficial occupation, that it is not an occupation by any individual, or any body of persons, whether for private or for public purposes, but that it is in contemplation of law an occupation by the Commissioners on behalf of a Government department, or public board, as servants of the Crown, that is, on behalf of the Crown itself.

The exception that was specially made in the judgment of the House of Lords, in *The Mersey Docks case* (1), was an exception in favour of property occupied by the Crown, or by the servants of the Crown, or any department of the Government acting on behalf of the Crown. In this case, in the first place, the work is a public work recommended in a report to the Crown by certain Commissioners appointed by the Crown; and, therefore, without more, it is to be constructed by the Crown out of public funds, or, in other words, by the State or Government of the country on behalf of and for the benefit of the public. For convenience, and convenience alone, the work is to be constructed, and under orders given under the powers of an act of parliament. It is to be executed, not by the Crown itself in its own person, which would, of course, be the Sovereign herself in her own person, which would be impracticable and impossible, but by the department of the Government to which works of that nature are assigned in the ordinary carrying on and execution of the business of the country. If it had been a work connected with the Navy, the board by which it would have to be carried out would, in all probability, have been the Board of Admiralty. If it had been the construction of a port, or anything relating to the Commerce of the country, probably it would have been the Board of Trade; but as it happens to be a work to be executed upon what was claimed to be the property of the Crown,—and which must at least be taken to form part of the property of the Crown, it would naturally have been left in the

hands of that department which deals with the property of the Crown, and which executes works, or contracts for the execution of works connected with the land or other property of the Crown, namely, the Commissioners of Woods and Forests. The task was, therefore, committed to the Commissioners of Woods and Forests, and the powers in question are conferred upon those Commissioners; and for that purpose, and for that purpose only, and for that reason, and for that reason only, they are made a corporation. It is quite clear upon this that the Commissioners entered into the occupation of property claimed to be the property of the Crown, upon which they constructed the whole or part of the bridge in question, and in respect of passengers and vehicles upon this bridge they are entitled, under the act of parliament, to receive certain tolls.

In what character, then, or on whose behalf, do they occupy this bridge and receive these tolls? They do so, certainly not for their own benefit. It is merely because they happen to constitute that department of the Government to which public works of all descriptions, to be executed by the Crown, are invariably and necessarily committed. It is in that character, and that character only, that they occupy the bridge and receive the tolls in question. They are bound, under the act of parliament, to apply those tolls to the specific purposes pointed out by the act. If there should be a surplus, that surplus really is money belonging to the Crown, and they could not apply one shilling of it without the authority of the Crown.

Only 13,500*l.* out of the 80,000*l.* advanced had been repaid at the time the rate was made. But in case there shall arise a surplus, which surplus will be in the hands of the Commissioners, that surplus, no doubt, will be disposed of according to the provisions of an act of parliament yet to be passed. In the mean time this corporation would hold that money on behalf of the Crown; it would be public money belonging to nobody but the Crown, and they would be trustees of that money until it was appropriated by the Crown, or the proper authorities under the authority of that act of parliament.

But to return to the question of occupa-

tion. According to the strict terms of the statute of Elizabeth, and the substance and true effect of the decision in *The Mersey Dock case* (1) by the House of Lords, there must be occupation other than an occupation by the Crown, or for or on behalf of the Crown. Here there is no such occupation. The occupation is by this public Board or department of the Government, existing only under the appointment of the Crown, and under the authority of the Crown, and for the purposes of the State, and who exist, not only in the capacity conferred upon them or created by this act of parliament, but in every capacity in which they act at all as a department of the Government, as servants of the Crown, by and on behalf of the Crown, for the public benefit of the State.

Under these circumstances, we are all of opinion that the corporate body in question, created by this act of parliament, are not liable to be rated in respect of these tolls, and consequently the judgment of the Court will be in favour of the Crown.

We may observe, as is suggested by my Brother Bramwell, that when we look to the form in which this case comes before us, we find that it is upon a mandamus to the Magistrates to issue their warrant to levy a certain sum of money, the amount of the rate in question, by distress and sale of the goods and chattels of the Commissioners of Works. They do not, and they cannot, possess goods and chattels to the value of a single shilling, except that which belongs to the Crown. It does not belong to them in their corporate capacity, but strictly for and on behalf of the Crown, and cannot be applied to any purposes except for the purposes of the Crown. Under these circumstances, really to order these Magistrates to seize the goods and chattels of these Commissioners would be to order them to seize the goods and chattels of the Crown, which are held by a Government department merely on behalf of the Crown, in order to satisfy this poor-rate (10).

(10) With reference to this part of the judgment, it may be observed that it was arranged, by consent, that the question should be brought before the Court of Queen's Bench in the present form.

Upon all these grounds we are of opinion that the judgment of the Court of Queen's Bench should be affirmed.

Judgment affirmed.

Attorneys—Capron, Dalton & Hitchins, for the parish; the Solicitors to Her Majesty's Commissioners of Works and Public Buildings, for the Crown.

[IN THE COURT OF COMMON PLEAS.]

1868. { THE METROPOLITAN BOARD OF
June 25. { WORKS, appellants, CLEVER,
respondent.

Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 98.—Laying out Road for Building—Width of Street.

The respondent was the owner of land lying between roads A. and B; he built houses along road A. with back gardens running down to road B, and he then took down the old fence of road B, and placed an oak fence with gates 3 feet back on his land:—Held, that he could not be compelled, under the 25 & 26 Vict. c. 102. s. 98, to put back his fence to 20 feet from the centre of road B.

This was an appeal under the provisions of the statute 20 & 21 Vict. c. 43. against the decision of a Police Magistrate for the Metropolis, dismissing a complaint made by the appellants against the respondent for not setting back a fence 20 feet from the centre of a road called Hither Green Lane.

CASE.

The respondent is the lessee for a long term of years of certain property situate on the south side of Hither Green Lane, near to the Lewisham and Bromley Road, Lewisham. The respondent's property is bounded on the north by Hither Green Lane, and on the south by a road called Ladywell Park Road. Hither Green Lane is a road which has been from time immemorial a public highway, and has been from time to time repaired by the parish authorities. It is of irregular width, being from 19 to 20 feet wide in some places, and increasing to from 23 to 24 feet in width in others, but in

no part exceeding 25 feet in width. Hither Green Lane has within the past year, or thereabouts, been formed and laid out for building as a street for the purposes of carriage traffic.

The respondent has erected eleven houses on his said land, and placed those houses so as to front the Ladywell Park Road, which is a new road laid out for building purposes. The respondent's houses have long narrow strips of garden behind, extending to the Hither Green Lane, from which they are divided by an oak park-fence, with a gate to each, affording an approach from, and exit to, the Hither Green Lane.

The respondent's said houses were completed about 1866, and at that time the respondent's land was divided from Hither Green Lane by a bank and thorn-fence thereon. When the houses were completed, the respondent caused the fence to be grubbed up and the bank to be levelled, and set the line of the present oak-fencing about 3 feet within the outermost edge of the old bank, and the respondent's oak-fencing is placed several feet within the distance of 20 feet measuring from the centre line or crown of the roadway along a right line drawn at right angles to the course of the said street.

The respondent has himself done no act towards forming or laying out Hither Green Lane as a street for the purpose of carriage traffic, otherwise than so far as the removal of the old thorn-fence and the erection of the oak park-fence may be such act, nor has he any present intention of doing any such act, or putting up any building fronting towards Hither Green Lane.

On the 1st of May, 1857, the following by-law was made in pursuance of the powers vested in the Metropolitan Board of Works: "Four weeks at the least before any new street shall be laid out, written notice shall be given to the Metropolitan Board of Works, at their office, Spring Gardens, in the county of Middlesex, by the person or persons intending to lay out such new street, stating the proposed level and width thereof, and accompanied by a plan of the ground, shewing the local situation of the same.

"Forty feet at the least shall be the

width of every new street intended for carriage traffic; twenty feet at the least shall be the width of every new street intended only for foot traffic: Provided that the said width respectively shall be construed to mean the width of the carriage and footway only, exclusive of any gardens, forecourts, open areas, or other spaces in front of the houses or buildings erected or intended to be erected in any street. Every new street shall, unless the Metropolitan Board of Works . . . consent, . . . have at the least two entrances of the full width of such street, and shall be open from the ground upwards. The measurement of the width of every street shall be taken at a right angle to the course thereof, half on either side from the centre or crown of the roadway to the external wall or front of the intended houses or buildings on each side thereof, but where forecourts or other spaces are intended to be left in front of the houses or buildings, then the width of the street, as already defined, shall be measured from the centre line up to the fence, railing, or boundary dividing, or intended to divide, such forecourts, gardens or spaces from the public way. The carriage-way of every new street must curve or fall from the centre or crown thereof, at the rate of three-eighths of an inch, at the least, for every foot of breadth. In every new street the curb to each footpath must not be less than 4 nor more than 8 inches above the channel of the roadway, except in the case of crossings, paved or formed for the use of foot-passengers; and the slope of every footpath towards the curb must be half an inch to every foot of width, if the footpath be unpaved; or not less than a quarter of an inch to every foot of width if the footpath be paved. In this by-law the word 'street' shall be interpreted to apply to and include any highway (except the carriage-way of any turnpike-road), and any road, public bridge (not being a county bridge), lane, footway, square, court, alley or passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley or passage. In case of any breach of the regulations contained in this 'by-law,' the offender shall be liable for each offence to a penalty of 40s., and

in case of a continuing offence, to a further penalty of 20s. for each day after notice thereof from the Metropolitan Board of Works."

The appellants contend that on the above facts the Magistrate ought to have convicted the respondent; that the 98th section of the 25 & 26 Vict. c. 102. clearly contemplates the street being made the full width of 40 feet, measuring 20 feet on each side of the centre line of the roadway to the nearest external wall, fence or boundary of the houses or land on each side of the street; that for the purposes of the act, the part, whether wall, fence or building, abutting on the street is to be deemed the front, although the same plot of land may also abut on another street, and although a house or building fronting the last-mentioned street may be erected thereon; that there need be no act by, or intention of the particular owner to form or lay out his land for building purposes; but that if the old road be, in fact, formed or laid out for building purposes, as a street for carriage traffic, all the land on each side, situate within 20 feet of the centre line or crown of the roadway, must be laid into the new street as formed for buildings.

The respondent contends on the other hand, that unless and until some act of user or intention to build happen or exist on the part of the individual owner of land fronting the new street, or unless or until he do some further act than that above detailed, to lay out or concur in laying out such street, he is not liable to be called upon to set back his fence leaving a space of 20 feet between it and the centre or crown of the roadway; and that particularly in the present case, as his houses front the Ladywell Park Road, the provisions of section 98. and of the by-law do not extend to compel him to set the oak fencing back to the required distance, nor is he to be forced thus to give up and throw into the new street so much of his property as lies between the existing boundary and the line of 20 feet, measuring from the centre or crown of the roadway in Hither Green Lane.

The question for the opinion of the Court is, whether, under the facts before appearing, the line of the respondent's oak fencing

ought to be set back to a distance of 20 feet, measuring southwards from the centre line or crown of the roadway in Hither Green Lane. If the Court shall be of opinion in the affirmative, then the respondent is to be convicted in the penalty of 40s.; but if the Court shall be of opinion in the negative, then the decision of the Magistrate is to stand affirmed.

Philbrick, for the appellants.—In the case relied on by the other side, *The Metropolitan Board of Works v. Cox* (1), the Magistrate found that the lane had not been laid out for building, whereas here he has found that it has been so laid out; that case, therefore, is not in point; whilst *Taylor v. the Metropolitan Board of Works* (2) seems in favour of the appellants. The question is, whether the act of the majority binds, or whether the particular owner must shew an intention to build by his acts. The object of the statute is to secure a wide street, and it could not be intended that one owner should be able to frustrate this.

[WILLES, J.—The case is the same as if the old fence remained, and if so, where is there anything to shew that the old fence is to be put back?]

The section contemplates the widening of an old road, and widening it continuously, and it is not necessary to wait till the owner actually builds. There is no hardship; he gets the benefit of the wide street.

Codd, for the respondent.—It is found here that the respondent has done no act. *The Metropolitan Board of Works v. Cox* (1) is therefore a direct authority in his favour; and *Taylor v. the Metropolitan Board of Works* (2) is distinguishable. It is further to be observed, that here the houses do not face towards this lane.

Philbrick, in reply.—It is a question of fact whether, looking to what has been done, generally, the Magistrate thinks the place has been laid out as a street—*The Queen v. Fulford* (3).

WILLES, J.—I am of opinion that the Magistrate's decision was right, and should

(1) 19 Com. B. Rep. N.S. 445.

(2) 36 Law J. Rep. (N.S.) M.C. 53.

(3) 33 Law J. Rep. (N.S.) M.C. 122.

be affirmed. This is abundantly clear when section 98. is considered. The section imposes a penalty for violating an enactment, which is, that "no existing road, &c. being of a less width than 40 feet shall be hereafter formed or laid out for building as a street for the purposes of carriage traffic, unless it be widened to the full width of 40 feet." Who breaks that enactment if the road has been formed for building as a street? The person who has so formed or concurred in forming it, and we must take care we have a person before us who committed the offence. Did the defendant? All he did was to move this old fence a little way back, and so to give a little advantage to those using the road. Is that a laying out for building? Clearly not, unless it was to make a line between intended buildings and the road. But it is found he had no such intention, for it is found that he has done no act towards laying out the lane as a street, unless the removal of the old fence be such an act. Therefore, if any offence has been committed, it is not by him. This seems to be the view taken in *Taylor v. the Metropolitan Board of Works* (2), where Blackburn, J. says that the owner must shew an intention to make buildings of such extent as will form part of a street. I am, therefore, of opinion that the decision should be affirmed, with costs.

BYLES, J.—I am of the same opinion. The defendant is an owner of land adjacent to one side of the lane for a considerable distance, and he never had any intention to make a street, though some other owners of adjacent land had. It is a very serious matter to take a man's land, and without plain words we ought not to construe the enactment so as to apply to the present case. It appears to me that the enactment does not apply; and I also think that the case of *The Metropolitan Board of Works v. Cox* (1) is in point.

Affirmed, with costs.

Attorneys—W. Wyke Smith, for appellants; C. Stronghill, for respondent.

[IN THE COURT OF QUEEN'S BENCH.]

1868.
May 27.

THE GUARDIANS OF THE POOR
OF THE BRADFORD UNION,
appellants, THE CLERK OF
THE PEACE FOR THE COUNTY
OF WILTS, respondent.

Lunatic Prisoner—Order of Secretary of State—Removal to Asylum—Cost of Maintenance—Retrospective Order—Time for making Order—3 & 4 Vict. c. 54.

H. L. was convicted of felony, at the Lent Assizes for Wilts, 1864, and was sentenced to be imprisoned in the gaol at D. for twelve calendar months. While undergoing his sentence he became insane, in June, 1864, and was removed by an order of a Secretary of State to a lunatic asylum, under 3 & 4 Vict. c. 54. On the 28th of March, 1867, two Justices of the county of Wilts, sitting in the borough of D, adjudicated the place of the last legal settlement of H. L. to be in the parish of B, in the union of B, and they ordered the guardians of the union to pay to the keeper of the gaol 5l. 15s. 3d., for the reasonable charges of inquiring into the settlement, and of conveying him to the asylum, and to pay to the keeper of the asylum 114l. 15s. 4d. for the cost of maintenance from the 23rd of June, 1864, to the 25th of March, 1867, and the weekly sums which should from time to time be ordered for his maintenance:—Held, first, per totam Curiam, that the order was not bad by reason of its having been made after the expiration of the term of the sentence. Secondly, that the county Justices had jurisdiction to make it, although they were sitting in the borough which possessed an exclusive jurisdiction. Thirdly, (Blackburn, J. dubitante,) that the order was bad as to the 114l. 15s. 4d., on the ground that it was retrospective.

Held, per Mellor, J., that the order was not bad simply because it was retrospective, but because the keeper of the asylum ought to have applied for it in a more reasonable time, and that, after so great a lapse of time, the Justices ought not to have made it.

CASE stated by consent, and by the order of Shee, J., under 12 & 13 Vict. c. 45. s. 11.

Henry Lewis, referred to in the order hereinafter mentioned, was convicted of

felony, committed in the county of Wilts, at the Wilts Lent Assizes, 1864, and was sentenced to be imprisoned in the House of Correction for the county, situate in the borough of Devizes in the county, for twelve calendar months, and whilst undergoing such sentence, namely, in June, 1864, he became insane, and was, by an order of Her Majesty's principal Secretary of State for the Home Department, removed from the prison to a house licensed for the reception of lunatics, situate at Britton Ferry, in the county of Glamorgan, in pursuance of the 3 & 4 Vict. c. 54, and in which house the lunatic has ever since been confined and maintained.

The order of the Secretary of State was as follows:—"The Right Hon. Sir George Grey, Bart., one of Her Majesty's most Hon. Privy Council and Principal Secretary of State, &c.—Whereas by an act passed in the third and fourth years of the reign of Her present Majesty, intituled 'An act for making further provisions for the confinement and maintenance of insane prisoners,' it is enacted that, 'If any person while imprisoned in any prison or other place of confinement, under any sentence of death, transportation, or imprisonment, or under charge for any offence, or for not finding bail for good behaviour, or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction or order by any Justice or Justices of the Peace, or under any other than civil process, shall appear to be insane, it shall be lawful for any two Justices of the Peace of the county, city, borough, or place where such person is imprisoned, to inquire, with the aid of two physicians or surgeons, as to the insanity of such person; and if it shall be duly certified by such Justices and such physicians or surgeons that such person is insane, it shall be lawful for one of Her Majesty's Principal Secretaries of State, upon receipt of such certificate, to direct, by warrant under his hand, that such person shall be removed to such County Lunatic Asylum, or other proper receptacle for insane persons, as the said Secretary of State may judge proper and appoint.' And whereas it has been certified to me under the hands of the Rev. Alfred Smith and Edward B. Edgell, Esq., two Justices of the Peace, and under the hands of R. Mont-

gomery and T. B. Austin, surgeons, being persons authorized as aforesaid, that Henry Lewis, who was, at a gaol delivery holden in and for the county of Wilts, on the 24th day of March, 1864, convicted of larceny, and sentenced to be imprisoned for one year in the House of Correction at Devizes, for the same, has become insane. And, whereas the lunatic asylum at Britton Ferry, in the County of Glamorgan, has been recommended to me as a fit and proper receptacle for the said lunatic. And, whereas it has been certified to me by two Justices of the Peace that they intend to make an order upon the parish of Bradford-on-Avon, in which the said lunatic has been adjudged to be settled, for the weekly maintenance of the said lunatic in a lunatic asylum, I do hereby, in pursuance of the act of parliament above recited, authorize and direct you to cause the said Henry Lewis to be received from the said House of Correction into the said lunatic asylum, there to remain (maintenance for the said lunatic to be provided as aforesaid) until further order shall be made herein; and for so doing this shall be your warrant. Given at Whitehall, the 18th day of June, 1864, in the 27th year of Her Majesty's reign,

"G. Grey.

"61404.

"The Superintendent of the Lunatic Asylum at Britton Ferry, in the county of Glamorgan, and all others whom it may concern: Warrant for the reception of Henry Lewis in the Lunatic Asylum at Britton Ferry, in the county of Glamorgan."

The officers of the parish of Bradford and the guardians of the poor of the Bradford Union were not informed of the lunacy of Henry Lewis, or of his removal to the asylum, until August, 1865, when the proprietor of such asylum applied to the guardians for the expense of maintaining the lunatic up to that date. In December, 1866, the guardians were again applied to by the clerk of the peace for the county of Wilts, to pay the expenses of maintaining the lunatic. On both occasions they refused to make any payment, on the ground that no order had been made on them, and that they were not liable to do so.

The case then set out an order of two Justices of the county of Wilts, sitting in

the borough of Devizes (the Secretary of State not having otherwise directed), made on the 28th of March, 1867, whereby they adjudged the place of the last legal settlement of Henry Lewis to be in the parish of Bradford, in the union of Bradford, in the county of Wilts, and ordered the guardians of the union to pay to the keeper of the house of correction 5*l.* 15*s.* 3*d.*, the reasonable charges for inquiring into the settlement, and of carrying Henry Lewis to the asylum, and to pay to the keeper of the asylum 11*l.* 15*s.* 4*d.*, being the aggregate amount of the weekly sums or charges for his maintenance in the asylum from the 23rd of June, 1864, to the 25th of March, 1867, and also to pay from the last-mentioned day such weekly sums as should from time to time be directed by the same or other Justices for the maintenance of Henry Lewis in the asylum.

The settlement of the lunatic had not been previously adjudged.

The borough of Devizes is a borough with a separate commission of the peace, and has a separate court of quarter sessions and a recorder, and the charters contain a non-intromittant clause.

The order was served upon the guardians, with the notice and grounds of adjudication, signed by the keeper of the house of correction and by Charles Pegge, the proprietor of the asylum.

The ground of adjudication was that Henry Lewis was born in the parish of Bradford in the year 1807.

The settlement of the lunatic was, at the time of the making of the order, in the parish of Bradford.

The guardians of the union duly gave notice of appeal against the order, dated the 28th of March, 1867, to the clerk of the peace of the county, to the clerk of the peace of the borough, to the keeper of the house of correction, and to the proprietor of the asylum. The grounds of appeal against such order were as follows :

First, That the order bearing date the 28th of March, now appealed against, was bad, illegal and void in law upon the face thereof.

Secondly, That the Justices being Justices of the county only, and not for the borough, had no jurisdiction to make the order.

Thirdly, That, at the time of the making of the order, Henry Lewis was not imprisoned in any county, city, borough or place within the jurisdiction of the Justices, or a criminal lunatic within the meaning of 3 & 4 Vict. c. 54.

Fourthly, That the sentence of imprisonment of Henry Lewis had expired long before the making of the order.

Fifthly, That the order was retrospective, and therefore bad.

Sixthly, That the Justices had no power in and by the order, to order the guardians to pay the expenses incurred in inquiring into the insanity of Henry Lewis, or for conveying him to the asylum in June, 1864.

Seventhly, That the Justices, in and by the order, had no power to order the guardians to pay the aggregate amount of the weekly sums or charges for the maintenance of Henry Lewis in the asylum, from the 25th of June, 1864, to the 25th of March, 1867, or any part thereof.

Eighthly, That the Justices had no power, in and by the order, to order the guardians to pay any weekly sum for the future maintenance of the lunatic in the asylum.

Ninthly, That the order adjudging the settlement of the lunatic and ordering the guardians to pay the expenses of inquiring into his insanity, and the expenses of maintaining the lunatic, ought to have been made (if at all) at the time when the lunatic was conveyed from the prison to the asylum, or within a reasonable time thereof.

Tenthly, Negativating the settlement of the lunatic in Bradford parish.

Eleventhly, That all the allegations contained in the notice sent to us, and in the grounds upon which the adjudication of the Justices took place, are, and each of them is, untrue ; and we shall require you to prove the same at and upon the trial of the appeal.

Twelfthly, That the notice and grounds of adjudication sent to us are not signed by the persons required by law to sign the same.

Thirteenthly, That the order ought to have been obtained by the clerk of the peace of the borough or by the clerk of the peace of the county.

To avoid any difficulty arising from the mode in which the appeal clause to the 3 & 4 Vict. c. 54. is worded, separate notices

of appeal were given both for the borough and county sessions.

The questions for the opinion of this Court were :

First, Whether, under the circumstances above stated, the order dated the 28th of March, 1867, was a good and valid order.

Secondly, Whether the guardians were liable to pay the sum of 5*l.* 15*s.* 3*d.*, being the charges of inquiring into the insanity of Henry Lewis and his conveyance to the asylum ; or the sum of 11*l.* 15*s.* 4*d.* being the aggregate amount of the weekly sums for his maintenance in the asylum from the 25th of June, 1864, to the 25th of March, 1867.

Thirdly, And whether the guardians were liable to pay the weekly sum of 16*s.* for his maintenance subsequently to the 25th of March, 1867, in the asylum.

If this Court should answer these questions or the first in the affirmative, the order was to be confirmed. But if the Court should answer the first question in the negative, then the order was to be quashed. And if the Court shall answer the second question in the negative and the third in the affirmative, or the third in the negative and the second in the affirmative, then such part of the order as was held to be bad was to be quashed, if this Court should think it right to do so.

Coleridge (*Wyndham Slade* with him), in support of the order.—The order is properly made under section 2. of 3 & 4 Vict. c. 54 (1). It will be said that it cannot be

made after the term of imprisonment has expired, but it is submitted that that is not so ; the end of the 1st section shews that the Secretary of State has power over the lunatic, although the term of imprisonment may have expired—see *The Queen v. the Clerk of the Peace for the West Riding of*

under his hand, that such person shall be removed to such county lunatic asylum or other proper receptacle for insane persons as the said Secretary of State may judge proper and appoint ; and every person so removed under this act, or already removed or in custody under any former act relating to insane prisoners, shall remain under confinement in such county asylum or other proper receptacle as aforesaid, or in any other county lunatic asylum or other proper receptacle to which such person may be removed, or may have been already removed, or in which he may be in custody by virtue of any like order, until it shall be duly certified to one of Her Majesty's Principal Secretaries of State, by two physicians or surgeons, that such person has become of sound mind, whereupon the said Secretary of State is hereby authorized, if such person shall still remain subject to be continued in custody, to issue his warrant to the keeper or other person having the care of any such asylum or receptacle as aforesaid, directing that such person shall be removed back from thence to the prison or other place of confinement from whence he or she shall have been taken, or, if the period of imprisonment or custody of such person shall have expired, that he or she shall be discharged."

Section 2, "That in all such cases as aforesaid, unless one of Her Majesty's Principal Secretaries of State shall otherwise direct, it shall be lawful for such two Justices, or any other two Justices of the Peace of the county, city, borough, or place where such person is imprisoned, to inquire into and ascertain, by the best evidence or information that can be obtained under the circumstances, of the personal legal disability of such insane person, the place of the last legal settlement, and the pecuniary circumstances of such person ; and if it shall not appear that he or she is possessed of sufficient property which can be applied to his or her maintenance, it shall be lawful for such two Justices, by order under their hands, to direct the overseers of the parish where they adjudge him or her to be lawfully settled, or in case such parish be comprised in a union declared by the Poor Law Commissioners, or shall be under the management of a board of guardians established by the Poor

(1) "That if any person, while imprisoned in any prison or other place of confinement under any sentence of death, transportation, or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour or to keep the peace or to answer a criminal charge, or in consequence of any summary conviction or order by any Justice or Justices of the Peace, or under any other than civil process, shall appear to be insane, it shall be lawful for any two Justices of the Peace of the county, city, borough, or place where such person is imprisoned to inquire, with the aid of two physicians or surgeons, as to the insanity of such person ; and if it shall be duly certified by such Justices and such physicians or surgeons that such person is insane, it shall be lawful for one of Her Majesty's Principal Secretaries of State, upon receipt of such certificate, to direct, by warrant

Yorkshire (2). The custody remains until a certificate is given that the prisoner is sane, and the expenses which are incurred during the whole time are to be recovered by an order of Justices made under section 2.

[LUSH, J.—It seems from the provisions

Law Commissioners, then the guardians of such union, or of such parish, (as the case may be,) to pay on behalf of such parish, in the case of any person removed under this act, all reasonable charges for inquiring into such person's insanity, and for conveying him or her to such county lunatic asylum or receptacle for insane persons, and to pay such weekly sum as they or any two Justices shall, by writing under their hands, from time to time direct, for his or her maintenance in such asylum or receptacle in which he or she shall be confined, and in the case of any person removed under any former act relating to insane prisoners, to pay such weekly sum as they or any two such Justices as aforesaid shall, by writing under their hands, from time to time direct, for his or her maintenance in the asylum or receptacle in which he or she is confined; and when the place of settlement cannot be ascertained, such order shall be made upon the treasurer of the county, city, borough, or place where such person shall have been imprisoned; but if it shall appear, upon inquiry, to the said or any other two Justices of the county, city, borough, or place where such person is imprisoned, that any such person is possessed of property, such property shall be applied for or towards the expenses incurred or to be hereafter incurred on his or her behalf, and they shall from time to time, by order under their hands, direct the overseers of any parish where any money or securities for money, goods, chattels, lands, or tenements of such person shall be, to seize so much of the said money, or to seize and sell so much of the said goods and chattels, or receive so much of the annual rent of the lands or tenements of such person, as may be necessary to pay the charges, if any, of inquiring into such person's insanity, and of removal, and also the charges of maintenance, clothing, medicine, and care of any such insane person, accounting for the same at the next special petty sessions of the division, city, or borough in which such order shall have been made, such charges having been first proved to the satisfaction of such Justices, and the amount thereof being set forth in such order."

of the statute that the property of the prisoner may be applied towards the expenses incurred, so that it would seem that there must be power to make the order although the term of imprisonment has expired.]

Next, it will be said that these county Justices have no power to sit in the borough and make the order there. The borough has a Court of Quarter Sessions, with a non-intromittant clause, but the gaol is part of the county of Wilts, and the Justices have power to sit in it for a county purpose—see 11 & 12 Vict. c. 43. s. 6, referring to 11 & 12 Vict. c. 42; and see also 6 Geo. 4. c. 64. s. 48.

Poland (*Lopes* with him), contra.—The order is wholly bad, or, at any rate, it is bad in respect of the sum of 11*l.* 15*s.* 4*d.*, being retrospective as to that amount. As to the first point, at the end of the twelve calendar months Henry Lewis ceased to be a criminal lunatic, within the meaning of 3 & 4 Vict. c. 54; he would then be entitled to be treated as any other lunatic in a private asylum, and the Justices had no power to make the order. The keeper of the asylum must apply to the Secretary of State for the repayment of the expenses of maintaining the lunatic.

[LUSH, J.—He can only be paid his expenses by getting an order under section 2.]

Next, the 6th section of 11 & 12 Vict. c. 43. no doubt incorporates some of the provisions of 11 & 12 Vict. c. 42; but then by section 35. nothing in the act is to apply to orders made with respect to lunatics; and by 26 & 27 Vict. c. 77. s. 1. that section is not to have any controlling effect upon the 6th section, It is submitted that the result is, that the county Justices have no jurisdiction within the borough to make this order.

[MELLOR, J.—If it had been intended to have the effect which you suggest, some other words would have been introduced. The controlling effect of section 35. on section 6. is repealed by 26 & 27 Vict. c. 77.]

Next, the order is bad as to the sum of 11*l.* 15*s.* 4*d.* The order of the Home Secretary was made in 1864, while the present order was made in March, 1867. It is a principle of law that the ratepayers of that year should not be compelled to pay the expenses incurred in former years. If

such an order be held good, why should not one be made for all past times? Under 16 & 17 Vict. c. 97. s. 97. an order may be made for the repayment of all moneys paid for the last twelve months; but that is by the express provision of the statute, without which it could not have been done at all. So in sections 98. and 99; and by section 133. nothing in the act is to affect 3 & 4 Vict. c. 54. *The Queen v. the Clerk of the Peace for the West Riding of Yorkshire* (2) does not decide that an order can be made for past expenses. The same objection was taken in *The King v. Maulden* (3), and Lord Tenterden, C.J. says, "the next question is, Is the order good altogether? It is objected to as being retrospective. The effect of a retrospective order is, to bring on inhabitants who ought not to bear it, a charge incurred during a former period. It is quite unnecessary that the Justices should have the power of making a retrospective order; for an order for the payment of a weekly maintenance might have been made as soon as the pauper was placed in the asylum; and as there is not any necessity that the Justices should have such power, and as no such power is expressly reserved to them, I am of opinion that they had it not." This order, therefore, so far as it relates to the by-gone time is bad, but good as to the residue.—See also *The King v. St. Nicholas, Leicester* (4), and *The Queen v. Darton* (5).

Coleridge replied.

COCKBURN, C.J.—Three objections have been made to the validity of this order. With regard to the two objections which have been made to the whole order, I am of opinion that our judgment must be for the respondent. The first objection is, that the order was made after the period of imprisonment to which the lunatic had been sentenced had expired.—[His Lordship went through the facts stated in the case as to this point.]—I think that the appellants properly refused to pay the expenses of the maintenance of the lunatic, because no order had then been made upon them, and if they had paid them, they would have done so in their own wrong. No order

was applied for until the month of March, 1867. It was objected that the order was bad on the ground I have mentioned, and at first I thought that it was so. I think, however, on a more careful examination of the section, it appears that although the period of imprisonment had expired, yet that if the lunatic had, during the time of imprisonment been transferred from the prison in which he had been confined to a lunatic asylum, he would be entitled to his discharge at the expiration of the sentence. That is borne out by the subsequent enactment in 23 & 24 Vict. c. 76. s. 8, which provides that when by reason of the expiration of the term of imprisonment, the prisoner would be entitled to his discharge, if duly certified to have become of sound mind, it shall be lawful for the Secretary of State to order the discharge, although he may not have been certified to be of sound mind, to the intent that he may be placed in a county lunatic asylum, or otherwise subjected to the same care and treatment as lunatics not being criminal. This shews plainly that without the order of the Secretary of State he could not have been discharged. The order is therefore good so far as this objection is concerned.

The second objection is, that the order is bad because the Justices making it were county Justices, who made it while sitting in the borough. The 6th section of 11 & 12 Vict. c. 42. enables Justices of the Peace for the county to act within the town. This is incorporated into 11 & 12 Vict. c. 43. by section 6. of that act; but then it is said that section 35. provides that nothing in the act shall extend to complaints or orders made with respect to lunatics. But then by 26 & 27 Vict. c. 77. that section is not to affect section 6, and therefore, by what is certainly a most remarkable piece of legislation, the operation of section 6. is left untouched, but the rest of the act, as section 11, which gives a limit to the time within which complaint must be made, is not to apply to these orders. This objection, therefore, also fails.

The third objection is, that the order is bad in part, because it is retrospective, that is to say, as to the payment of the 11*l.* 15*s.* 4*d.* The question arises whether, under the 2nd section of the 3 & 4 Vict. c. 54. such an order can be made. I quite feel that

(3) 8 B. & C. 78.

(4) 3 Ad. & E. 79.

(5) 12 Ibid. 78.

mischief and inconvenience may result from our holding that such an order cannot be made where the keeper of the asylum has no right to refuse to receive the lunatic, and yet without an order cannot recover the expenses of the maintenance. Such a position is not satisfactory, but if the legislature has not provided for such a case, it is not for us to legislate with a view to cure the omission. I am of opinion that we cannot so construe section 2. as to make it operative, so as to enable the Justices to make the order. —[His Lordship read the various provisions of the sections, and then continued]—Now, *prima facie*, that language seems to be prospective; there is nothing in it which speaks of the power to make the order as to the expense already incurred, and we start with this undeniable and indisputable rule of law, that a rate must be prospective and not retrospective, for the reasons given, namely, that the expenses ought to fall upon the ratepayers for the present time, and that by making a retrospective rate, the expenses are made to fall upon those who were not ratepayers at the time they were incurred. This is a principle long adopted and long acted on. It occurred to me that the order might be good, although retrospective, if it had been applied for within a reasonable time; but the statute is silent as to past expenses, and I find nothing to warrant it being made as to expenses incurred between the removal and the order. I lament that I should be obliged to come to this conclusion, but the omission must be cured by the legislature if it is to be cured at all.

BLACKBURN, J.—I am of the same opinion on all the points but one, and as to that I do not doubt sufficiently to say that I dissent. The first question arises on the statute 3 & 4 Vict. c. 54.—[His Lordship read the 1st section.]—I agree with my Lord and the rest of the Court that the Secretary of State may send the prisoner who becomes lunatic to the asylum, and that he is to be confined there till he is certified to be of sound mind, the Secretary of State having power to change the asylum in which he is confined, and then he may be discharged upon the order of the Secretary of State. I think that during the interval between the time at which the Secretary

of State sends him to the asylum and the time of his discharge, he is to be considered to be in confinement under the order of the Secretary of State, and is to be maintained in the same way as he would be entitled to be maintained while he was in the asylum during the term of imprisonment. Then comes the question how he is to be maintained. The answer is to be found in section 2, for section 1. is silent upon it.—[His Lordship read the section.]—I entertain some doubts as to the meaning of these words, enabling the Justices to make the order upon the overseers or the guardians or the treasurer of the county. It seems to me that the keeper of the asylum has merely an equitable claim upon the government for the maintenance of the lunatic, and he cannot get the money unless he gets an order under that section. While the prisoner is confined in the asylum he must be maintained, and it must take some time, some few weeks, to ascertain where his settlement is, if it can be ascertained, and before the treasurer can be ordered to pay the expenses. The legislature must have intended that the keeper should go on keeping and maintaining him all that time. Then the time keeps running on, and if the order is afterwards made, the body of ratepayers will be changed, and it will be hard upon them if they are made to pay. Does the section mean that the Justices may make an order for the maintenance from the date of the order during the confinement already unprovided for, or does it mean maintenance from the day and date when he was sent to the asylum? I am inclined to think that the true construction is, to give power to make the order for the weekly payments from the time the lunatic was sent to the asylum. The principle upon which retrospective orders are said to be bad was pretty clearly laid down in *The King v. Maulden* (3) and other cases. But in *The King v. Maulden* (3) Lord Tenterden says, that there was no necessity that the Justices should have power to make such an order. In the present case, unless there is power to make the order now objected to, the keeper of the asylum cannot get the expenses at all except through the benevolence of the Crown. If I could find anything in the act to shew that it might be made retro-

spective so far as a reasonable period is concerned, I should be willing to say that if the application was made in a reasonable time, the Justices ought to have power to make the order, but I cannot find anything of that sort. As to the other point, I agree with the rest of the Court.

MELLOR, J.—I am of the same opinion. I do not desire to add anything to what has been said upon the first point. With reference to the second point, I will only say that I think the 26 & 27 Vict. c. 77. has the effect which my Lord and my Brother Blackburn have put upon it, and that is the only rational meaning which can be suggested, although the legislature has not expressed its meaning very plainly.

As to the third point, I differ from the rest of the Court. When I consider the language of the act and the object which the legislature had in view, it seems to me that, *ex necessitate rei*, there must be power to make an order in some respects retrospective. It could never have been intended that the keeper of the asylum should be left to the equitable consideration of the Treasury in these matters, and I think that the intention was, that all the expenses of the maintenance, of the removal to the asylum and of the inquiry into the state of mind of the lunatic, should be thrown upon the parish in which he was settled. I do not feel the difficulty which is felt by the rest of the Court in dealing with the expenses of maintenance. Looking at the necessity of the case and all the circumstances, I think that we must put upon the words the construction for which I think they are large enough,—that it was intended to give the Justices power to order that the costs of maintenance should be paid from the time of the removal of the lunatic to the time at which the order is made. Such an order would be to a certain extent retrospective; but I think that the Justices would have power to make such an order. I think, however, that the person who applies for such an order must come promptly if he wishes to get back the money which he has expended. If he chooses to pay the necessary expenses it is his own fault, and he cannot be allowed to go against the principle which has been established, that you must not throw upon the ratepayers of one year the expenses incurred in another,

unless there is some statutory enactment giving power to do so. But I come to the same conclusion as the rest of the Court, that the order is bad, because the keeper of the asylum is precluded from obtaining it.

LUSH, J.—The first question is, whether the order was made in time. The prisoner was under confinement and became insane, and then he was removed to the lunatic asylum, where he continued. Had the Justices power to make the order after the term of imprisonment had expired? I cannot doubt that they had such power; so long as he continued in the asylum, they had power under the 2nd section to ascertain the place of his last legal settlement, and to direct the overseers to pay the charges for the inquiry into his sanity, the expense of removal and the maintenance. I think, therefore, that the order is so far good. The second question is, whether they had power to make the order while they were sitting within the borough. I agree that they had such power. The third question is, whether they could make it so as to enforce the payment of bygone expenses. I agree with my Lord that the language of the 2nd section is prospective merely. I can see no qualifying words.—[His Lordship read from the section.]—The words are capable of meaning that the order may be made for the whole maintenance, past and future, or they may mean future maintenance. Do they mean the whole or the future only? I am unable to agree with my Brother Mellor that the order might be made as to part of the past expenses, for if there is power to make it as to part, there is power to make it as to the whole, so that it could be made for the whole expenses running over a series of years. I cannot interpret the statute as saying that there is power to make a retrospective order, there being nothing to qualify the rule of law which prevails in such cases. So far, therefore, as it applies to the sum of 114*l.* 15*s.* 4*d.*, I think it bad.

Judgment accordingly.

Attorneys—G. L. P. Eyre & Co., agents for Alfred Beavan, Bradford-on-Avon, for appellants; Merriman & Pike, agents for Merriman & Gwillim, Marlborough, for respondents.

[IN THE COURT OF COMMON PLEAS.]

1868.
June 10, 11 ;
July 4.

STAMPER, appellant ; THE
CHURCHWARDENS AND
OVERSEERS OF THE POOR
OF THE PARISH OF SUN-
DERLAND - NEAR - THE -
SEA, respondents.

*Poor-Rate — Parliamentary Borough
Vote — Owner rated instead of Occupier
—30 & 31 Vict. c. 102. s. 7.*

The appellant and five other persons each occupied a room in a six-roomed house in the parish of Sunderland-near-the-Sea, in the parliamentary borough of Sunderland; each had the exclusive possession of his own room, and used in common the street-door, &c.; the owner occupied no portion of the house; at the time of the passing of the 30 & 31 Vict. c. 102. the owner was rated in respect of the whole house instead of the occupiers, by virtue of the Small Tenements Act (13 & 14 Vict. c. 99), the provisions of which were then in force in the parish; after the passing of the 30 & 31 Vict. c. 102, the churchwardens and overseers of the parish separately rated the six occupiers:—Held, that the rate was bad,

and that the owner (not the occupiers) was rateable, under the exception which is contained in 30 & 31 Vict. c. 102. s. 7, and which provides that "where the dwelling-house or tenement shall be wholly let out in apartments or lodgings not separately rated, the owner . . . shall be rated . . . to the poor-rate."

This was a case stated by consent, and by order of Willea, J., for the opinion of the Court of Common Pleas, under the statute 12 & 13 Vict. c. 45. s. 11:

CASE.

1. A rate or assessment for the relief of the poor of the parish of Sunderland-near-the-Sea, in the county of Durham, and for other purposes chargeable thereon according to law, was made by the churchwardens and overseers of the said parish, on the 20th of November, 1867, after the rate of 1s. 10d. in the pound, in which rate or assessment the occupiers of a certain house or tenement, situate at No. 5, Queen Street, within the said parish, were rated or assessed as follows:—

2. The said rate or assessment, and the declaration required by law were duly

No.	Name of Occupier.	Name of Owner.	Description of property rated.	Name and situation of property.	Gross estimated rental.	Rateable value.	Rate at 1s. 10d. in the pound.
2226	Edward Woods . .	Thos. Lawson	1 room	5, Queen St.	£. s. d. 4 3 0	£. s. d. 3 10 0	s. d. 6 5
2227	John Cave	"	"	"	3 9 0	3 0 0	5 6
2228	William Stamper . .	"	"	"	4 3 0	3 10 0	6 5
2229	Margaret Havelock .	"	"	"	3 9 0	3 0 0	5 6
2230	William Knight . .	"	"	"	3 9 0	3 0 0	5 6
2231	Thomas Humble . .	"	"	"	3 9 0	3 0 0	5 6

signed by a majority of the churchwardens and overseers of the said parish, and the said rate or assessment was duly allowed on the 30th of November, 1867, by George Hudson and H. R. A. Johnson, Esqs., two of Her Majesty's Justices of the Peace for the said county.

3. On the 22nd of May, 1868, William Stamper, an occupier named in the said rate or assessment of one of the rooms in the house or tenement referred to in the

said rate or assessment, gave notice to the churchwardens and overseers of the poor of the said parish, to the assessment committee of the Sunderland Union, in the said county of Durham, and to Thomas Lawson, of Bishop Wearmouth, the owner of the tenement mentioned in the said rate or assessment, in the following terms:

"County of Durham, to wit.

"To the churchwardens and overseers of the poor of the parish of Sunderland, &c.

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"Take notice that I, being rated as an occupier of a room in a certain tenement, No. 5, Queen Street, in the parish of Sunderland-near-the-Sea, comprised within the said Sunderland Union, in a certain rate or assessment for the relief of the poor of the said parish, and for other purposes chargeable thereon according to law, made on the 20th of November, 1867, after the rate of 1s. 10d. in the pound, do intend, at the next general quarter sessions of the peace to be holden in and for the county of Durham, at Durham, in the said county, to appeal against the said rate or assessment; and that the particular causes and grounds of such appeal are: First, that, as an occupier of a room in the said tenement, I am not by law liable to be rated or assessed to the relief of the poor of Sunderland-near-the-Sea. Secondly, that the room which I occupy in the said tenement is not a house or tenement liable to be rated or assessed to the relief of the poor of the said parish. Thirdly, that the dwelling-house or tenement of which the room for which I am rated or assessed forms a part, is wholly let out in apartments or lodgings, and the owner of such tenement is liable by law to be rated or assessed in respect thereof to the relief of the poor of the said parish, and not the occupier of any separate apartments or lodgings in the said dwelling-house or tenement. Fourthly, that I am not an occupier of any land, house or tenement within the said parish liable by law to be rated or assessed to the relief of the poor of the said parish. And take notice that at the time of the said appeal I mean to avail myself of all or some one or more of the said causes and grounds in support of the said appeal.

(Signed) "William Stamper."

4. The said parish of Sunderland-near-the-Sea is within the parliamentary borough of Sunderland, in the county of Durham.

5. The house, No. 5, Queen Street, mentioned in the said rate or assessment, is one of the many houses in the said parish which are wholly let out to different tenants in separate rooms.

6. The house was originally built and intended as a separate dwelling-house for the occupation of one family only. It is a six-roomed house, and has three storeys, containing two rooms on each floor, namely, one room on each side of the passage and stair-

case. There is one outer or street door, and a water-closet and other conveniences, all of which since the occupation of the house by the several tenants have been and are used in common by all of them. The six rooms in the house are tenanted by the six persons respectively whose names appear in that portion of the rate hereinbefore set forth; and whatever furniture is in the room is the property of the tenant occupying the same. The owner, Thomas Lawson, does not reside in, or, by himself, his family, or servants, occupy any portion of the said house or tenement; neither has he, nor does he exercise, nor is he entitled to have or exercise, any control or interference with the tenants, nor does he supply the tenants with any attendance or service of any kind or description whatever. Each tenant has the exclusive occupation of his or her own respective room, is liable to a week's notice to quit, and the rents are payable weekly by each, as follows, viz. Edward Woods, 2s. per week; John Oave, 1s. 8d. per week; William Stamper, 2s. per week; Margaret Havelock, 1s. 8d. per week; William Knight, 1s. 8d. per week; Thomas Humble, 1s. 8d. per week.

The assessed taxes or house-duty, the rates leviable under the Public Health and Local Government Acts, and the rent of the water supplied by the water company of the district for the purposes of the water-closet, are all paid by the owner of the said tenement.

7. The Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7, enacts, with regard to any parish situated either wholly or partly within a parliamentary borough, as follows:

"Where the owner is rated at the time of the passing of this act to the poor-rate in respect of a dwelling-house or other tenement situate in a parish wholly or partly in a borough, instead of the occupier, his liability to be rated in any future poor-rate shall cease, and the following enactments shall take effect with respect to ratings in all boroughs.

(1.) After the passing of this act no owner of any dwelling-house or other tenement situate in a parish either wholly or partly within a borough shall be rated to the poor-rate instead of the occupier, except as hereinafter mentioned:

(2) The full, rateable, value of every dwelling-house or other separate tenement, and the full rate in the pound payable by the occupier, and the name of every occupier, shall be entered in the rate-books :

Where the dwelling-house or tenement shall be wholly let out in apartments or lodgings not separately rated, the owner of such dwelling-house or tenement shall be rated in respect thereof to the poor-rate :

Provided as follows :

(1.) That nothing in this act contained shall affect any composition existing at the time of the passing of this act ; so nevertheless that no such composition shall remain in force beyond the 29th of September next.

(2.) That nothing herein contained shall affect any rate made previously to the passing of this act, and the powers conferred by any subsisting act for the purpose of collecting and recovering a poor-rate shall remain and continue in force for the collection and recovery of any such rate or composition.

(3.) That, where the occupier under a tenancy subsisting at the time of the passing of this act of any dwelling-house or other tenement which has been let to him free from rates is rated and has paid rates in pursuance of this act, he may deduct from any rent due or accruing due from him in respect of the said dwelling-house or other tenement any amount paid

by him on account of the rates to which he may be rendered liable by this act."

8. By the 61st section of the said act it is enacted, that, unless there is something in the context repugnant to such construction, the term "dwelling-house" shall include any part of a house occupied, as a separate dwelling and separately rated to the relief of the poor.

9. The 13 & 14 Vict. c. 99, intituled, "An Act for the better assessing and collecting the poor-rates and highway-rates in respect of small tenements," commonly called "The Small Tenements Rating Act," received the royal assent on the 14th of August, 1850.

10. After the passing of that act, it was duly adopted in and by the parish of Sunderland-near-the-Sea, and continued in force until the passing of the 30 & 31 Vict. c. 102.

11. From the 7th of October, 1850, the owners of small tenements in the said parish the yearly rateable value whereof did not exceed 6*l.*, were duly rated to the poor-rates levied in the said parish, instead of the several occupiers of the same.

12. The following is a copy of so much of the rate for the relief of the poor of the said parish which was in existence at the time of the passing of the 30 & 31 Vict. c. 102, as relates to the said premises of the appellant :

No.	Owner.	Description of property.	Situation of property.	Gross estimated rental.	Rateable value.	Amount of rate assessed upon and payable by the owner instead of the occupier, by virtue of the statute or statutes in that behalf.
1225	Thos. Lawson	House.	5, Queen-st.	25 <i>l.</i>	20 <i>l.</i>	1 <i>l.</i>

The question upon which the opinion of the Court is desired upon the above statement of facts is, whether the said William Stamper is liable by law to be separately rated in the said rate or assessment to the relief of the poor of the said parish, as an occupier of a room in the said dwelling-house, being a part only of the said dwelling-house ; and, if not so liable, what shall be done or ordered by the Court in the premises.

The Solicitor General (Lovesy with him), for the appellant.—The question is, whether the owner or the occupiers are rateable under 30 & 31 Vict. c. 102. s. 7. The house is *wholly* let out in apartments which previously were not separately rated, and that section enacts that where a dwelling-house shall be wholly let out in apartments or lodgings not separately rated, the owner shall be rated. It is true that the interpretation clause (section 61.) says that,

"dwelling-house" shall include "any part of a house occupied as a separate dwelling, and separately rated to the relief of the poor"; but this is only to hold good if there is nothing in the context repugnant to such construction, and here such a construction would be manifestly repugnant. Further, when the 7th section speaks of "apartments or lodgings," "lodgings" do not mean lodgings in the ordinary popular sense. The expression is taken from the first statute relating to the rating of small tenements, viz., Sturges Bourne's Act, 59 Geo. 3. c. 12, a statute which was followed by the 13 & 14 Vict. c. 99; and a consideration of those statutes shews that "apartments or lodgings" does not mean lodgings in the ordinary sense, as to which there was no necessity for the statutes, as they never were rated; but is meant to apply to cases where the occupier may be treated as something more than an ordinary lodger. Moreover, the words of section 7. are "not separately rated," and here the rooms were not separately rated; and if it be urged that "rated" means "rateable," the answer is, that the legislature has used both phrases in the statute, and shewn that they knew how to distinguish between them. The section looks to what is existing, in fact, at the time of the passing of the statute; and its effect is, that where the Small Tenements Acts are in force, those acts are to cease and the occupiers to be rated, unless the case falls within the exception, as the present case does. Under the Reform Act, 2 Will. 4. c. 45. s. 27, it was held, in *Cook v. Humber* (1) that the meaning of "house" was a question of structure, and not merely of the mode of occupying; and it may be said that the words of the interpretation clause, "occupied as a separate dwelling," re-introduce the question of structure; but even if this be so, the 7th section was intended to meet cases where the building was structurally one house, as here. The section gets rid of the Compounding Acts, so that the occupiers become rateable; but, as it was foreseen that in one case the occupiers would be too poor to pay rates, the section provides that, in such case, the owner shall be still rated; and that

case is the present one, which falls within the intention and words of the statute.

Manisty (Bruce with him), for the respondents.—Although it had two objects, the main object of the 30 & 31 Vict. c. 102. was to extend the franchise and, amongst other things, to establish household suffrage accompanied by payment of rates,—a suffrage which rests on sections 3. and 8, combined with the interpretation clause, section 61. The intention (which is what we should look to) was, that where a man had a separate exclusive occupation (not as a mere lodger) and contributed to the rates, he should be qualified to vote. In *Pitts v. Smedley* (2) a lodger is defined to be "the occupier of part of a house, where the landlord resides upon the premises and retains the key of the outer door."

[BOVILL, C.J.—In *Cook v. Humber* (1) Erle, C.J., says, "The common meaning of 'lodgings' is, part of a house used for residence."]

In *Toms v. Luckett* (3) the exclusive control over the door is made the test; and in *Nolan's Poor Law* it is said: "In order to constitute a rateable occupier it is necessary, not only that the person should have possession, but that he should have such a control and dominion over the subject as implies freedom from any paramount occupation or direct interference by a superior with his domestic arrangements and internal management, such as a farmer enjoys over his farm and the master of a family over his house. Although, therefore, if a tenement be divided by a partition and inhabited by different families, the owner in one and a stranger in another, these are several tenements and severally rateable,—per Holt, C.J., *Tracey v. Talbot* (4);—yet no lodger, though possessing the principal part of the house, was ever rated; but the owner, how small soever the part reserved for himself, is, in the eye of the law, the tenant for the whole, and is rated as the occupier." The expressions used in *The Queen v. Smith* (5) are also much to the

(1) 11 Com. B. Rep. N.S. 33; s. c. 31 Law J. Rep. (N.S.) C.P. 73.

(2) 8 Sc. N.R. 907; s. c. 14 Law J. Rep. (N.S.) C.P. 73.

(3) 5 Com. B. Rep. 23; s. c. 17 Law J. Rep. (N.S.) C.P. 27.

(4) Salk. 531.

(5) 30 Law J. Rep. (N.S.) M.C. 74.

same effect. And in the present case there was exclusive occupation, and no part reserved. We now come to the exception contained in the 7th section, of which the effect is, that where the owner lets the whole house so that he has no dominion, and it is occupied solely by tenants who are rated and pay rates, these occupiers are to be rated.

[BOVILL, C.J.—Your contention therefore is, that “rated” means “rateable,” whilst the other side say it means “rated at the time of the passing of the act.”]

The question is not to be determined by the fact of the Small Tenements Acts being in force in the parish, for, if so, the result would be different in the different parishes of the borough, according as those acts had or had not been adopted therein; and another consequence would follow from such a construction, viz, that the owner would be rated just as he was under the Small Tenements Acts, but would not have the advantage of compounding. The 59 Geo. 3. c. 12. s. 19. clearly points to the existence of such an occupation by lodgers as would make them rateable, and it is clear that where the house is wholly let out they are so liable. The exception merely meant to say, *ex abundanti cautela*, that in one case the owner was to be liable, and it applies where the owner chooses to let out to persons in such a manner that he would still be occupier in point of law, and they would not be separately rated.

The Solicitor General, in reply.—At the passing of this new act these rooms were not separately rated; and that being so when the act passed, the question is, whether this was to be altered. It is said that we must construe the act according to its intention, and not its words; but we must get at the meaning of what is expressed. Again, we must take into account what existed in fact and law at the time of the passing of the act. When the act passed there were pure lodgers, and also cases where the occupants were, in fact, not treated as simple lodgers; where they no doubt were occupiers, and the owner was an occupier also. If an owner had tenants occupying separate houses whose annual value was below 6*l.*, and the Small Tenements Acts were adopted, the owner had to pay a compounding rate whether he liked or not. Under the present statute this is to

cease, and the occupiers are to be rated, and if they be rated and pay rates they are entitled to be registered. And if there were nothing more, the act would apply to all cases where the owner was previously rated instead of the occupiers. But then comes an exception as to compounding, which says, in effect, that some compounding householders let out their houses in lodgings which are not pure and simple lodgings (for there was no necessity to provide as to that), but are lodgings in the sense in which the term is used in Sturges Bourne's Act, where it may be doubtful whether the occupant is an occupier or a lodger; and that the owner who, in such a case, has been rated shall continue to be rated. The result of the argument on the other side is, that the provision is not wanted; and, further, the 7th section has nothing to do with lodgers; and no case but the present can be put to which it can be applicable. The expression “not separately rated” applies to actually existing facts, and if “rated” were to be read “rateable,” the provision would have no sense. The occupants are either simple lodgers or are occupiers of apartments or lodgings in the sense of Sturges Bourne's Act: in the first case the clause is not wanted, and in the second we have the very case contemplated.

Cur. adv. vult.

The following judgments were delivered on the 4th of July—

BOVILL, C.J.—The appellant in this case is the occupier of one room in a house situate within the respondents' parish; and by a rate made for the relief of the poor on the 20th of November, 1867, he was rated at a sum of 6*s.* 5*d.* upon a rateable value of 3*l.* 10*s.* per annum, in respect of his occupation of that room. He appealed to the Quarter Sessions against the rate; and this special case has been stated, in order to obtain the decision of this Court upon the question of whether he was liable to be so rated. Although the question is brought before us in this form, the determination of it involves the general principle upon which parochial officers must act in rating similar property, and will thus necessarily affect the lists of voters in parliamentary boroughs, and the rights of persons to be placed upon the register. The appellant in this particular case objects to be rated, and the parish

officers are insisting that they have a right to rate him; but, in many cases, the position of the parties would be reversed. The parishes would probably prefer to rate the owners of small houses rather than the occupiers of the separate apartments; and the occupiers of the apartments might prefer to be rated, in order to obtain the qualification for being placed upon the register of voters. We have, however, to determine what is the proper construction to be placed upon the act of parliament, with reference to this and other similar cases. The enactment, or rather the exception, in section 7. of the act of last session is, that, "Where the dwelling-house or tenement shall be wholly let out in apartments or lodgings not separately rated, the owner of such dwelling-house or tenement shall be rated in respect thereof to the poor-rate." The house in question contained six rooms, and is stated to have been wholly let out to different tenants (of whom the appellant is one) in separate rooms,—each tenant occupying one room, and all six tenants having the use in common of the street-door, passage, staircase, and other conveniences. The owner or landlord does not reside upon the premises, or occupy any part of them, or exercise any control over the tenants, each of whom has the exclusive possession of his own room. The case, therefore, seems to come precisely within the description of a "*dwelling-house wholly let out in apartments*": and the only remaining question is, whether, at the time this rate was made, on the 20th of November, 1867, these apartments were "*not separately rated*," within the meaning of this clause of the statute. The apartments were not in fact separately rated at the time of the passing of the act, nor at the time when this rate was about to be made. If those words mean not separately rated at the time the act was passed, or at the time a rate is to be made, the exception would apply, and the owner of the house, and not the separate tenants of the rooms, ought to be rated, and the appellant would be entitled to succeed on this appeal. It was contended, however, for the parish, that the words "*not separately rated*" must be read as if they were "*not liable to be separately rated*"; and that they were intended to apply, not to a case like the present, where the separate tenants of the apartments alone occupied the house, but to cases where the owner or landlord

let out the rooms, but himself resided in or kept the control over a part of the house, in such a sense as that he would be the occupier in point of law, and therefore rateable as such occupier. Upon the facts submitted for our consideration in this case, neither the owner or landlord nor any person representing him resides in or occupies any part of the house; and that has always been considered a material circumstance in determining whether the different parts of a house are to be considered as separate and independent dwellings or tenements; and, as each tenant of a room here has the sole and exclusive occupation and control over it, although he has the use of the other parts of the house in common with the other tenants, he must, I think, be considered as the occupier of a separate tenement for rating purposes. Indeed, unless this be so, there would be no person who could be properly described as the occupier, I think, therefore, that, under the statute of Elizabeth, and but for the exception in the 7th section of the act of last session, these separate occupiers of rooms would be liable to be separately rated to the relief of the poor. This, then, raises the difficulty as to the meaning and effect of the words "*not separately rated*," which are introduced into the exception in the 7th section, and which have given rise to the present question. If those words mean "*not liable to be separately rated*," this part of the section would, in my view of the occupation of the rooms, have no operation upon the case, and the separate occupiers of the rooms must be rated. But if, on the other hand, they mean, not separately rated at the time of the passing of the act, or when the rate has to be made, then the exception would apply, and the owner of the house, and not the tenants of the several rooms, must be rated. In considering what is the right interpretation of the exception, it is necessary to look to the other parts of the same section, to bear in mind the general scope and object of the act, and to consider the exception with reference to the various other provisions which are contained in the act. There is no doubt that the principal object and general scope of the late act were, to create a considerable extension of the parliamentary franchise, and in boroughs, by section 3, to extend it (subject to certain qualifications) to occupiers of dwelling-

houses who were rated to the relief of the poor; and, by the effect of the interpretation clause, section 61, it was extended to occupiers of *any part of a house* occupied as a separate dwelling, and separately rated. At the time the act was passed, in many places the parish officers were entitled to and did rate the owners of houses instead of the occupiers, under the Small Tenements Act and other statutes; and it is manifest that, so long as those acts and that system remained in operation, and the owners were rated instead of the occupiers, the occupiers of those houses or parts of houses, not being rated, could not under the 3rd section of the act be properly placed upon the register of voters. The 7th and 8th sections of the act were no doubt introduced in order to alter the previous system of rating the owners instead of the occupiers, and to make the occupiers again rateable, with a view to the parliamentary franchise. The first part of the 7th section enacts that the rating of the owner instead of the occupier is to cease; and the effect of the 8th section is, to make the previous rating of the owner, or his liability to be rated instead of the occupier, at the time the act was passed, coupled with the subsequent actual rating of the occupier, a sufficient rating for the purpose of the occupier being placed upon the register. The language of the 7th section, so far as it is material to the present question, is as follows: "Where the owner is rated, at the time of the passing of this act, to the poor-rate in respect of a dwelling-house or other tenement situate in a parish wholly or partly in a borough, instead of the occupier, his liability to be rated in any future poor-rate shall cease, and the following enactments shall take effect with respect to rating in all boroughs: 1. After the passing of this act, no owner of any dwelling-house or other tenement situate in a parish either wholly or partly within a borough shall be rated to the poor-rate instead of the occupier, *except as hereinafter mentioned*. 2. The full rateable value of every dwelling-house or other separate tenement, and the full rate in the pound payable by the occupier, and the name of the occupier, shall be entered in the rate-book. Where the dwelling-house or tenement shall be wholly let out in apartments or lodgings not separately rated, the owner of such dwelling-

house or tenement shall be rated in respect thereof to the poor-rate." These enactments are not confined to dwelling-houses or parts of houses, but apply to all tenements, and are of general application to the then existing laws for rating to the relief of the poor; and in terms and in substance they seem to apply to all cases in which at the time of the passing of the act the owner was rated *instead of the occupier*, viz., where the occupier was liable to be rated under the statute of Elizabeth, but by reason of some general or special statute was not so rated, and where the owner was rated in place of the occupier. By the first part of the enactment in section 7. and the first sub-enactment, it is clear that the rating of the owner was to cease in all cases "*except as hereinafter mentioned*"; and then comes the exception upon which the present question arises, and which is introduced by way of qualification upon the previous general enactment in the same section. Now, in the first place, it seems to me that this clause was intended to be an exception from and to apply in cases which came within the principal enactment, viz., in cases where there was an occupier who would have been liable to be rated as such under the statute of Elizabeth, but where the owner instead of such occupier was rated under the provisions of some other statute; whereas, in the case put by Mr. Manisty, and to which he contended the exception was intended to apply, viz., that of the owner occupying or having control over part of the house, the owner would be the person properly rateable as the legal occupier. That would not be a case of the owner being rated instead of the occupier, and there would therefore have been no occasion for the exception. The principal enactment in the first part of the section would not include such a case, and the exception therefore would be wholly unnecessary. It further appears to me that, both in the 7th and in the 8th sections, *the time of the passing of the act* is made the dividing point with reference to the rating and liability to be rated of the owner instead of the occupier; and I think the words "not separately rated," in the exception, must also be construed as having reference to the same time, viz., the passing of the act. It is further to be observed that, in the very next section, the 8th, the legislature,

in referring to the rating of the owner at the time of the passing of the act, uses the words "*is rated*," or "*is liable to be rated*," which shews that they were fully alive to the difference between the two expressions: and this makes it still more difficult to read the words "*not separately rated*," in the exception, as meaning "*not liable to be separately rated*," as contended for by the respondents. Again, the exception mentions *lodgings* as well as apartments; and in the case of lodgers no rating is required, their right to be placed upon the register being specially provided for by the 4th section. Upon these grounds, and after the best consideration which I have been able to give the matter, it seems to me that this is a case in which "*the house was wholly let out in separate apartments not separately rated*," within the true meaning of the exception, and that the owner of the house, and not the occupiers of the separate apartments, must therefore be rated in respect of it. The owner not being a party to the proceedings, and it not being stated what is the amount upon which he ought to be rated, we are not in a position to say how the rate should be amended; and the proper course will therefore be that it should be quashed.

BYLES, J.—I am of opinion that the assessment of the appellant is wrong. I collect from the case that the appellant, though he may be called a *lodger* in the popular sense of that word, is more than a mere lodger in its strict legal sense; for he has the exclusive occupation of a particular room, and has a right to use the outer door, the staircase, and other conveniences, as easements appurtenant to his occupation, the owner not residing on the premises, and therefore not retaining his control over the outer door, or his character of master or paterfamilias. I therefore think the tenant was before the statute 30 & 31 Vict. c. 102. liable to be rated. But I think the late statute takes away that liability, and shifts it on the owner. Sub-section 1. of section 7, and the exception ingrafted thereon, appear to govern this case. The effect of the rule and exception is this. The rule is, *no owner is to be rated instead of the occupier*. The exception is this—except where the house is wholly let out in *apartments or lodgings* not separately rated; and, in cases falling

within this exception, the owner shall be rated. An exception implies that the case excepted is one which, but for the exception, would have fallen within the rule. The rule here applies only to cases where there is an *occupier* as well as owner; so, therefore, does the exception. The excepted cases, therefore, include cases of *occupation*, properly so called. It follows that the apartments or lodgings mentioned in the section include rooms of which the tenant is occupier, and for a trespass to which he could bring an action of trespass. The effect of the enactment in the present case is, to make the owner rateable instead of the tenant. The words "*not separately rated*" introduce some difficulty, and their meaning is very doubtful. The appellant has contended that they mean, not separately rated at the passing of the act; the respondent, that *rated* means *rateable*, or that the words "*separately rated*" mean actually rated before, or by the rate in question. Some violence to the words, or some difficulty, attends both constructions, perhaps attends any construction. Possibly the words mean not separately rated as being "*separate dwellings*," like the flats in Edinburgh, or the houses in Victoria Street. But, as without those words the sense of the clause seems to be clear, and as there is (to say the least) no more difficulty in bending those words to fit that clear sense than to fit any other sense, the presence of those words does not seem to me to preclude the appellant's construction of the clause. There are other considerations which tend to the conclusion that the owner, and not the occupier, is in this case the person to be rated. The main object of the act (as appears from the preamble) was, to amend the laws relating to the representation of the people. Any alteration in the law of rating was secondary and subsidiary to the main object. In settling the qualification for voting in boroughs, the governing intention seems to have been to confer the franchise on every ordinary rated occupier of a dwelling-house (which expression by the interpretation clause includes not every dwelling, but only every "*separate dwelling*"), and to exclude from the franchise lodgers, unless their lodgings were worth, if unfurnished, 10*l.* a year. The word "*lodger*" is nowhere defined in the act; and section 4. sub-

section 2. speaks of him as *occupying* separately and as sole tenant part of a dwelling-house. From all which it may be argued that the legislature, even in section 4, did not use the words "lodger" and "lodgings" in their narrow and strict legal sense, but in the popular sense, so as to comprehend occupiers of rooms, where the rooms form part of a dwelling-house, and were not intended and constructed to form complete separate dwellings, as they do in the flats of Edinburgh, in the chambers of the Inns of Court, or in the houses in Victoria Street. Flats are as much separate dwellings as ordinary adjoining houses are. The difference is, that flats are under one roof, and are divided one from another by a horizontal plane, but ordinary adjoining houses by a perpendicular or vertical plane. And, independently of the introduction in section 4. of the word *occupy*, it may be remarked that it is a recognized rule in the construction of acts of parliament, that words are to be taken in their ordinary and popular sense, unless the context requires a different sense. It may be, therefore, that the appellant is within the meaning of the statute a *lodger*; but that precise question is perhaps not before us. For these reasons, I think the occupier in this case is not now liable to be rated, but that the owner is liable.

MONTAGUE SMITH, J.—The appellant complains that he is rated to a poor-rate made for the parish of Sunderland, for one room occupied by him in a house. The rateable value of the room appearing on the rate is 3*l*. 10*s*. I am of opinion that the appellant is not liable to be so rated. The case finds that the house, consisting of six rooms, was built and intended for the occupation of one family only; and the structure apparently remains in its original state. The six rooms are let in separate rooms to six persons. There is only one street-door, and one set of domestic offices, which are used in common by the six occupiers. The owner does not reside in the house, or exercise any control over the occupiers. At the time of the passing of "The Representation of the People Act, 1867," the owner was rated for the house, the rateable value of which was 20*l*., and, as appears in the rate, "instead of the occupier," by virtue of the Small Tenements Act, 13 & 14 Vict.

NEW SERIES, 37.—MAG. CAS.

c. 99, the provisions of which were then in force in Sunderland. The question in the appeal turns on the construction of the 7th section of 'The Representation of the People Act, 1867,' and especially of an enactment found, in the shape of an exception, in that clause. It will be necessary, in order to ascertain the scope and meaning of the enactments in the 7th clause, to advert shortly to the two clauses defining the qualifications of voters in boroughs. The 3rd clause defines "the occupation franchise," and requires as part of the qualification the rating of the voter "as an ordinary occupier." The 4th clause defines "the lodger franchise," and confers the right to vote on a man who "as a lodger has occupied separately and as sole tenant lodgings." Rating forms no part of this qualification. The 3rd clause contains all that need have been enacted to carry out the intention of the legislature as regards rating, if rating had depended simply on the statute of 43 Eliz., "for the relief of the poor." But, in several places, owners were rated, instead of the occupiers, in respect of small tenements, by virtue of statutes passed for the purpose; and the legislature found it necessary to deal with the state of things which so existed. Hence the clause in question, which is in terms a rating clause, and nothing more. This clause (the 7th) does not expressly refer to the Small Tenements Acts; but, assuming the existence of the mode of rating introduced by them, and confining the new legislation to parliamentary boroughs, enacts that, "Where the owner is rated at the time of the passing of the act in respect of a dwelling-house or other tenement, instead of the occupier, his liability to be rated in any future poor-rate shall cease." The clause then proceeds to enact, that, "after the passing of the act, no owner of any dwelling-house or other tenement shall be rated to the poor-rate instead of the occupier." If the clause had stopped there, it would have been clear: but it adds, "except as hereinafter mentioned." These words clearly point to an exception in which provision will be made for some cases where, after the passing of the act, owners shall still be rated "instead of the occupiers." The exception, which is in imperative words, runs as follows: "Where the dwelling-house or tene-

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ment shall be *wholly* let out in apartments or lodgings, not separately rated, the owner of such dwelling-house or tenement *shall* be rated in respect thereof to the poor-rate." This exception clearly keeps alive or re-enacts the liability of the owner to be rated instead of the occupier in one class of cases; and the question is whether the case of this house falls within that class. Now, when the rate appealed from was made, the house was wholly let out in single rooms, which were not separately rated; and it would certainly seem that a house so let out is a house wholly let out in apartments or lodgings, in the ordinary and popular sense of those words. If this house does not answer the description, it is difficult to suggest one which would do so. The exception clearly cannot apply to the case of a house in which the owner lives, and takes lodgers to live in the same house with him; for the enactment expressly deals with a house "*wholly*" let out in lodgings, and therefore assumes to deal with houses in which the owners do not live, but wholly and entirely let them out, as in this case. Strong support is given by previous legislation to this view of the enactment. The words are evidently taken from Sturges Bourne's Act, 59 Geo. 3. c. 12. s. 19, which describes houses "let out in lodgings or in separate apartments." That act, in order to remedy the mischief arising from the evasion of the payment of rates in such cases, makes provision for rating the owner instead of the occupiers. In introducing the same words into the exception with which we are dealing, and which has the same object as Sturges Bourne's Act, viz. to render the owner liable to be rated instead of the occupier in a certain class of cases, it seems reasonable to presume that the legislature was dealing with the same sort of apartments and lodgings as those described in the former act. Now, it is, I think, clear that the rooms in this house in Sunderland exactly answer the description of apartments in Sturges Bourne's Act. That act dealt with rooms so occupied as to be rateable under the Statute of Elizabeth; and these rooms would be, as rightly contended by the respondents, rateable under that statute, if no other legislation had intervened. If, then, these rooms do fall within the description of Sturges Bourne's Act, the

inference is very strong that they were intended to be comprised in the enactment with which we are now dealing, which employs the same language for the same object as the former act. As far as I can collect the intention of the legislature from the language used, it was meant to make a distinction between the occupiers of mere rooms and apartments in an ordinary house, and the occupiers of small houses, and of parts of houses, as defined in the interpretation clause, i.e. occupied as "separate dwellings," such as chambers in the Inns of Court. The first are really and practically lodgers, differing from lodgers, properly so called, only in this, that the owner does not live in the house, but lets it out wholly instead of partially in lodgings. The legislature may well have intended that the occupiers of mere apartments should not be rated as "ordinary occupiers;" and it may have been governed by two considerations in making the distinction to which I have adverted,—first, the great inconvenience of assessing the occupants and collecting the rates of separate rooms in houses of this description, as a purely rating question,—secondly, the anomaly which might exist in the franchise, if a lodger, properly so called, that is, a man who lived in a house *partially* let out in lodgings was not entitled to the franchise, unless his lodgings unfurnished were of the value of 10*l.* a year, whilst the man who occupied one room in a house *wholly* let out in lodgings, was entitled to it, however small the value of his room might be. The great difficulty in the construction of the enactment arises from the words "not separately rated." It was contended for the respondents that those words limit the operation of the exception to the case where the rooms are not separately liable to be rated; and that "rated" must be read "rateable." But, first, the legislature has used the word "rated"; and I cannot construe it to mean "rateable" unless the context compels me to do so. But the context leads to a contrary conclusion. If "rated" is to be read "rateable," and the exception is to be construed to be confined to apartments not liable to be rated as separate tenements, by reason of the occupiers being mere lodgers only, the whole enactment becomes inoperative, because, on the hypothesis, the owner

would by the statute of Elizabeth, and without the enactment, be rateable; and the owner certainly never could be rated "instead of the occupier," because, on the hypothesis, there is no occupier liable to be or who could be rated. The words cannot, therefore, I think, be read in a way which would render the enactment in which they are found meaningless and nugatory. Again, the words cannot mean that, in case, after the passing of the act, the apartments, shall in fact be separately rated, the owner shall not be rated, because that would in effect be to give to the overseers an election to rate the occupiers or the owner, which cannot be presumed to have been the intention. But, if that were the proper construction, it could not avail the respondents in this case; for, at the time of making the rate appealed from, the occupiers were not in fact rated. The words "not separately rated" are satisfied by holding them to mean not separately rated at the time of the passing of the act; and they may have been introduced to leave cases, if any, where apartments in a house wholly so let out were at the time of the passing of the act separately rated, *in statu quo*, unaffected by the exception. This limited meaning is not inconsistent with the general intention which seems to pervade the enactment, viz. an intention to put the occupiers of lodgings in an ordinary house wholly let out in lodgings, and the owner of a house so let, in the same position as the occupiers of lodgings in a house partially so let out, and the owner of such house. I have endeavoured to reach the mind of the legislature through the words they have used, adopting the rule of construction given by Lord Wensleydale in *The King v. the Inhabitants of Banbury* (6), where that learned Judge says: "The right rule of construction is, to intend the legislature to have meant what they have actually expressed, unless a manifest incongruity would result from doing so, or unless the context clearly shews that such a construction would not be the right one." The above construction will not, as I have before incidentally observed, affect the case of occupiers of apartments in houses so constructed as to be occupied separately, and which by actual severance are separate dwellings, as chambers in the Inns of Court.

(6) 1 Ad. & E. 142.

These if not dwelling-houses, are clearly parts of houses "occupied as separate dwellings," and are not, as I think, "apartments or lodgings" within the meaning of those words in the 7th clause. It was made a question during the argument whether the room occupied by the appellant was a "dwelling-house" at all within the meaning of the act, even as dwelling-house is interpreted, and whether the distinction between dwelling-house and lodgings, depending on the principle of actual severance in structure of the house, as defined in the cases of *Cook v. Humber* (1) and *Henrette v. Booth* (7), was not intended to be preserved by the late act. I do not think it necessary to decide whether the room in question ought to have been deemed to be part of a house as defined in the interpretation clause or not, supposing the case had to be decided on that ground alone, and the exception in the 7th section had not been introduced into the act; because I think, for the reasons already given, this room is an apartment or lodging within the meaning of that exception, and that the liability to be rated is governed by that enactment. The consequence will, no doubt, follow, that the present appellant will only be entitled to vote, if at all, upon the lodger franchise. The question of the right to vote is not directly before the Court; but reasons may be suggested for considering the occupiers of the house in question to be "lodgers" within the meaning of the 4th clause. It may not be necessary to confine the meaning of the words "as a lodger" to lodgers properly so called, in a statute which (in the 7th clause) uses the word a house "wholly let out in lodgings"; and it may be that the statute can be so construed as to include under the term "lodgers" both the persons who live in houses partially let out in lodgings, and in which the owner resides, and those who live in houses wholly let out in lodgings, especially where, as to the latter class, the owner of the house is made liable to be rated. The word "lodgers" is not defined in the act; but the provisions to which I have adverted may tend to shew that the word was not used in the confined sense of "mere lodgers"—to quote the words of Maule, J.,

(7) 15 Com. B. Rep. N.S. 500; s. c. 33 Law J. Rep. (N.S.) C.P. 61.

in *Toms v. Luckett* (3),—but in a more enlarged sense, intended to describe the occupants of lodgings such as those existing in the present case, which are neither houses, nor severed and separate dwellings, such as chambers and flats. It was said by the Court in *Cook v. Humber* (1) that “a lodger is a tenant, if the premises are let to him.” There is no doubt that that is so, although the owner lives in the same house; and that for many legal purposes there is no distinction, as regards the occupants of lodgings, between the cases where the house is partially let out and where it is wholly so let out, provided that the lodgers in each case have the right to the exclusive possession of their own rooms. The 8th section does not seem to me to advance the argument for the respondents; for that clause is framed to make provision for the first registration of occupiers, in cases where the owner is no longer liable to be rated in their stead, and does not affect the point arising for our decision, which turns on the question whether the owner in the particular case is not still so liable. If the above construction be correct, the operation of the 7th clause, taken as a whole, will be, that occupiers of small houses, and of separate parts of houses, as chambers, will for the future be liable to be rated, notwithstanding the Small Tenements Acts, whatever the value of their holding, and that the owner will no longer be rateable in respect of them; and, so far as rating is concerned, such occupiers will be qualified to vote upon the occupation franchise; but that, as regards the occupiers of lodgings, where the house is wholly let out in apartments, as in this case, not separately rated when the act passed, the owner, and not the occupiers, must be rated, and the occupiers will be entitled to vote, if at all, upon the lodger franchise. For the reasons I have given, I think the appellant is entitled to our judgment, and that the rate must be quashed.

Judgment for the appellant.

Attorneys—Shum & Crossman, agents for John Kidson, Sunderland, for appellant; Young, Maples, Teesdale & Nelson, agents for H. B. & C. W. Wright, Sunderland, for respondents.

[IN THE COURT OF QUEEN'S BENCH.]
1868. } LAYARD, *appellant*; OVEY,
May 2. } *respondent*.

Turnpike — Exemption from Toll of Clergyman visiting Sick Parishioner.

A clergyman driving out to visit a sick parishioner is exempted by 3 Geo. 4. c. 126. s. 32. from paying toll in respect of his carriage and horses, although accompanied by his wife and family.

CASE stated by Justices under 20 & 21 Vict. c. 43.

The respondent, as collector of tolls on the road leading from Rickmansworth to Sudbury, made complaint before a Justice of the Peace for Middlesex against the appellant for passing through the turnpike-gate without paying toll in respect of a horse drawing a carriage with four wheels. It appeared, upon the hearing of the complaint, that the defendant was the perpetual curate of St. John's, Wembly, and that on the 22nd of October, 1867, he was sent for to visit a sick parishioner within his parish; that he went to visit her in a pony carriage drawn by one pony; that he took with him in the carriage his wife and two daughters; that he could have gone the whole way through his own parish, but that the distance was shortened by nearly a mile by going into the turnpike-road, which was in another parish, and on which road was the Sheepcote toll-gate; that he went by the turnpike-road, and that on passing the toll-gate the complainant demanded the toll, which the defendant refused to pay, alleging that he was exempt as being the perpetual curate of the ecclesiastical district of St. John's, Wembly, then going to visit a sick parishioner within his own district or parish. For the non-payment of this toll the present complaint was made. It was contended, by the defendant, that he was entitled to the exemption claimed by reason of the proviso in 3 Geo. 4. c. 126. s. 32 (1).

It was contended, by the complainant, that although the defendant was personally exempt from toll, that exemption did not extend to the persons conveyed with him

(1) By 3 Geo. 4. c. 126. s. 32. no toll shall be demanded or taken by virtue of this or any other act or acts of parliament on any turnpike-road or from any person or persons for any horse or horses, or other beast or cattle, or for any wagon, wain, cart or other carriage employed in carrying

in his carriage. To this it was replied, by the defendant, that inasmuch as the person being the driver and owner of a carriage is the person liable to pay the toll, if it could not be levied upon the clergyman driving it could not be levied upon the other occupants of the carriage, and therefore could not be demanded at all.

The Magistrates were of opinion that inasmuch as persons on military duty could not take others with them, even although the statute had exempted the carriage conveying them, still less was it competent to a clergyman to do so, for whom the statute had made the exemption merely a personal one. It was also their opinion that although the clergyman driving the carriage was personally exempt, he did not thereby also avoid the liability he might incur as being the driver by reason of other persons who were not exempt being in the carriage with him, the liability of the driver of a carriage being a liability to pay the charge incurred by the carriage and its contents. They therefore convicted the defendant in the penalty of 1s. and costs. If the Court should be of opinion that the defendant was rightly convicted, the conviction was to remain; if otherwise, to be quashed.

F. T. Streeten, for the respondent.—It is submitted that this conviction can be supported. The persons in the carriage were more than could be necessary for the visitation, and it could not surely be contended that a clergyman on parochial duty could drive out in a coach and four and take a party of friends with him.

[*COCKBURN*, C.J.—It is a question of *bona fides*. Here there can be no doubt as to the *bona fides* of the appellant.]

The exemption as far as the clergyman is concerned is a personal one.

[*BLACKBURN*, J.—No; the exemption applies to the horses or carriages of the clergyman. If the appellant had taken out his wife and family for a drive and called

or conveying, or going empty to fetch, carry or convey, or returning empty from carrying or conveying, &c., or of or from any person or persons going to or returning from his, her or their usual place of religious worship tolerated by law on Sundays or any day on which divine service is by authority ordered to be celebrated, &c., or from any rector, vicar or curate going to or returning from visiting any sick parishioner, or on other his parochial duty within his parish.

(2) *Cockburn*, C.J. and *Blackburn*, J.

on a sick parishioner by the way, it might have been different. But here the finding of the Magistrates is in his favour.]

Prideaux (*Macnamara* with him) was not heard.

Per Curiam (2).—The conviction must be quashed.

Conviction quashed.

Attorneys—*W. A. Grestorex*, for appellant; *Robinson & Preston*, for respondent.

[IN THE COURT OF QUEEN'S BENCH.]

1868. { THE TALARGOCH MINING COM-
May 2. { PANY, appellants; THE
GUARDIANS OF ST. ASAPH
UNION, respondents.

Poor - Rate—Artificial Watercourse — Water conveyed by Pipes for the Purpose of Working Lead-Mines—Rateable Value.

The proprietors of a lead-mine obtained, in consideration of annual payments, the right of diverting a natural spring upon the land of an adjoining proprietor, and of conveying the water over the land of intervening proprietors to iron pipes laid down near their own mine. This water was required for steam pumping-engines and other machinery used in working the mine:—Held, first, that there was sufficient evidence to shew that the mine-owners were so far occupiers of the land covered by the pipes and watercourse as to be rateable in respect of it; secondly, that the rateable value of this land was not its ordinary value for agricultural purposes, but the increased value which it had acquired from its use in working the mine, for that, although the mine itself was not rateable, the pipes and watercourse could in no respect be considered as part of it.

The King v. the Overseers of Bilston (1) explained.

Upon appeal by the Talargoch Mining Company, Limited, against a valuation list of the parish of Dyserth, within the St. Asaph Union, the following CASE, by an order of *Lush*, J., was stated for the opinion of the Court, pursuant to 12 & 13 Vict. c. 45. s. 11.

In the parish of Dyserth, in the county of Flint, there is a lead-mining company

(1) 5 B. & C. 151.

known as "The Talargoch Mining Company, Limited," and according to the memorandum of association of the company, "the objects for which the company is established are the raising, working and selling of lead ore, and other minerals, upon and under a certain mine known as Talargoch." From this mine between 300 and 400 tons of lead ore are raised monthly. A spring, rising in the adjoining parish of Curn, used to run along its natural course in the parish of Dyserth, and turn a corn-mill, the property of Mr. Shipley Conway; but the company requiring the water to work an hydraulic pumping-engine on the mine, and for other purposes, took a lease of the mill, and diverted, by an artificial and new watercourse, of about a mile and a half in length, wholly within the parish, so much of the water as was required for the purposes of the mine, after providing sufficient for the inhabitants along the stream. When the new watercourse was originally constructed, the company were not seised or possessed of any of the lands through and over which the water flowed, but they paid the occupiers of those lands an annual sum for carrying the water over their lands. In consequence, however, of the dissatisfaction expressed by one of the principal occupiers on the line, who undertook to the company, the latter were induced to purchase the interest of the superior landlord in the premises, and then let the whole of the farm to the occupier. To some other riparian proprietors, however, the company still make annual payments for the lands respectively occupied by their watercourse. The total amount paid to all the occupiers, including the occupier of the farm belonging to the company, is 7*l.* 7*s.* 6*d.* The rateable value of the land in which the water flows is, for agricultural purposes, 2*l.* The new watercourse is partly open and partly tunnelled, and the whole, with the walls, sluices, flood-gates, pipes, and other works connected therewith, are from time to time cleansed, repaired, renewed, maintained and kept in order by the company. At the terminus and destination near the mine, the water, for about 250 yards, is conveyed by large iron pipes, which pipes were laid down so as to lead in the first instance to the hydraulic engine. In consequence of the uncertain supply of water in the summer, the company found

it necessary to put down a steam pumping-engine; and from 1862 to the present time, the hydraulic engine has not been in use, but the pipes still convey the water to the mine.

A portion of the water (a six-inch pipe) is conveyed through the pipes that were put down to feed the hydraulic engine to feed a steam pumping-engine, and which water, after supplying this engine, returns into the natural watercourse. The remainder of the water, which flows along the artificial course, passes into a pool to supply another steam pumping-engine and to work a water-wheel which winds the ore and refuse out of the mine. Attached to the wheel is a pair of crushers to crush the ore, and also a circular saw, which is used to saw timber used in the mine, and for other purposes, such as sawing boards for the repair of carts used in the mine, and upon a few occasions, as and when required, for the repair of the buildings of the farm belonging to the company. After passing over the water-wheel, the water is used to wash and clean the ore in order to make it merchantable, and it then returns into the natural course. According to the custom of the trade, the ore is crushed, washed and cleansed before it is removed from the mine.

Whilst the company held the water corn-mill before mentioned, they paid 100*l.* a year for it, and they were rated at 100*l.* for the mill, and paid their rates; but the lease thereof having expired, they have now made a fresh arrangement with the landlord, by which they have given up the mill, and pay him 100*l.* per annum for the flow of water to their mine. The occupiers of the mill-house and the land attached to it, are now rated at a reduced rateable value, consequent on the loss of the flow of the water to the mill. The parish officers of Dyserth considered that the watercourse is enhanced in value by the water flowing on it, and was subject to be rated to the relief of the poor, and have rated the two acres of land covered with water, at 100*l.* The assessment committee considered, on the above facts, that the company were rateable, and have rated them at 100*l.*

The opinion of the Court is requested, whether the company is liable to be rated for the land on which the water flows, and if so, whether to the amount of the agricultural value of the land, or to the amount of its enhanced value by reason of its being

converted into a watercourse and applied to the purposes above set forth.

If the Court should be of opinion that the company are liable to be rated, then the company agree, that a judgment in conformity with such decision, and for such amount, and for such costs as the Court may adjudge, may be entered on motion by the respondents, at the sessions next, or next but one, after such decision shall have been given. If the Court be of a contrary opinion, then the respondents agree that a judgment in conformity with the decision of such Court, and for such costs as such Court may adjudge, may be entered on motion by the company at the sessions next, or next but one, after such decision shall have been given.

Watkin Williams, for the respondents.—First, the company are rateable in respect of the pipes through which the water is conveyed. They could maintain trespass for so much of the land as is covered by the pipes. It is conceded that the mine itself is not rateable—*Rowles v. Gell* (1), the ground of exemption being that coal-mines are alone mentioned in the statute. But the occupation of property by means of pipes is rateable. In *The Queen v. the Proprietors of the West Middlesex Waterworks* (2), where a waterworks company conveyed water by means of a main under the surface of the highway, and no freehold or leasehold interest in the soil was vested in the company, it was held that the company were in possession of the space in the soil which the mains filled and were rateable in respect of them. In *The King v. the Overseers of Bilston* (3), where an engine used in working a mine was held not to be the subject of a rate, the engine was just as much a part of the mine as if it had been underneath it. It does not matter whether property is occupied for the benefit of other non-rateable property or not—*The King v. Cunningham* (4). If the owner of a lead-mine opened a tramway of the 300*l.* a year for the sole benefit of the mine the rateability of this way would not be affected by its proximity to the mine which is not rateable. With regard to the

value of the occupation of the watercourse, the overseers have adopted no new principle in assessing it at the value of 100*l.* a year. It cannot be said that this watercourse is only used for the purpose of working the mine. Could it be said that houses built for the use of men employed in working the mine were not rateable?

Mellish (*M'Intyre* with him), for the appellants.—As to the question whether the company are in occupation of the land over which the water is diverted, it must be remembered that this watercourse was originally a natural stream, and although diverted has all the incidents of a natural stream as regards the adjoining owners. The company cannot therefore be considered as occupiers of the land covered by this stream, at least of that portion of it which lies open.

With regard to the second question, the Court must say whether the case can be distinguished from *The King v. Bilston* (3), where it was distinctly held that the occupier of an ironstone mine could not be rated in respect of an engine which had been erected for the purpose of drawing water from the mine, on the ground that the engine was not profitable but burdensome except as respected the mine itself. Here the watercourse has no value except in respect of a subject-matter which is not rateable.

[BLACKBURN, J.—*The King v. Bell* (5) shews that if the owner of mines lays a railroad over the surface of the adjoining land for the purpose of carrying away the ore, that would be rateable.]

Here the watercourse would pass under a conveyance of the mine without express words.

W. Williams, in reply.—Two questions remain to be decided by the Court. First, are the company in occupation of the land over which the water flows? Secondly, can the watercourse be considered as part of the mine? As to the first question, no doubt can be entertained but that the company occupy the land by means of their pipes. With regard to the second the sum of seven guineas paid by the company is not the rent of the land which they actually occupy. The annual value of this land is of much greater amount owing to the presence of the watercourse.

(1) *Cowp.* 451.

(2) 1 E. & E. 716; s. c. 28 Law J. Rep. (N.S.) M.C. 135.

(3) 5 B. & C. 851.

(4) 5 East, 479—per Lord Ellenborough.

(5) 7 Term Rep. 508.

COCKBURN, C.J.—I think that our judgment must be for the respondents. The only difficulty is in determining what is the real question submitted to us. If it was intended to raise any question as to the rateability of the watercourse, because of its being accessory to the working of a lead-mine, I think that the answer is, that although the mine itself is not rateable, and although, according to the case of *The King v. the Overseers of Bilston* (3), anything which forms part of the machinery of the mine is also exempted from rateability, yet here we are dealing with a watercourse passing over a considerable extent of land, and we must look at the case as one where the value of the land is enhanced by the presence of the watercourse which passes over it, so that the rateable value is increased. On the other hand, if it was intended to rate the sum of 100*l.*, which is annually paid, not as rent for the land covered by the water, but for the right to divert the water from its natural spring, I agree with Mr. Mellish that this would not be a proper subject for a rate. With regard to the rateable value of the land covered by the watercourse, I think that the enhanced value of this land with the water upon it, by reason of its neighbourhood to the mine, was properly taken into account. Suppose that, instead of the present state of things, the company were neither owners nor occupiers of the land covered by the watercourse, they would have to pay so much rent for the use of it, and the amount of that rent would be a proper measure for the rate. Mr. Williams says, that this hypothetical rent must be assumed to have been the basis of the present rate. If the overseers had in mind, when they made the rate, the 100*l.* which is paid for the privilege of diverting the water, they went upon a wrong basis; but there is nothing to shew that this was the case, and they may very well have considered that 100*l.* fairly represented the annual value of the land covered with the water. The rate must, therefore, be affirmed.

BLACKBURN, J.—I quite agree with what the Lord Chief Justice has said. The first question, as to the occupation of the land covered by the watercourse, and the bricks and other articles by which the water is confined, is one of fact. If the company are occupiers of the land so

covered by the water, they are rateable in respect of it: if what they possess is only an easement without any exclusive occupation they are not rateable. As to the pipes, I see no distinction between this case and those which have decided that gas and waterworks companies so far occupy land by means of their mains as to be rateable in respect of them. Then comes the other question, what is the rateable value according to which the land covered by the watercourse, ought to be assessed? It has been said that inasmuch as this stream is used in working a lead-mine, which is not rateable, the enhanced value of the stream ought not to be taken into account, and the case of *The King v. the Overseers of Bilston* (3) has been relied upon. There it was held that an engine used in working a mine of ironstone was not rateable. But I think that it must be taken that there the shaft was part of the mine itself. There is nothing to shew that it occupied any land distinct from the pit. If it did I should hesitate before I concurred with the decision. In the present case the value of the land is enhanced by reason of the facility for taking water to the mine. If another person were proprietor of the land in which this watercourse flows, he might let the use of the water to the company from year to year, and the rateable value would be the rent which they might reasonably be called upon to pay. There might be various circumstances to determine what has been called the higgling of the market. No doubt the existence of the watercourse would be a great element in estimating this annual value; for if it were merely agricultural land, they would have to incur great expense in collecting and conducting the water. Therefore the enhanced value of the land with the water upon it, must be taken into account, independently of the right to divert water from the spring. It may be that the assessment committee have erroneously taken the value of this right into account, but if they have merely considered the 100*l.* as the proper annual value of the land covered by water, they are right.

Judgment for the respondents.

Attorneys—S. C. Frankish, agent for T. G. Edwards, Denbigh, for appellants; Tooke & Holland, agents for Williams & Wynne, Denbigh, for respondents.

[IN THE COURT OF QUEEN'S BENCH.]

1868. }
 April 22. } THE QUEEN v. WATSON.

Poor-Rate—Township—Hamlet detached from a Township for Ecclesiastical Purposes, but remaining attached to it for Civil Purposes.

There is no legal objection to the inference that a hamlet or township once extended into two parishes, and afterwards became detached and annexed to the one parish for ecclesiastical purposes, continuing to form part of the other parish for civil purposes.

The hamlet of T. had for a hundred years past, and for anything that appeared to the contrary before that time, been rated to the poor and highway rates of the adjacent township of H, which maintained its own poor and highways separately, and together with another township formed the parish of H. On the other hand, the lands in T, from the earliest period, were tithable to the adjacent parish of K, as being situate in that parish, and the occupiers were rated to and paid church-rates in that parish, and also Easter and other ecclesiastical dues, and never paid tithes, &c. to H :—Held, that there was no ground for disturbing the long-established usage of rating T. to the poor-rates of H, as it was impossible to say that this usage could not have had a legal origin from the tithes having been severed from T. and conferred upon the parish of K, while T. itself was associated with H. as one township for rating purposes according to the act 13 & 14 Car. 2. c. 12.

Upon appeal, by Joseph Watson to the Quarter Sessions for the East Riding of York, against a poor-rate made by the churchwardens and overseers of the parish of Hessele, the Sessions dismissed the appeal, and ordered the rate to be confirmed, with costs, subject to the opinion of the Court of Queen's Bench on the following

CASE.

On the 1st of September, 1865, a poor-rate was made, in conformity with the valuation list then in force, by the churchwardens and overseers of the poor of the parish of Hessele, in the East Riding of the county of York, which rate was thereafter

duly allowed and published. In and by the rate the appellant, Joseph Watson, and the respondents, Henry Barkworth, Christopher Leake Ringrose, John Burstall Thompson and John Percy Clark, are respectively rated for and in respect of lands in their respective occupations situate in the township or hamlet of Tranby.

Against this rate the appellant duly appealed to the above-mentioned Sessions, and the question raised on the appeal and material for the purposes of this case is, whether the appellant and the four respondents are liable to be rated in respect of their respective occupations of so much of the property therein rated as is locally situate in the township or hamlet of Tranby, it being contended, on behalf of the appellant, that he and they were not legally liable to be rated to, and in respect of, such property in the parish of Hessele, but in the adjacent parish of Kirk Ella, in the said East Riding, of which it was contended that Tranby formed a part.

The parishes of Hessele and Kirk Ella are both ancient immemorial parishes. Hessele consists, independently of the disputed district of Tranby, of the township of Anlaby and the township of Hessele, the former of which maintains its own poor and highways separately, and has its own overseers and surveyors. The churchwardens and overseers of Hessele make poor-rates for the remainder of the parish, and which rates, like the present rate, are commonly called rates for the "township of Hessele," but which rates for a considerable time past, as hereinafter mentioned, have included the lands of Tranby.

The district of Tranby has commonly been called a township or hamlet, but it has not maintained its own poor or highways separately, nor appointed a constable. It consists of a considerable tract of agricultural land, having on it three or four gentlemen's residences, one of which has a lodge and farm-house attached to it. It lies adjacent to Hessele and also to Kirk Ella, but the residences in Tranby, with one exception, are nearer to the parish church of Hessele than that of Kirk Ella.

For about the last one hundred years, and for anything that appears to the contrary before that time, the lands in Tranby have been rated to the relief of the poor of

Hessle, exclusive of the township of Anlaby, and the overseers of that part of Hessle parish have acted for Tranby as if it were a part of their district.

The earliest rate of which there is evidence is that of the year 1765, and in that and the six succeeding years the ratepayers of Tranby, though included in the Hessle rates, are inserted in a list by themselves, headed "Tranby Tenants," and ending with a summary of the amount under the head "Total Tranby Assessments"; but this practice was not continued after 1772, but all the persons rated both in Hessle and Tranby are included in one general list. The Tranby lands have also, as far back as the memory of living witnesses extends, and for anything that appears to the contrary beyond that time, been rated to the highway-rates for Hessle, exclusive of Anlaby, and the Hessle surveyors of highways have repaired the roads of Tranby as if it were a part of their district. The county-rate also, which was made upon or in respect of Hessle exclusive of Anlaby, included the lands of Tranby.

On the other hand, the lands in Tranby from the earliest period have been tithable to Kirk Ella, as being situate in that parish; the occupiers have been rated to, and paid church-rates in that parish, and also Easter dues and all other ecclesiastical dues, and have never paid tithes, church-rates, or any ecclesiastical dues to Hessle; some of the residents of Tranby have had seats in the parish church of Hessle, but not as of right, and some of the bodies of deceased inhabitants of Tranby have been buried in the church or churchyard of Hessle, but this has been only under permission, and not as of right, and double fees have been charged, as in the case of strangers. The incumbent of Hessle sometimes married Tranby people, when it was wished he should do so, but he married them, not at Hessle, but at Kirk Ella Church, by the permission of the incumbent of that parish. In fact, as to all ecclesiastical matters, Tranby has uniformly and immemorably been treated and reputed as a part of the parish of Kirk Ella.

In the year 1792 an act of parliament was passed (32 Geo. 3. c. cix.), intitled 'An Act for dividing, inclosing, draining, and improving the open fields,

meadows, pastures, commons and waste grounds within the several townships or hamlets of Hessle, Anlaby, and Tranby, in the county of the town of Kingston-upon-Hull, and for making a compensation in lieu of tithe for certain ancient inclosed lands within the said several townships or hamlets, and also within the township or hamlet of Woolferton, otherwise Woolfretton, in the said county.' The act may be referred to, and taken to form a part of this case. In the preamble it was recited, amongst other things, that within the townships of Hessle and Anlaby were certain open fields, grounds, and lands therein respectively mentioned and described, and that within the township or hamlet of Tranby, in the said county, was a certain open field called by the name of "Tranby Field," with several pieces of sward ground, the whole containing about 400 acres, which said several open fields, meadows, pastures, commons and waste grounds in the preamble mentioned, are described as situate within the several parishes of Hessle and Kirk Ella, in the said county, and reciting, amongst other things, that the vicar of the parish and parish church of Hessle aforesaid was entitled to certain glebe lands and common rights within the said several fields, lands and grounds, or some of them, and that the said vicar and one Walter Strickland were respectively entitled to all manner of tithes, both great and small, arising within such parts of the said fields, lands and grounds, as were situate within the parish of Hessle aforesaid, and that Robert Carlisle Broadley, Esq., and William Wade, clerk, as vicar of the parish and parish church of Kirk Ella aforesaid, were respectively entitled to all manner of tithes, both great and small, arising within such parts of the fields, lands and grounds as are situate within the parish of Kirk Ella, and that as well the respective townships or hamlets of Hessle, Anlaby and Tranby aforesaid, as the lands in each of them belonging to the several proprietors in the fields, lands and grounds lie intermixed and dispersed in small parcels." Commissioners are then appointed for putting the act into execution.

The 24th section of the act is as follows: "And whereas disputes may arise between the inhabitants or proprietors of

lands in the respective townships of Hessle, Anlaby and Tranby aforesaid, and also the inhabitants or owners of lands in some of the parishes, townships, or places adjoining to the same, touching the respective boundaries thereof; and it will be necessary upon the said intended division and inclosure to settle and ascertain all such boundaries, as well of the townships of Hessle, Anlaby and Tranby aforesaid, as also of the adjoining parishes, townships or places; therefore be it enacted, that the said Commissioners shall and may, and they are hereby authorized and empowered to inquire into, ascertain, set and determine, and fix, not only the boundaries of the said several townships or hamlets of Hessle, Anlaby and Tranby, but also the boundaries of such parishes, townships or places adjoining to the same, and after the said boundaries shall be so respectively ascertained, set out, determined and fixed, the same shall, and they are hereby declared to be the boundaries as well between the respective townships of Hessle, Anlaby and Tranby aforesaid, as also the parishes, townships, or places respectively adjoining to the same, subject to an appeal at the Quarter Sessions in manner hereafter mentioned, and any law, usage, or custom to the contrary notwithstanding."

The 25th section enacted, that the Commissioners should make allotments to the said vicar of Hessle and Walter Strickland that should be equal in value to their then glebe lands and grounds directed to be inclosed, for and in lieu of such respective glebe lands.

By the 26th section the Commissioners were required to make allotments to the vicar of Hessle, Walter Strickland, Robert Carlisle Broadley and the vicar of Kirk Ella, of the different lands thereby directed to be inclosed in lieu of all manner of tithes, both great and small, and all vicarial and ecclesiastical rights, dues and payments arising or payable within, for, or in respect of the lands and grounds by the said act directed to be inclosed.

Directions then follow for the division of the allotments amongst the persons in the sections mentioned. Section 27. contains powers for the general allotment of the residue of the lands

of Hessle, Walter Strickland, Robert Carlisle Broadley and the vicar of Kirk Ella, were respectively entitled to certain great and small tithes arising out of the several messuages and ancient inclosed lands within the several townships or hamlets of Hessle, Anlaby, Tranby and Woolferton aforesaid, and which were within the several parishes of Hessle and Kirk Ella, the Commissioners were required by their award to order that the owners of the messuages and inclosed lands should annually pay to the vicar of Hessle, Walter Strickland, Robert Carlisle Broadley and the vicar of Kirk Ella, such sums of money as the Commissioners should deem to be a just recompense for all the last-mentioned tithes.

By section 53. it was enacted, that the Commissioners should draw up their award in writing, with a plan annexed thereto as therein mentioned. The concluding provisions of this section are in the words following: "The several allotments and divisions, and all orders, directions and regulations and determinations so to be made as aforesaid, and declared in and by the same award, shall be final, binding, and conclusive unto all the parties interested therein."

The Commissioners appointed by and acting under and in execution of the act, duly made their award in writing, and dated the 23rd of February, 1796.

All the rated lands and tenements in Tranby mentioned in the rate appealed against are dealt with in and by the award; parts of them, which consisted of old inclosures in Tranby, were charged by the Commissioners pursuant to section 32. of the act with tithe rents payable to Robert Carlisle Broadley and the vicar of Kirk Ella and their respective successors, in lieu of their former rights to tithes in respect of the said old inclosures, and which tithe rents have been since regularly paid. The remainder of the rated lands, being the greater part thereof, and consisting of allotments of Tranby Field and the other open lands in Tranby, were awarded, set out, and allotted, in different parts and allotments, to certain persons through whom the present owners and occupiers thereof, including the appellant, respectively derived title. The award does not purport to set out, determine, or fix the boundaries of any townships or parishes otherwise or more particularly than

shewn in and by the description and declarations hereinafter mentioned. Of the 51 acres, in respect of which the appellant is rated in the rate appealed against, about 38 acres are old inclosures charged with tithe-rents as above mentioned. The following is the extract from the award relating thereto, that is to say: "Kirk Ella Tithing. The whole annual payments to be made to the said Robert Carlisle Broadley, his heirs and assigns."—[Here followed the names of two owners, and the numbers on the plan and the total quantity, together with the amount of the annual tithe rent; the letter T. being affixed.]—The case then proceeded: By the letter T. in the above extract is meant to be stated that the lands are in the township of Tranby.

Of the rate of 3*l.* 4*s.* 2*d.*, at which the appellant is rated, 2*l.* 4*s.* 2*d.* is in respect of these 38 acres of old inclosure. The remainder of the said 51 acres consists of new inclosures allotted by the Commissioners, and declared by them to be in the township of Tranby and parish of Kirk Ella.

The following is an extract from the award respecting one of the said allotments for which the appellant is rated, that is to say, "We do also award, set out, allot, and appoint unto the said William Green and his heirs, all that other piece or parcel of land situate, lying, and being in Tranby Field, containing 12 a. 2 r. 18 p. be the same more or less, adjoining lands herein awarded to the said Joseph Sykes on or towards the east, lands herein awarded to Francis Green on or towards the west, old inclosure and Maize Lane on or towards the north, and Swanland Road on or towards the south; and we do order and direct that the said William Green, his heirs and assigns, shall make and for ever hereafter maintain good and sufficient ditches and fences on the east side and south end of this allotment; and we declare this allotment to be in the said township of Tranby and parish of Kirk Ella aforesaid."

Of the 255 acres and more for which the respondent Thompson is rated, 30 acres are old inclosure, and are charged in the Kirk Ella Tithing in the same manner as the appellant's 38 acres, and similarly marked with the letter T. Of the rate of 17*l.* 4*s.* 7*d.*, at which the said appellant is rated, 2*l.* 0*s.* 6*d.* is in respect of these 38 acres of

old inclosure. All the remainder of the lands mentioned and rated in the extract from the rate appealed against, except West Field and Pit Top as hereinbefore mentioned, are new inclosure, allotted in similar terms *mutatis mutandis*, and declared to be in the township of Tranby, and parish of Kirk Ella aforesaid.

The practice of rating Tranby lands to the poor above mentioned as a part of Hessele, was continued without opposition or objection until recently, when the parish of Hessele, finding their existing burial-ground insufficient, expended a considerable sum of money, exceeding 1,500*l.*, in purchasing a new burial-ground, and in the expenses connected therewith, which expenditure under the recent Burial Acts became a charge on the poor-rate. The rate-payers of Tranby, who were entitled as of right to bury in the churchyard of Kirk Ella, which was sufficient for the necessities of that parish, and was likely to continue sufficient for many years to come, objected to this new charge upon them, and became desirous, if they could legally do so, to put an end to the practice of rating the lands in Tranby as a part of Hessele parish, and the present appeal was brought with the concurrence of all of them to try its validity.

The question for the opinion of the Court is, whether the lands and tenements in Tranby mentioned in the rate appealed against, or any of them, are liable to be rated to the relief of the poor in the parish of Hessele.

If the Court shall be of opinion that the lands and tenements, or any of them, are not liable to be so rated, then the said rate is to be amended by striking out of the said rate so much as relates to the lands and tenements which are not liable to be so rated, and the order of the Court of Quarter Sessions is to be quashed. But if the Court shall be of opinion that all the lands and tenements are liable to be so rated, then the order of the Court of Quarter Sessions is to be confirmed.

Prideaux and *Lewers*, for the respondents.—There is nothing to shew that Tranby could ever have been part of the parish of Kirk Ella. There are even authorities to shew that a part of one parish cannot be treated as a part of another

parish for the purpose of the highway rate. In *Dawson v. Willoughby-with-Sloothby* (1), where a hamlet claimed exemption from the highway rates of its parish, on the ground that it had been assessed and was liable to the highway rates of a neighbouring parish, the Court held that a part of one parish could not legally be united to another parish for the purpose of the repair of the highways. The reasonable presumption is that Tranby and Hessele formed one reputed parish for the purposes of the poor-rate at the time of 43 Eliz. c. 2. *Sharpley v. the Overseers of Mablethorpe* (2) is similar to the present case. There the ground of appeal was that the rating parish consisted of two distinct parishes. It was shewn that there were two rectories which were distinct for ecclesiastical purposes, and there was evidence to shew that there had been originally two churches. There was also other evidence which left it uncertain whether there was one parish or two. But as it was proved that there had been a single rate for the relief of the poor during the last 150 years, the Court held that there was evidence that these districts were reputed as one parish at the time of the 43 Eliz. c. 2; so that the rate was good even if the parishes had been, in fact, immemorially distinct. The powers given by the 43 Eliz. to be executed in parishes are, by the 13 & 14 Car. 2. c. 12 (3), extended to all

townships and villages, whether parochial or extra-parochial—*The King v. the Inhabitants of Rufford* (4). A parish may comprise one or more villis—*Com. Dig. tit. 'Parish.'* In *Lousley v. Hayward* (5) it was held that a pew in the body of a church might be prescribed for as appurtenant to a house out of the parish; so part of the evidence relied on by the appellant is of little importance. It is enough to shew that there is evidence that Tranby formed part of a reputed parish in the time of Queen Elizabeth—*Hilton v. Pawle* (6), *Nichols v. Walker* (7). The Commissioners under the Inclosure Act had no power to set out the boundaries of Hessele for civil purposes.—They also referred to *The King v. Leigh* (8) and *Domesday*, vol. 1.

P. Thompson, for the appellant.—The weight of the evidence is in favour of the presumption that Tranby forms part of the parish of Kirk Ella. A township cannot legally form part of one parish for temporal purposes, such as the relief of the poor, whilst it forms part of another separate and distinct parish for ecclesiastical purposes, such as burial, marriage and other ecclesiastical services. The combination of the occupiers of lands in the township of Tranby, in the parish of Kirk Ella, with the occupiers of lands in the township of Hessele, in the parish of Hessele, for the purpose of the maintenance of the poor of these two townships jointly, has arisen from considerations of mutual convenience only, and can be put an end to at any time.—He cited *The Queen v. Ashby Tolville* (9).

MELLOR, J.—In this case I am of opinion that the rate must be confirmed, and that the order of Sessions was right. The case, no doubt, has some difficulty; but I think that, unless the appellant can shew us some legal objection to the practice which has hitherto prevailed, we ought to give effect to it according to the rule laid down by Lord Campbell in the case of *Sharpley*

all and every the acts, powers and authorities for the necessary relief of the poor within the said township or village, &c.

(1) 1 Str. 513.

(2) 1 You. & J. 583.

(3) Cro. Car. 92.

(4) Cro. Car. 394.

(5) 3 Term Rep. 746.

(6) 35 Law J. Rep. (n.s.) M.C. 154.

(1) 5 Best & S. 920; a.c. 34 Law J. Rep. (n.s.) M.C. 37.

(2) 3 El. & B. 906; a.c. 24 Law J. Rep. (n.s.) M.C. 35.

(3) By 13 & 14 Car. 2. c. 12. s. 21, after reciting that the inhabitants of Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, Durham, Cumberland and Westmoreland, and many other counties in England and Wales, by reason of the largeness of the parishes within the same, have not nor cannot reap the benefit of 43 Eliz., it is enacted, that all and every the poor, needy, impotent and lame person and persons within every township or village within the several counties aforesaid, shall from and after the passing of this act be maintained, kept, provided for and set to work within the several and respective townships and villages wherein he, she or they shall inhabit, or wherein he, she or they was or were last lawfully settled, according to the intent and meaning of this act; and that there shall be yearly chosen and appointed, according to the rules and directions in the said act of the 43rd year of Queen Elizabeth mentioned, two or more overseers of the poor within every of the said townships or villages, who shall from time to time do, perform and execute

v. *Mablethorpe* (3), where he says, "I can see no reason whatever for disturbing the usage which has prevailed so long." In this case it may be that, before the origin of the parishes, when the churches were first erected, the persons who founded them were the owners of the land, the tithes of which were originally assigned to these churches, so that in process of time the tithes of particular ecclesiastical districts became assigned to particular churches till there was a division, and that may have been anterior to the subsequent actual division of the parishes; and it may be that originally this district of Tranby had its tithes assigned to the church of Kirk Ella, and yet, for all civil purposes, may have been formed into a district consisting of itself and the township of Hessle; and it may be that, after the formation of parishes, the tithes of Tranby were appropriated to the church of Kirk Ella for ecclesiastical purposes, and it may then have been formed into a township together with the township of Hessle; and being so at the time of the statute of Elizabeth, became by reputation such a township or parish as may, under that act, be entitled to maintain the poor and have all the privileges that properly belong to a parish or township; and, at the same time, it may be that, owing to circumstances and the actual bargain or understanding upon which the union or separation may have taken place, it may have been the practice for some of the inhabitants of the district of Tranby to go to the church of Kirk Ella, and that may account for the usage subsequently, and for the payment of church and other ecclesiastical dues. But we have, on the other hand, for a hundred years at least, and without any evidence to the contrary, the fact that it has uniformly been rated to the poor for the township of Hessle as part of that township, and has uniformly contributed to the highway rates; and it also appears, though I do not rest so much upon that, there is evidence that there is a manor of Hessle-cum-Tranby, a manor consisting of Hessle and Tranby. No doubt, in the origin of ecclesiastical divisions, the limits of parishes followed the ambit of the manors, though cases have often occurred in which the parish has included two manors. However that may be, I think there is

here abundant evidence to shew that the district of Hessle and Tranby is a district that properly maintains its own poor and had the power and authority to make a rate. Under these circumstances, I am of opinion that the order of Sessions should be confirmed.

LUSH, J.—I think that we ought not to disturb a state of things which has existed for so long a period of time unless we can see that it could not have had a legal origin. The case finds as a fact that for more than a hundred years the inhabitants of Tranby have been assessed to the poor-rate by the overseers of the township of Hessle; and where the inhabitants of a township have during a certain period supported and maintained a common highway and been assessed to the highway rate, and there is no evidence to raise a presumption to the contrary, I should have no difficulty in inferring that the practice could be traced back still further, and that it had a legal origin. I think that it may have had a legal origin for more reasons than one, but it is sufficient to refer to one, which is this: the township of Tranby was originally, whatever it may be now, merely a part of the township of Hessle, though it may have been part of the parish of Kirk Ella. I am not aware of any legal impossibility for a township to run into and to consist of portions of two parishes, and I see it is called in the act of parliament the "township of Tranby," sometime a hamlet. If I had to decide whether it was a separate township or not, I should say that the evidence is wanting to shew that it ever was a township of itself, because I find that it is an incident to a township that it should have a constable, and it is necessary that it should once have had a church of its own, for the solemnization of sacraments and burials, and so on. It is found that Tranby never had a church of its own, nor a constable. Now, for a very long period, this particular district has been associated with Hessle in the maintenance of the poor and of the highways. This association could have had a legal origin if, in fact, it was a portion of a township, because then the statute of Charles would have enabled this township, though it might consist of portions of two parishes, to appoint overseers

of its own, and separately to maintain its own poor. This being so, in the absence of evidence to the contrary, with evidence that Tranby is not a township of itself, we find it associated in all civil matters with the district around it, and I have no hesitation in inferring that it was, and necessarily so, a part of the township of Hessle, and this is one, though not the only, mode of accounting for the usage which has existed for so long a time, and which we are therefore bound to maintain.

HANNEN, J.—I am of the same opinion. It seems to me that if we assume that Hessle and Tranby were originally united together as one township all difficulties at once vanish, and that therefore, as we ought if possible to uphold what has existed so long, we should admit what from the evidence appears to be a reasonable conclusion. I think that this conclusion may be drawn both from negative and positive evidence. The negative evidence is, that though three divisions have been referred to and mentioned in Domesday Book, Tranby does not appear to have been mentioned, though it seems to be included in one or other of those divisions. Then there is the fact that the Tranby lands have been rated with Hessle to the highway-rate. Now, it may very well be that one township, as a township, may be liable to repair the highways irrespective of any parochial divisions that are consistent with the supposition that they belong to one township. Now, "vill" or township is a natural division, and it seems to be nothing more than a collection of houses. But upon reference to *Co. Lit.*, 115, b, and the other authorities collected in *Com. Dig.*, tit. 'Vill,' the division of parishes appears to be not a natural but an artificial division, and may have been dependent on circumstances which it is impossible for us to ascertain. It may well have been that a parish established for certain purposes may have had its natural division cut into two parts, and in this way Tranby may have been attached to the ecclesiastical division of Kirk Ella, while for civil purposes it remained attached to its own division of the township of Hessle. And I agree with my learned Brothers that if this state of things had existed down to the time of the statute of Elizabeth and subsequently, and had become

inconvenient, the statute of Charles would then have enabled another arrangement to be introduced under which Tranby would revert to its old civil association with Hessle. This seems to me to reconcile all the difficulties of the case, and to uphold what has continued for so long a period of time.

Judgment for the respondents.

Attorneys—Coverdale & Co., for appellant; Boys & Tweedies, for respondents.

[IN THE COURT OF QUEEN'S BENCH.]

1868.

May 8.

THE QUEEN v. EYRE.

Justice of the Peace — Jurisdiction — Offence committed out of Great Britain by Officer of the Government — Binding over Prosecutor and Witnesses to appear in Queen's Bench — Court of Oyer and Terminer.

By 11 & 12 Will. 3. c. 12, and 42 Geo. 3. c. 85, offences committed out of Great Britain by governors of colonies and officers of the government under colour of, or in exercise of their offices, may be prosecuted or inquired of, heard and determined in His Majesty's Court of King's Bench here in England, either upon information or indictment, and the offence may be laid to have been committed in Middlesex:—Held, that the power conferred upon Justices by 11 & 12 Vict. c. 42. ss. 2, 17, 20, of binding over the prosecutor and witnesses to prosecute or give evidence against any person charged with an indictable offence, committed on land beyond the sea, at the next court of oyer and terminer or gaol delivery, or superior court of a county palatine, or court of General or Quarter Sessions of the Peace, extends to cases where the offence is one of those specified in 42 Geo. 3. c. 85, and that the description "court of oyer and terminer," in 11 & 12 Vict. c. 32. s. 20, applies to the Court of Queen's Bench.

Rule calling upon James Vaughan, Esq., one of the Metropolitan Police Magistrates,

sitting at the Bow Street police court, and Edward John Eyre, Esq., to shew cause why a writ of mandamus should not issue directed to the Magistrate, commanding him to hear the evidence on certain charges preferred against Mr. Eyre on the 22nd of April, 1867, on the prosecution of Peter Alfred Taylor, Esq., and to proceed therein according to law.

It appeared from the affidavits that while Mr. Eyre was within the jurisdiction of the police courts of the metropolis, application was made by Mr. Taylor to the Magistrate previously mentioned, for a warrant or summons against Mr. Eyre, directing him to appear at the police court to answer certain charges to be preferred against him for offences alleged to have been committed by him against the provisions of 11 & 12 Will. 3. and 42 Geo. 3. (1), that is to say, among other things, for issuing an oppressive and illegal proclamation. Mr. Vaughan thereupon issued two summonses as prayed, and on the 22nd of April Mr. Eyre appeared at the police court in obedience to these summonses. Mr. Taylor, upon whose information the summonses had been issued,

was also in attendance with the witnesses for the prosecution, who were prepared to give evidence in support of the charges. Mr. Vaughan then stated that since granting the summonses his attention had been directed to 11 & 12 Vict. c. 42. s. 20. That the trial provided for by the statute must take place in the Queen's Bench, and that he, Mr. Vaughan, had no power to bind over the prosecutor or witnesses to appear at the Court of Queen's Bench, or at any other place except at the next court of oyer and terminer and gaol delivery, or superior court of a county palatine, or Court of General or Quarter Sessions of the Peace at which the accused was to be tried, and that the Court of Queen's Bench was not one of these courts, and that he had therefore no power to bind over any of these parties to the Court of Queen's Bench. That by 11 & 12 Vict. c. 42. s. 22. the recognizances, depositions and so forth, were directed to be delivered to the proper officer of the court in which the trial is to be had, who, in this case would be the officer of the Queen's Bench, so that if he proceeded to hear the case,

(1) By 11 & 12 Will. 3. c. 12, after reciting that "a due punishment is not provided for several crimes and offences committed out of this His Majesty's realm of England, whereof divers governors, lieutenant-governors, deputy governors, or commanders-in-chief of plantations and colonies within His Majesty's dominions beyond the seas, have taken advantage, and have not been deterred from oppressing His Majesty's subjects within their respective governments and commands, nor from committing several other great crimes and offences, not deeming themselves punishable for the same here, nor accountable for such their crimes and offences to any person within their respective governments and commands," it is enacted, that "if any governor, lieutenant-governor, deputy-governor, or commander-in-chief of any plantation or colony within His Majesty's dominions beyond the seas, shall, after the 1st day of August, 1700, be guilty of oppressing any of His Majesty's subjects beyond the seas, within their respective governments or commands, or shall be guilty of any other crimes or offences, contrary to the laws of this realm, or in force within their respective governments or commands, such oppressions, crimes and offences shall be inquired of, heard and determined in His Majesty's Court of King's Bench here in England, or before such Commissioners and in such county of this realm as shall be assigned by His Majesty's commission, and by good and lawful men of the same county, and that such punishments shall be inflicted on such offenders as are usually inflicted for offences of like nature committed here in England."

By 42 Geo. 3. c. 85. s. 1. it is provided, "That from and after the passing of this act, if any person who now is, or heretofore has been, or shall hereafter be employed by, or in the service of His Majesty, his heirs or successors, in any civil or military station, office or capacity, out of Great Britain, shall have committed, or shall commit, &c., any crime, misdemeanor or offence in the execution, or under colour, or in the exercise of any such station, office, capacity or employment as aforesaid, every such crime, &c. may be prosecuted or inquired of, and heard and determined in His Majesty's Court of King's Bench here in England, either upon an information exhibited by His Majesty's Attorney General or upon an indictment found; in which information or indictment such crime, &c. may be laid and charged to have been committed in the county of Middlesex; and all such persons so offending, and also all persons tried under any of the provisions of the said recited act, passed in the reign of King William aforesaid, or this act, or either of them, for any offence, &c., and not having been before tried for the same in Great Britain, shall on conviction be liable to such punishment as may by any law or laws now in force, or any act or acts that may hereafter be passed, be inflicted for any such crime, &c. committed in England, and shall also be liable, at the discretion of His Majesty's Court of King's Bench, to be adjudged to be incapable of serving His Majesty in any station, office or capacity, civil or military, or of holding or exercising any public employment whatever."

and should be satisfied that there was a *prima facie* case against the defendant, he (Mr. Vaughan) would have to bind over the witnesses and prosecutor to go to the Central Criminal Court, while the depositions and recognizances, and all the statements that were made before him, would have to be sent to the officer of the Court of Queen's Bench. That by section 25, in the case of an indictable offence committed on land beyond the seas, the Justice, if he thought proper to commit, would have to commit to the common gaol of the county. That the common gaol of the county of Middlesex is Newgate, and therefore if Mr. Eyre were committed for trial without bail, he would be sent to Newgate, and on the sessions of the Central Criminal Court being held, as no indictment could be preferred there, he would be at once discharged; and he (Mr. Vaughan) had therefore come to the conclusion that he had no jurisdiction in the matter.

The counsel for the prosecution called the attention of the Magistrate to the words of 42 Geo. 3. c. 85. s. 1. and 11 & 12 Vict. c. 42. s. 2. (2), and contended that reading

(2) The act 11 & 12 Vict. c. 42. recites "that it would conduce much to the improvement of the administration of criminal justice within England and Wales if the several statutes and parts of statutes relating to the duties of Her Majesty's Justices of the Peace therein with respect to persons charged with indictable offences were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by positive enactment."

By section 2. "In all cases of indictable crimes or offences of any kind or nature whatsoever committed on the high seas, or in any creek, harbour, haven or other place in which the Admiralty of England have or claim to have jurisdiction, and in all cases of crimes or offences committed on land beyond the seas, for which an indictment may legally be preferred in any place within England or Wales, it shall be lawful for any one or more of Her Majesty's Justices of the Peace for any county, riding, division, liberty, city, borough, or place within England or Wales in which any person charged with having committed or with being suspected to have committed any such crime or offence shall reside or be, or shall be supposed or suspected to reside or be, to issue his or their warrant to apprehend the person so charged, and to cause him to be brought before him or them, or some other Justice or Justices of the Peace for the same county, riding, division, liberty, city, borough or place, to answer the said charges, and to be further dealt with according to law."

By section 20. "It shall be lawful for the Justice or Justices before whom any such witness

these sections with section 25. of the last-mentioned act it was the duty of the Magistrate, if he was satisfied that there was a *prima facie* case, to commit Mr. Eyre to the common gaol of the county in which he (the Magistrate) had jurisdiction, there to be safely kept until delivered in due course of law, which would be by his trial in the Court of Queen's Bench, which was a court of oyer and terminer, and such a court as described in the sections referred to. It was also contended that section 20. of the same statute did empower the Magistrate to bind over the witnesses to appear at the Court of Queen's Bench, being a court of oyer and terminer applicable to the trial of this particular offence, but that, even if the legislature had inadvertently omitted to give power to the Magistrate to

shall be examined as aforesaid, to bind by recognizance the prosecutor and every such witness to appear at the next court of oyer and terminer or gaol delivery, or superior court of a county palatine, or court of General or Quarter Sessions of the Peace, at which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused, &c.; and the several recognizances so taken, together with the written information (if any), the depositions, the statement of the accused, and the recognizance of bail (if any) in every such case shall be delivered..... to the proper officer of the court in which the trial is to be had, before or at the opening of the said court on the first day of the sitting thereof, or at such other time as the Judge, Recorder, or Justice who is to preside in such court at the said trial shall order and appoint."

By section 25. "When all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the Justice or Justices of the Peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such Justice or Justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if, in the opinion of such Justice or Justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such Justice or Justices shall, by his or their warrant, commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place to which by law he may be committed, or, in the case of an indictable offence committed on the high seas, or on land beyond the seas, to the common gaol of the county, riding, division, liberty, city, borough, or place within which such Justice or Justices shall have jurisdiction, to be there safely kept until he shall be thence delivered by due course of law."

bind over the witnesses to appear at the trial, it would not relieve the Magistrate from the duty imposed upon him by sections 2. and 25. to commit the accused for trial. That the Court of Queen's Bench was the highest court of oyer and terminer for the whole of England, including of course the county of Middlesex, and that, although other courts of oyer and terminer had been established, the jurisdiction of the Queen's Bench had not been interfered with; and it was, therefore, still a court of oyer and terminer for the county of Middlesex. The Magistrate, however, declined to proceed to hear the evidence, and it was arranged that the summonses should stand adjourned till the 4th of May, in order that an application for a mandamus might be made to the Court of Queen's Bench.

A rule in the terms before mentioned having been obtained—

J. J. Powell shewed cause.—The offences specified by the acts 11 & 12 Will. 3. c. 12. and 42 Geo. 3. c. 85. are not indictable offences within the meaning of 11 & 12 Vict. c. 42. s. 2, and therefore the Magistrate had no power in this case to take the evidence and bind over the prosecutor and witnesses. The words “inquired of, heard and determined” in the latter statute have been explained by Lord Wensleydale, in *The King v. Ruck* (3), where it was held that the words “dealt with” apply to Justices of the Peace; “inquired of” to the grand jury; “tried” to the petit jury, and “determined” to the Court. And these proceedings must take place in Middlesex. Now, the offences specified in 11 & 12 Vict. c. 42. s. 2. are offences for which an indictment may be preferred in *any* place in England and Wales.

[BLACKBURN, J.—You propose to read the words “any place” as “every place.” The proceedings are to be in the Court of Queen's Bench, which does not necessarily sit in Middlesex.]

Still, the grand jury would have to be summoned from the county of Middlesex. Again, the act 11 & 12 Vict. c. 42. deals with the existing jurisdiction of Justices of the Peace, and was not intended to extend their powers. This is shewn by the pre-

amble of the act. Now, section 20. merely enables the Justices to bind over the witnesses to appear at the next court of oyer and terminer. But it is submitted that it was not intended to include the Court of Queen's Bench in these general words. It is a well-known rule that the Crown is not bound in a statute, except by express words. The Court of Queen's Bench, it is true, is a court of oyer and terminer, but it is also a court of coronage, and it could hardly be contended that it was included by a general act relating to coroners. Where the Court of Queen's Bench is intended to be included it is specially mentioned, as in 59 Geo. 3. c. 69. s. 4, which enacts that offences committed in England may be tried at the King's Bench, in Westminster, or at the assizes or sessions of oyer and terminer. The Judges of this Court are Justices of the Peace, but the Court would not be affected by statutes relating to the sessions of the peace.

[LUSH, J.—The act 11 & 12 Vict. c. 42. is merely a regulating statute, but it is substituted for 7 Geo. 4. c. 64, which is in express terms a statute extending the power of Justices.]

Offences of such importance as the one in question were probably intended to be removed from the jurisdiction of Justices of the Peace.—He referred to *Stephen's Blackstone*, vol. 4. pp. 441, 442.

Sir R. Collier (*Fitzjames Stephen* and *J. H. Payne* were with him) was not heard.

BLACKBURN, J.—We are all of opinion that in this case the rule ought to be made absolute in the terms in which it was obtained, and that the Magistrate must take the evidence of the witnesses produced against Mr. Eyre, and, if he thinks that upon the depositions there is a *prima facie* case, must bind the prosecutor and witnesses to give evidence and return the recognizances and depositions to the proper officer of this Court before or at the next sittings. The question turns entirely upon the jurisdiction of the Justices of the Peace. This jurisdiction was in the first instance limited to a particular district, that of the commission of the Justices, but it was afterwards extended. The first statutory provisions relating to the mode of taking the examination of witnesses before Justices are 1 & 2

(3) 1 Russ. C. & M. 827; s. c. *Russellon Crimes*, 4th edit., vol. 1, 757.

Ph. & M. c. 13. s. 4. and 2 & 3 Ph. & M. c. 10, which directed the Justices to certify the examinations to the next general gaol delivery to be holden within the limits of their commission. Then came the act 7 Geo. 4. c. 64, which by section 2. provided that the Justices should have power to bind the prosecutors by recognizances to appear at the next court of oyer and terminer &c., and that they should preserve the examinations and recognizances, and deliver or cause them to be delivered to the proper officer of the court in which the trial was to be, and section 3. contains similar provisions where the offence is not felony but misdemeanor or suspicion thereof. These provisions are practically re-enacted by the repealing statute, the 11 & 12 Vict. c. 42. Section 2. of this statute is as follows.—(The learned Judge read the section at length).—Now the first point taken by Mr. Powell is, that an offence which the statute orders to be tried in Middlesex is not an indictable offence committed on land beyond the seas for which an indictment may legally be preferred in *any* place within England and Wales according to 11 & 12 Vict. c. 42. s. 2. I cannot see the force of this objection. This is an offence for which an indictment may be preferred in the county of Middlesex, and why is it not an offence committed beyond the seas, for which an indictment may be preferred in some place in England? Then section 20. of the 11 & 12 Vict. c. 42. is as follows.—(The learned Judge read the section).—And the next contention is, that the Court of Queen's Bench does not come within the definition "next court of oyer and terminer." The Court of Queen's Bench is a court of oyer and terminer, and if an indictment is found in this case, it must be tried before it as a court of oyer and terminer. Yet it is said that this case does not come within section 20. The reason suggested, as far as I can make out, is, that the Crown is not bound by a statute unless it is named, and therefore that the Court of Queen's Bench is not affected by provisions in which it is not mentioned. But I cannot think that this rule applies. The reason for going before a Magistrate and taking the depositions in the first instance, instead of preferring an indictment *ex parte*, behind the back of the person

charged, are just the same where the case is directed to be tried in the Queen's Bench as in other cases. For the reasons which I have given, I think that the Magistrate is bound to hear the case, and consider whether there is a *prima facie* case against Mr. Eyre.

MELLOR, J.—I am of the same opinion. The words of the act 42 Geo. 3. c. 85. s. 1. are, that the offence may be prosecuted or inquired of, and heard and determined in His Majesty's Court of King's Bench here in England, either upon an information exhibited by His Majesty's Attorney General, or upon an indictment found. Mr. Eyre, as I understand, is charged with offences specified in this statute. But it is said that although he may be tried for this offence in the Court of Queen's Bench as a court of oyer and terminer, yet he is not entitled to the advantages which the statute 11 & 12 Vict. c. 42. has introduced respecting the committal of prisoners. By section 2. of this statute, persons charged with offences committed on land beyond the seas, for which an indictment may be preferred in any place in England and Wales, may be summoned before any two Justices and dealt with according to law. Mr. Powell's contention is, that here the indictment could only be preferred before the grand jury in Middlesex, and therefore that the case is not within the meaning of the act. But I have very great difficulty in seeing that the act 11 & 12 Vict. c. 42. does not apply to all indictable offences of whatever description, and think that to hold otherwise would be to deprive the prisoner, as well as the prosecutor, of a benefit which the statute intended to confer upon him.

LUSH, J.—I am of the same opinion. The only question before us is, whether the Magistrate had jurisdiction to entertain this charge, the Magistrate acting for the county in which the person charged was at the time of the charge, and the offence being one which by the statute must be prosecuted, inquired of, heard and determined in this court. This question has been very properly referred to us by the Magistrate; but, after considering the terms of the 11 & 12 Vict. c. 42. s. 2, I have come to the conclusion that the Magistrate had jurisdiction to deal with this case. It would

be, to my mind, extraordinary if this particular case were excluded from the application of the statute; and when I look at the section which is part of an act consolidating the former statutes upon the same subjects, I find that it was intended to include every description of offence committed on land beyond the seas for which an indictment may legally be preferred in any place within England or Wales. In the present case the offence is charged to have been committed beyond the seas, and is one for which an indictment may be preferred in the Court of Queen's Bench. Then we come to section 25. of the same act. This section enacts, that if the evidence given raises a strong or probable presumption of the guilt of the accused party, the Justice in the case of an indictable offence committed on the high seas or on land beyond the sea is to commit him to the common gaol of the county, &c., within which such Justice or Justices shall have jurisdiction. And section 20. embraces what is contained in the act 7 Geo. 4. and the two previous statutes, as to taking depositions and returning the recognizances. I have not the least difficulty in holding that the act 11 & 12 Vict. c. 42. intended to include proceedings such as these within its operation.

BLACKBURN, J. added: I wish to say that none of us entertains the least doubt but that the Magistrate was right in taking the opinion of this Court.

Rule absolute.

Attorneys—Shoen & Roscoe, for the prosecution;
Hopwood & Sons, for the Magistrate.

[IN THE COURT OF COMMON PLEAS.]

1868. }
June 4. } ASHBY v. HARRIS.

Burial-Ground—Right to plant Flowers on private Graves—Metropolitan Intermment Acts.

A burial board established under the Metropolitan Intermment Acts granted to A. R. the right of making a private grave, and the exclusive right of burial therein, in a certain spot in their cemetery, to hold the

same in perpetuity for the purpose of burial, and of erecting thereon a monument, with a proviso that if the monument with its appurtenances should not from time to time be kept in repair by the owner according to such rules, orders and regulations as had been, or should be from time to time, made by the burial board for the management and regulation of the cemetery and the vaults, graves and monuments therein, the grant should be void. A. R. buried her husband in this spot, erected a headstone and surrounded the plot with a curbstone. The board afterwards made a regulation that no person should be allowed to plant flowers, &c. on the graves, but that they themselves should alone do it, at certain prices they fixed, and they prevented A. R. from planting the said spot with flowers:—Held, that they had no right to prevent A. R. from so planting the said spot.

This was a case stated for the opinion of the Court under the 20 & 21 Vict. c. 43. by two Justices of the county of Middlesex.

CASE.

At a petty sessions, held at Highgate, in the county of Middlesex, on the 10th day of February, 1868, before us the undersigned, two of Her Majesty's Justices of the Peace for the said county, James Ashby, of Finchley, in the said county, an officer duly appointed by the Burial Board of the parish of St. Pancras, in the said county, hereinafter called the appellant, appeared before us the said Justices to answer to a complaint made by Elizabeth Harris, of the same place, hereinafter called the respondent, for that the said appellant did on the 25th of January last, at the said parish of Finchley, unlawfully assault and beat her the said respondent.

Upon the hearing of the said complaint, the following facts were proved or admitted: That the Burial Board of the Parish of St. Pancras had provided a burial-ground at Finchley aforesaid, under the provisions of the Burial Act (15 & 16 Vict. c. 85), and that the appellant is an officer appointed by the said board and a duly sworn constable. That the respondent is the wife of John Harris, a gardener resident at Finchley. That on the 17th of August, 1857, the Burial Board

made a grant to Ann Robotham, of which the following is a copy :

"Interment of Joseph Robotham.

"The Burial Board of the Parish of St. Pancras, in the county of Middlesex, established under the act 15 & 16 Vict. c. 85.

"Number 128.

"By virtue of an act passed in the 16th and 17th years of the reign of Her Majesty Queen Victoria, intituled 'An Act to amend the Laws concerning the Burial of the Dead in the Metropolis':

"We, the Burial Board of the Parish of St. Pancras aforesaid, being an incorporation incorporated by and under the said act, in consideration of the sum of 2*l.* 2*s.* to us in hand paid by Mrs. Ann Robotham, of No. 4, Queen's Terrace, St. Pancras, do hereby grant and convey unto the said Ann Robotham the right and privilege of constructing and making a private grave, and the exclusive rights of burial and interment therein when made, in all that piece of land six feet and six inches long, by two feet and six inches wide, situate and being in the second class Chapel ground of the St. Pancras Cemetery, situate in the parish of Finchley, in the county of Middlesex, distinguished by the number 10, in 12 K; to hold the same to the said Ann Robotham in perpetuity for the purpose of burial, and of erecting or placing therein a monument or stone, but if the same shall not be so erected or placed within twelve calendar months from the date hereof (unless with licence for further time obtained from the said burial board), or if such monument or stone, with the appurtenances, to be so erected or placed, shall not from time to time be kept in repair by the owner or owners for the time being according to such rules, orders and regulations as have been, or shall from time to time hereafter be, made by the said burial board for the management and regulation of the said cemetery, and the vaults, graves and monuments therein, this grant shall be void.

"Given under the common seal of the said burial board, this 27th day of August, 1857.

"Charles Green, (L.S.)
"Clerk to the Board."

That in accordance with this grant Mrs. Robotham caused her late husband to be buried in the said ground, and erected a headstone and a curb round the sides of the grave, leaving an open space at the top over the body without any stone or other covering. That John Harris, the respondent's husband, personally or by his agents, had been in the habit of planting the above-named open space with flowers from the year 1857 to the month of October, 1867, by the authority and at the charges of the said Mrs. Robotham. That on the 7th of June, 1867, the said burial board passed a resolution, of which the following is a copy:

"That the superintendent make a return of all the graves in the cemetery for which the owners pay to be planted with flowers, and that such owners be written to and informed that the board purpose taking the planting of such graves with flowers under their own direction; that for the future no other persons will be permitted to do so, and that all applications for and payments in respect of planting and keeping up such graves with flowers, &c. will have to be made to the clerk at the office, or to the superintendent of the cemetery."

That at the quarterly meeting, held in September, 1867, the recommendation of a committee "that so soon as the owners of graves are apprised that the board undertake the planting of graves themselves, the superintendent have authority to prevent other persons entering the cemetery for the purpose of interfering with such planting," was adopted by the board; and at a board, holden on the 17th of September, 1867, it was resolved, "that the clerk issue notices to the owners of private graves planted with flowers, &c., informing them of the intention of the board to undertake such planting themselves for the future." That accordingly, on the 1st of October, 1867, Mr. Charles Green sent a notice to Mrs. Robotham that the board had determined to undertake for the future all such planting and keeping up through their officers; and that from the date of the letter, no other persons than those appointed by the board would be permitted to enter the cemetery for such a purpose, and with such notice a list of prices fixed by the board to be charged for

planting and keeping up graves was sent. That, in the month of January, 1868, the said John Harris obtained from the said Mrs. Robotham an authority in writing to plant the said grave. That on the 25th of January last the respondent, as her husband's agent and assistant, went with her son to the said burial-ground to the said grave for the purpose of planting the same, and was informed of the order of the burial board, and required to desist from planting the grave or otherwise interfering with it. That she persisted in commencing to dig the open space between the curb-stones and over the body for the purpose of sowing flower-seeds, and was forcibly prevented from continuing so to do by the appellant, who acted under the instructions given to him by the said burial board. And that for this assault she summoned him before us.

It was not contended on either side that the respondent was digging the grave in an improper manner, or that she was about to sow or plant objectionable seeds, or that the appellant used greater force than was necessary to remove her from the grave to prevent her planting the same; and both parties waived any objection which might (by the 46th section of the statute 24 & 25 Vict. c. 100. as to offences against the person) have been made to our hearing and deciding the case, on the assertion of a right by either side.

The respondent contended that she was justified and entitled to plant the grave under the authority of the said Mr. Robotham, by virtue of the grant made to her by the burial board, whereby the grantee is bound to keep the monument or stone, "with the appurtenances," in repair from time to time.

And the appellant contended that such keeping in repair, if the open space over the grave should be deemed an appurtenance, or the planting of the open space whether an appurtenance or not, was subject to such rules, orders and regulations as should have been or might from time to time be made by the said board; and that in accordance with such rules, &c. he had authority to prevent her so planting the said grave.

The following clauses of the statute 15 & 16 Vict. c. 85. were referred to at the hearing of the said summons, viz.,—

Section 33, at the end. The parishioners and inhabitants of such parish, or of each of such parishes, shall have the same rights of sepulture in such burial-ground as they respectively would have had in the burial-ground or burial-grounds in and for their respective parishes, subject, nevertheless, to the provisions herein contained.

Section 34. Any burial board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial, either in perpetuity or for a limited period, in any part of any burial-ground provided by such board; and also the right of constructing any vault or place of burial, with the exclusive right of burial therein, in perpetuity or for a limited period; and also the right of erecting and placing any monument, grave-stone, tablet or monumental inscription in such burial-ground.

Section 38. The general management, regulation and control of the burial-grounds provided under this act shall, subject to the provisions of this act and the regulations to be made thereunder, be vested in and exercised by the respective burial boards providing the same. Provided that any question which shall arise touching the fitness of any monumental inscription placed in any part of the consecrated portion of such grounds shall be determined by the bishop of the diocese.

We, the said Justices, being of opinion that the respondent had a right to enter the burial-ground and plant the grave for the purpose of keeping the monument and its appurtenances in repair; and that the order of the board that such planting should be done by no other persons than those appointed by the board, at a rate of charges fixed by themselves, was unreasonable and beyond the powers conferred on them by the 38th section of the act, 15 & 16 Vict. c. 85, hereinbefore referred to, convicted the appellant of the assault charged against him in the penalty of 1*s.* and 17*s.* costs.

Whereupon the appellant, being dissatisfied with our decision as erroneous in point of law, and having, pursuant to the statute 20 & 21 Vict. c. 43, applied to us to state and sign a case setting forth the facts and the grounds of our decision for the opinion of Her Majesty's Court of Common Pleas,

we have, in compliance with such application, stated the same accordingly.

If this Honourable Court should be of opinion that the said burial board was duly authorized to make a rule, order or regulation, "that no person other than those appointed by the said board should be permitted to enter the cemetery for the purpose of planting the graves," then the conviction to be quashed, otherwise to stand of full effect.

J. J. Powell, for the appellant.—First, no right to plant flowers was conveyed; secondly, even if it were, it was to be subject to the regulations of the cemetery. By 15 & 16 Vict. c. 85. s. 33, the burial board, "under such restrictions and conditions as they think proper, may sell the exclusive right of burial . . . in any part of any burial-ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein, . . . and also the right of erecting . . . any monument, &c., in such burial-ground." The contract was meant to be limited to this, and only a right to bury and put up a monument was conveyed. Again, by section 38, "the general management, regulation and control of the burial-ground is to 'be vested in and exercised by the board.'" And clearly under this section there was power to make such an order as was made here.

Grantham, for the respondent.—Section 33 expressly says, that the board may impose conditions before they convey, and here they conveyed without any stipulation, and the regulation made afterwards was beyond their powers. They had no right to derogate from the grant they had made, and to do what might be a prevention of the planting altogether, as it would be, if they pleased to put a large charge on the performance of it.

[*BOVILL*, C.J. referred to *Gibson's Codex*, 453, as cited in 1 *Burn's Justice*, 272.]

Again, it may be said that this planting came within the provision as to repair, looking to the nature of the grave.

Powell, in reply.—The soil was not conveyed, but certain rights therein which did not include this power. As to what has been said about monuments in a church, a permission is necessary, and further it

may be questionable whether it may not be retracted. The rights of a rector as to burial were much discussed in *Bryan v. Whistler* (1).

BOVILL, C.J.—I am of opinion that the decision of the Magistrates was correct. The board have power, under such restrictions as they think proper, to sell the exclusive right of burial in any part of the burial-ground, and also the right of constructing any vault or place of burial, with the exclusive right of burial therein, and also the right to erect a monument. They might, therefore, have imposed conditions, but they granted certain rights with very limited restrictions, none of which, in my opinion, prevent the planting of the grave. In order to decide this case we must look to the terms of the grant, and, on doing so, we find that it conveys the privilege of making a private grave and erecting a monumental stone, and provides that if the stone and its appurtenances are not repaired, according to the rules from time to time made for the management of the cemetery, the grant is to be void. This being the grant, a headstone was erected and a curb placed round the sides of the grave, leaving the open space over the body without any stone. Mrs. Robotham had authority to construct such a monument as was constructed, and as by the terms of the grant she was bound to keep it as constructed in repair, the question is, what is such repair? Leaving it untended, covered with weeds and neglected, could not be such repair; the degree of repair must depend on the thing to be repaired; this grave was of a particular description; and, in my opinion, except that she was to do nothing that was indecent or contrary to propriety, Mrs. Robotham was to be the judge of the repair necessary, and there was nothing to prevent her from planting the grave with flowers. If I had any doubt it would be, in great measure, removed by seeing what was usually done when the grant was made, and I should conclude from what is stated that then everybody did so plant if they pleased, and further, Mrs. Robotham exercised the privilege for ten years, which

(1) 8 B. & C. 288.

is strong to shew the meaning of the parties. Here there was a grant in perpetuity of this spot as a private grave; the board had no right to make a regulation to interfere with the rights conveyed; and Mrs. Robotham had the exclusive right to plant the grave.

WILLES, J.—I am of the same opinion. The question turns on the grant; and it appears to me that, in construing it, no regard is to be had to the words "according to such rules, orders and regulations as shall, from time to time, hereafter be made," because if force were given to them, the conveyance would be repugnant to them, and it would seem that the case fell within the well-known rule, and that these words were to be rejected for repugnancy. But, without going so far and avoiding this conclusion, the proper construction would be that the rules to be made are to be general rules for the management of the cemetery, such as rules as to the shutting of the gates at night, but not particular rules as to the rights of the person to whom the grant was made. As appears from *Com. Dig.*, tit. 'Cemetery,' B, there are two sorts of rights of burial: first, the common right of every parishioner to be buried in the churchyard without the right to any particular place; secondly, the exclusive right to be buried in a particular spot, which, by the common law, with certain exceptions as to the right to land, could only be obtained by a faculty or by having an ancient house, a right which, as is shewn in *Whistler v. Bryan* (1), the rector himself could not grant. This second very exclusive kind of right is the right intended by the legislature to be given by the burial board. The effect of the grant was to appropriate a particular place and give exclusive right of burial exclusive of interference; and it seems to me that the case of a rector is not analogous, because the profits of the churchyard belong to him; whereas this is excluded by the character of the burial board, which is not entitled to have the cemetery for profit, but only for burial. The grant, also, is clear; the grantee might have covered the whole space with a monument; or, if she did not, might leave such a space as is now in question; and as she might repair the stone if it had covered the

whole, so if it does not she may keep the rest in decent order. It is fairly within the words of the grant that she may plant this space decently and in the usual way. The practice is immemorial, and is consonant with the notions of our country, where persons have always been allowed to ornament the graves and have the right to protect them against wrongdoers. Thus (*Com. Dig.*, tit. 'Cemetery,' C.), if "any one pull down a tombstone or monument put up in the church, the heir may have an action; and if any one deface the arms, pennons, &c., put up in a window or elsewhere in honour of his ancestor, though they be defaced by the parson, ordinary or churchwardens, as well as by a stranger." And in *Spooner v. Brewster* (2) it was held that, though the freehold of the churchyard is in the parson, trespass lies for the erector of a tombstone against a person who wrongfully removes it from the churchyard and erases the inscription. The proper conclusion is, that there was a grant of the exclusive right to do all such things as are decent in setting up a memorial.

BYLES, J.—I am of the same opinion. This was a populous parish; in 1855 a cemetery was provided, and though there is no evidence of what was done till 1857, there is abundant evidence of what was done after, and that it was the habit to plant the graves; so that, connecting this with the resolution, the practice is clear. As respects ordinary parishioners, they are entitled to the use of the land till the body is destroyed by decay; but this is a grant of a perpetual exclusive right. I think one great value relatives put on a right to plant flowers is, that they might plant them themselves; and as the usage existed when the grant was made, I think that the grant was made subject to it, and that the board cannot derogate from their grant.

Attorneys—W. T. Ricketts, for appellant; W. Durrant Cooper, for respondent.

(2) 3 Bing. 186.

[IN THE COURT OF QUEEN'S BENCH.]

1868. } THE QUEEN v. THE MAYOR,
April 22. } &c. OF OLDHAM.

Poor-Rate—Property of Municipal Corporation—Exemption of Corporate Property by 4 & 5 Vict. c. 48. s. 1.

The exemption created by 4 & 5 Vict. c. 48. s. 1. of the property of municipal corporations from liability to poor-rate, where this property is in a parish wholly within a borough, the poor of which are relieved by one entire rate, is not affected by the decision in Jones v. the Mersey Docks (1), nor by the Union Chargeability Act, 28 & 29 Vict. c. 79.

A corporation not included in the Schedules A. and B. of the Municipal Corporations Act, 4 & 5 Will. 4. c. 76, is by 16 & 17 Vict. c. 79. s. 2. entitled to the benefit of the exemption in 4 & 5 Vict. c. 48. s. 1.

Upon appeal to the Quarter Sessions for Lancaster against a poor-rate, made by the overseers of the township of Oldham, the Sessions confirmed the rate, subject to the following

CASE.

A charter of incorporation was granted to the borough of Oldham in 1849, under the provisions of 5 & 6 Will. 4. c. 76. By 13 & 14 Vict. c. xlii. this charter was confirmed.

The borough of Oldham is co-extensive with and includes the whole of the township of Oldham. Before the passing of the Union Chargeability Act, 28 & 29 Vict. c. 79. (2), an entire rate was made and levied for the relief of the poor of the township of Oldham upon the rateable property therein, but exclusive of all the property the subject of this case.

The township now contributes to the relief of the poor, as one of eight townships forming the Oldham Union, according to the rateable value of the property comprised therein, to a common fund for the

relief and maintenance of the poor, whether in or out of the workhouse of such union, pursuant to the provisions of the last-mentioned act. The corporation of Oldham are possessed of and are the occupiers of the property set forth in the above-mentioned rate, which property is wholly situate within the borough and township of Oldham.

This property, which consists of water-works and mains, gasworks, meters and mains, police-stations, telegraph, baths and washhouse, farm-yard, fire-engine houses, a town-hall, market-house, cemetery, and other property, has not heretofore been rated to the relief of the poor.

The borough of Oldham is a borough coming within the proviso of the 4 & 5 Vict. c. 48. s. 1. (3), and as the property lies in a township, which is situate wholly within the boundaries of the borough, in which the poor within the boundaries thereof as existing for municipal purposes were up to the passing of the act relieved by one entire poor-rate, the corporation claim to have their property still exempted from the

(3) By the 4 & 5 Vict. c. 48. s. 1, after reciting that the municipal corporations of cities and boroughs named in the Schedules (A.) and (B.) annexed to the act, 6 Will. 4., to provide for the regulation of municipal corporations in England and Wales, have been held not to be liable by law to be rated to the relief of the poor in respect of any lands, tenements, and hereditaments, being the properties and in the occupation of such municipal corporations, by reason that the income arising therefrom is applicable to public purposes only; and that it is expedient that such municipal corporations should nevertheless in some cases be rateable and be rated to the relief of the poor in respect of such property, it is enacted, "That the said municipal corporations named in the said schedules shall from and after the passing of this act be rateable and be rated to the relief of the poor in respect of lands, tenements, and hereditaments, being the property and in the occupation of such municipal corporations, as if such lands, tenements, and hereditaments were not corporate property, any law, usage, or custom to the contrary notwithstanding; provided always, that where such property lies in any parish which is situate wholly within the boundaries and limits of a city or borough named in the said schedules and in which city or borough the poor are relieved by one entire poor-rate, or in which city or borough the poor within the boundaries or limits thereof as existing for municipal purposes at the time of the passing of the said act were then relieved by one entire poor-rate, the exemption of such property from rateability shall continue as if this act had not passed."

(1) 11 H.L. Cas. 443; s.c. 35 Law J. Rep. (N.S.) M.C. 1.

(2) By 28 & 29 Vict. c. 79. s. 1. so much of 4 & 5 Will. 4. c. 76. as requires parishes in unions to defray the expenses of their own poor is repealed, and the expenses thenceforth incurred are to be charged to the common fund.

rate levied for the relief of the poor by virtue of the proviso in the same act, and notwithstanding the act 28 & 29 Vict. c. 79.

It is to be taken, for the purposes of this case, that the occupation of the before-mentioned property of the corporation, which is liable to be rated under 43 Eliz. c. 2. s. 1, is an occupation yielding a net annual value or clear rent over and above the probable average annual cost of repairs, insurances and other expenses necessary to maintain the property in a state to command such rent.

It is to be taken for the purposes of this case that the property is occupied and used for municipal purposes.

The question for the opinion of the Court is, whether the appellants are liable to be rated for the relief of the poor in respect of the property comprised in the rate or assessment.

F. M. White, for the respondents.—The appellants will rely upon the exemption in 4 & 5 Vict. c. 48. s. 1, but it is submitted that the operation of this proviso was, so far as the exemption is concerned, simply to continue the law as if the act had not passed. This law has now been explained by the case of *Jones v. the Mersey Docks* (1), which decides that property like this, although occupied for public purposes, is rateable. The object of the act was to make property rateable, not to exempt it. The recital contains no express declaration of the law.

[HANNEN, J.—Suppose that the recital had been, “whereas it has been erroneously held,” &c., would that make any difference?]

Perhaps not; but the operation of the statute ought to be limited to its sole object, which was to impose a rate. The public policy is in favour of uniformity of decisions in the Poor Law.

[LUSH, J.—It seems to me that it is just as if the legislature had said, “We think it right that corporate property should in general be rateable, but we also think that, under certain circumstances, it ought not to be rateable.”]

Secondly, this case is not within the meaning of the proviso. Although Oldham is incorporated, it is not within either of the schedules of the Municipal Corporation

Act, 4 & 5 Will. 4. c. 76. Lastly, the law of rating is now changed by 28 & 29 Vict. c. 79. s. 1, and the proviso was not intended to apply to a case where several townships contribute to the union fund.

[MELLOR, J.—That section was not intended to affect any exemption.]

Quain (*Kemplay and Edwards* with him) contended that the respondents were prevented by the express words of the case from objecting that the borough of Oldham was not within the schedules of the Municipal Corporation Act; but the Court having refused to entertain this proposition, he pointed out that the act 16 & 17 Vict. c. 79. s. 2. (4) expressly extended the provisions of 4 & 5 Will. 4. c. 76. to all future corporations.

MELLOR, J. (5).—We are all of opinion that this property was improperly rated, and that the order of Sessions must be quashed. The case is singular and somewhat instructive as to the way in which our legislature proceeds. We have first the act 4 & 5

(4) By 16 & 17 Vict. c. 79. ss. 1, 2, after reciting “that the acts 6 & 7 Will. 4. cc. 104, 105, 7 Will. 4. and 1 Vict. c. 78, 2 & 3 Vict. c. 28, 3 & 4 Vict. c. 28, 4 & 5 Vict. c. 48, and 6 & 7 Vict. c. 89, or some of the provisions thereof respectively which might properly be made applicable as well to all the municipal corporations in England which have been erected since the passing of the act 6 Will. 4. for regulating municipal corporations in England, as to the municipal corporations specified in the schedules to that act, do not apply to such recently erected municipal corporations by reason of those acts or provisions being restricted in terms to the municipal corporations specified in those schedules: and that it is expedient that all acts relating generally to the municipal corporations in England specified in these schedules should apply as well to all municipal corporations in England erected after the passing of that act;” it is enacted, that “in every case in which an existing or future act passed after the act, 6 Will. 4. c. 76, for the regulation of municipal corporations, or any provision of any such act, applies generally to the municipal corporations specified in the schedules to that act, or applies generally to municipal corporations in England, every such act and every such provision shall (except only so far as by any act hereafter passed is otherwise expressly provided) extend and apply, not only to every municipal corporation in England specified in those schedules, but also to every municipal corporation in England erected after the passing of that act, 6 Will. 4. c. 76, and whether erected by charter under that act or otherwise.”

(3) Cockburn, C.J. was presiding at the trial of prisoners in the Central Criminal Court.

Vict., which was founded on the decisions of this Court, which held that municipal property was not rateable. The legislature, thinking that the state of things established by these decisions was not proper, proceeded to enact that in future municipal property should be rated, but exempted from what it proposed to enact as new law certain corporate property under certain conditions. The property in question complies with these conditions, and is therefore not liable to be rated. It has been said, however, that this act was passed by the legislature under a misconception as to the law, and that the proviso was not intended to alter the law as it existed at the time of the statute. But this cannot be the case, and it is impossible for us,—although we may very likely see that this act of parliament would never have passed if the late decision of the House of Lords had then been pronounced,—to set at naught the intention of the legislature by speculating upon what would have been done if they had known the law. When, however, we look at the proviso, we find that it is limited to parishes situate within certain specified boroughs in the schedules to the act 5 & 6 Will. 4. c. 76, and that the borough of Oldham is not within either of these schedules. The borough would therefore be in a different position from other municipal corporations; and in order to remedy this inconvenience an act of parliament, the 16 & 17 Vict. c. 79, was passed, which, in section 2, appears to have cured the objection. With reference to another point taken by Mr. White, the act 28 & 29 Vict. c. 89. does not appear to me to touch the question; for this act does not make property rateable which had not before been rated, but merely affects the machinery by which the rate is assessed.

LUSH, J.—I am also of opinion that the act 16 & 17 Vict. c. 79. brings the borough of Oldham within the classes specified in Schedules A. and B. to the Municipal Corporation Act. As to the proper construction of section 1. of that act, I cannot but regard the section as an expression of intention that under certain circumstances corporate property shall continue to be exempted from the poor-rate. There can be no doubt that the law as it was then supposed to be has been corrected by the decision in *Jones v.*

the Mersey Docks (1), but the legislature has declared that property such as this shall be exempted, and the reason is obvious, for what was paid in respect of this property as poor-rates would be refunded to the corporation in the shape of borough rates. As to what has been said concerning the act 28 & 29 Vict. c. 79, I think that there is nothing in it to qualify the effect of this proviso. It makes different parishes contribute for the benefit of the poor within the union to which they belong, but the liability to the rate itself remains unchanged.

HANNEN, J. concurred.

Order of Sessions quashed.

Attorneys—William Hunt, agent for J. Ponsonby, Oldham, for appellants; Bower & Cotton, agents for Kay, Clegg & Son, Oldham, for respondents.

[IN THE COURT OF QUEEN'S BENCH.]
1868. } ANGELL, *appellant*; THE VESTRY
June 3. } OF PADDINGTON, *respondents*.

Metropolis Management Acts (18 & 19 Vict. c. 120. s. 105; 25 & 26 Vict. c. 102. s. 77.)—*Provisions for Paving New Streets*—*Rateability of Church*.

A church, together with the land appurtenant to it, is not rateable either as a house or land to the expenses of paving a new street, under the powers of the Metropolitan Management Acts, 18 & 19 Vict. c. 120. s. 105, and 25 & 26 Vict. c. 102. s. 77.

CASE stated for the opinion of this Court, according to 20 & 21 Vict. c. 43.

The appellant appeared before one of the Magistrates of the metropolitan district sitting in the police court for the district of St. Marylebone, on the 6th of April, 1867, to answer a summons obtained by the respondents charging him, as the owner of certain premises in Warrington Gardens, in Paddington, abutting upon a new street about to be paved by the respondents, with neglecting to pay the sum of 14l. 3s. 2d., his estimated share of the expenses of such paving.

It appeared from the vestry books that in February, 1867, a resolution was duly

passed that Warrington Gardens be forthwith paved throughout the whole length of the carriage-way and footpaths, and that the estimated expenses, amounting to 83*l.* 9*s.* 4*d.*, be apportioned and charged upon the respective owners of the land and houses bounding, or abutting upon, or forming, the street. The appellant was the owner of one of those houses.

It appeared that there was a church, surrounded with land, opposite the row of houses mentioned in the resolution of the vestry, and abutting upon the road in question; and that no occupier or owner had been assessed in respect of this church and land, either as a house or as land; and it was objected by the appellant that the resolution of the vestry was not in accordance with the provisions of the act 25 & 26 Vict. c. 102. s. 77 (1), and that the owners or occupiers of the houses referred to in the resolution, the same being on one side of the street only, were improperly assessed with the whole amount of the estimated cost of repairing such road.

On the other hand, it was contended that it was not competent to question the legality of the resolution of the vestry in a proceeding under the above-mentioned act before one of the metropolitan Magistrates; and it was also contended that the church in question was neither house nor land abutting upon the new road within the meaning of the act, and that no owner or occupier of it could properly be assessed under the powers given

by the act, and that the owners or occupiers of the houses, although they were situated on one side only of the road, were properly assessed with the whole amount of the estimated cost of repairing the road.

By a conveyance, dated March, 1856, and made by the then Bishop of London to the Commissioners for Building New Churches, the plot of land on which the church of St. Saviour now stands, and the marginal land adjoining, was given by the Bishop to the Commissioners and their successors, to be devoted, when consecrated, to ecclesiastical purposes for ever, by virtue of the acts of parliament therein mentioned.

On the 12th of April, 1856, the Bishop of Oxford, under a commission from the then Bishop of London, consecrated the church for the celebration of divine service.

The appellant contended that the owners of Warrington Gardens ought not to be liable for making and putting in repair the whole width of road between the plot of land already mentioned and the houses, because it did not appear that the marginal piece of land abutting on the roadway was included in the consecration, and therefore exempted from chargeability with a proportionate part of the expense of putting the roadway into repair.

The Magistrate ordered that the appellant should pay 14*l.* 13*s.* 2*d.*, his share of the expenses in question.

(1) By the 18 & 19 Vict. c. 120. s. 105, "In case the owners of the houses forming the greater part of any new street laid out or made or hereafter to be laid out or made, which is not paved to the satisfaction of the vestry or district board of the parish or district in which such street is situate, be desirous of having the same paved, as herein-after mentioned, or if such vestry or board deem it necessary or expedient that the same should be so paved, then and in either of such cases such vestry or board shall well and sufficiently pave the same, either throughout the whole breadth of the carriageway and footpaths thereof, or any part of such breadth, and from time to time keep such pavement in good and sufficient repair; and the owners of the houses forming such street shall, on demand, pay to such vestry or board the amount of the estimated expenses of providing and laying such pavement (such amount to be determined by the surveyor for the time being of the vestry or board)," &c.

By 25 & 26 Vict. c. 102. s. 77, "Where any vestry or district board shall, under the powers given by

18 & 19 Vict. c. 120. s. 105, have paved or be about to pave any new street, the owners of the land bounding or abutting on such street shall be liable to contribute to the expenses or estimated expenses of paving the same, as well as the owners of houses therein, provided that it shall be lawful for the vestry or district board to charge the owners of land in a less proportion than the owners of house property, should they deem it just and expedient so to do; and any such costs or expenses, including the cost of paving at the points of intersection of streets, and all other incidental costs and charges, shall be apportioned by the vestry or board, and shall be recoverable either before the work shall be commenced, or during its progress, or after its completion; . . . and any such amount shall be recoverable from the present or any future owner of the premises either by action at law or in a summary manner before a Justice of the Peace, at the option of the vestry or board."

By section 112, "The expression 'new street' shall apply to and include all streets hereafter to be formed or laid out, and a part of any such street."

If the Court were of opinion that the resolution of the vestry directing that the whole amount of the cost of repairing the road should be assessed upon the owners and occupiers of the houses in question was bad, the order of the Magistrate was to be cancelled, but if otherwise, it was to remain in force.

Dowdewell (Macnamara with him), for the respondents.—The resolution of the vestry was fully warranted by the statutes in question.

[BLACKBURN, J.—There is no interpretation of the word “house” in the act.]

In stat. 18 & 19 Vict. c. 120. s. 81. there are regulations as to erecting any house, which are quite inapplicable to a church. Then, with regard to the liability imposed upon the owner of lands, if it appeared that more land was attached to this church than was required for the purposes of mere decency, there might be some ground for the appellant's argument, but in the present case the marginal piece of land is a narrow fringe of ground which would pass under a conveyance of the church.—(He was then stopped.)

J. Brown (Patchett with him), for the appellant.—The site of the church and the land connected with it ought to have been charged with a share of the expenses of paving the street. By the 18 & 19 Vict. c. 120. s. 162, which contains directions for levying rates for defraying the expenses of vestries and district boards, public buildings and void places, except churches and burial-grounds, are to retain their rateability. This exception would not have been required if the respondents are right.

[LUSH, J.—It was inserted to prevent any one supposing that it was intended to repeal the 3 & 4 Will. 4. c. 30, exempting churches and chapels from poor-rates.]

The word “house” cannot be limited to dwelling-houses, otherwise warehouses, stables, &c. would escape rateability. It would seem that a church might have been described as a house in the old indictments for burglary, upon the ground that it was *domus mansionalis Dei*—*Russell on Crimes* (3rd edit.), vol. 1, 826.

COCKBURN, C.J.—We think that the order was quite right. It is only necessary to say that a church is neither a “house”

nor “land” within the meaning of the act.

BLACKBURN, J.—I would add, that I do not think that the Commissioners for Building Churches can be considered as the owners or occupiers intended by the legislature.

LUSH, J. concurred.

Judgment for the respondents.

Attorneys—T. J. Angell, for appellant; F. J. Fuller, for respondents.

[IN THE COURT OF COMMON PLEAS.]

1868. { THE MAYOR, ALDERMEN AND
June 4, 8. { CITIZENS OF THE CITY OF
MANCHESTER, appellants;
CHAPMAN, respondent.

Local Act—Liability to pave Street—Owner of Ground adjoining Street—Cul-de-Sac.

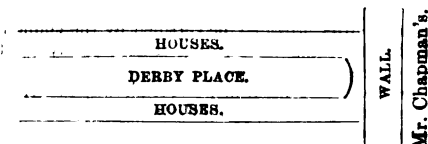
By a local act the liability to pave and sewer any street within the borough of M. was cast on the owners of the houses and ground lying alongside or adjoining to such street, and in case of neglect power was given to the borough council to sewer and pave the street, and to charge the owners with their proportionate parts of the expenses thereof, according to the extent of their respective houses and grounds lying alongside or adjoining to the said street:—Held, that an owner of ground at the end of a street which was a cul-de-sac, and which ground was only separated from such street by a wall the property of such owner, is the owner of ground adjoining to the said street within the meaning of the act, and therefore liable to contribute his proportionate part of the expense of severing and paving such street.

CASE stated under 20 & 21 Vict. c. 43. for the opinion of this Court by the stipendiary Magistrate for the city of Manchester.

At a petty sessions for the city of Manchester, holden before the stipendiary Magistrate on the 3rd of July, 1866, William Chapman, the respondent, appeared (by his counsel) in obedience to a summons duly issued upon the complaint of the mayor, aldermen and citizens of the city of Manchester, the appellants, charging that the said W. Chapman, on the

4th of May, 1866, at the city aforesaid, on demand, then and there neglected and refused to pay and refund to the council of the said city the sum of 8*l.* 17*s.* 9*d.*, the amount of the charges and expenses sustained, incurred and paid by the council of the said city in and incidental to the sewerage, levelling, flagging, paving and otherwise completing a certain street there situate, called Derby Place, under the provisions of a certain act, intituled, "The Manchester General Improvement Act, 1851" (14 & 15 Vict. c. cxix.), together with interest thereon, the said W. Chapman being the owner of houses lying alongside and adjoining the said street, and having neglected to sewer, level, flag, pave and complete the said street, as ordered so to do by writing under the hand of the town clerk of the said city, pursuant to the said act. And by the said summons the said W. Chapman was desired to shew cause why a distress for the said sum of 8*l.* 17*s.* 9*d.*, and interest thereon, should not be issued for recovery of the same.

It was proved to the satisfaction of the Magistrate that the council of the city of Manchester had, on the 2nd of December, 1863, duly ordered the said street, called Derby Place, which is described in the following plan, to be paved and sewerage,



and that such order was duly published as required by the said act; and that the said W. Chapman was, at the date of the said order, and still is, the owner of the land at the end of Derby Place.

That the several owners liable, under the said statute to pave and sewer the said street (inclusive of the said W. Chapman, if he be held to be an owner liable in that behalf), made default in paving and sewerage the same in compliance with such order, and the street was thereupon duly paved and sewerage by and at the cost of the corporation; and that the share of the said W. Chapman of and in such cost (if he were liable to contribute at all, and if the principle of measurement adopted by the cor-

poration for measuring along the sides and across the one end of the street be correct), has been correctly ascertained and apportioned by the corporation at the sum of 8*l.* 12*s.*, which sum, with interest thereon, at 5*l.* per cent., is the sum claimed by the corporation from the respondent.

It was further proved on the part of the corporation that the street was, on the 31st of August, 1865, declared by the said council a public highway in pursuance of the said act.

On the part of the respondent it was proved that the street in question was and is a *cul-de-sac*, the property of the respondent being at the end of it, and that before the erection of the houses in Derby Place the respondent built a substantial wall for the express purpose of fencing off his estate from the adjoining property; and subsequently Derby Place and other streets were laid out and built right up to the respondent's boundary wall; but it was admitted that the respondent could at any time, by removing such wall either wholly or partially, obtain access from his own estate to such street, and if he liked, continue the street; in which case he would be liable to sewer, flag, &c. such continuation.

It was contended before the Magistrate, on the part of the corporation, that under the 15th clause of the Manchester General Improvement Act, 1851 (1), the owners of houses and ground lying alongside and

(1) The following are the sections of 14 & 15 Vict. c. cxix., the Manchester General Improvement Act, 1851, which relate to this case:

Section 15. That if any street or part of a street (not being a highway repairable by the inhabitants at large) which now is or shall at any time hereafter be formed or set out within the borough, shall not be sufficiently sewerage and drained, levelled, flagged and paved, to the satisfaction of the council, it shall be lawful for the council, at any time, and from time to time, after the passing of this act, by any writing under the hand of the town clerk, to order that any such street or part thereof shall be freed from obstruction, and sewerage and drained, levelled, flagged and paved, or otherwise completed, in such manner and within such time as the council shall order and direct; and thereupon the respective owners of the houses and ground lying alongside or adjoining to the said street, notwithstanding any parts of such street may include, pass over, lie opposite or be adjacent to any cross or other street or any part thereof, shall, within such time and in such manner as shall be expressed in such order, at their respective charges and ex-

adjoining to the street were liable to contribute to the cost of paving and sewerage in proportion to their frontage, even if such houses and ground were at the end of the street; and that the words "alongside or adjoining" were to be construed literally, and apply to all property which was in contact with such street; and that under the said act the obligation to pave and sewer a street was not cast upon the persons owning the soil of the street, but on the owners of the land adjoining thereto.

It was contended on the part of the said W. Chapman, that under the circumstances of the case he was not an owner of houses and ground lying alongside and adjoining the said street, as alleged in the said summons, within the true intent and meaning of the said statute, and that he was not liable to contribute to the expense of paving and sewerage Derby Place, aforesaid.

The Magistrate decided that the respondent was not, under the circumstances of the case, and upon the true construction of the statute, liable to contribute; and he dismissed the summons.

The question for the opinion of the Court was, whether upon the facts appearing in this case the Magistrate's decision was erroneous in point of law.

If the Court should be of opinion that he

penances, remove all obstructions, and well and sufficiently sewer and drain, level, flag and pave, or otherwise complete such street respectively.

Section 17. That if any such owners shall neglect or omit to remove the obstructions, and sewer, drain, level, flag and pave, or otherwise complete such street or any part of any such street within such time and in such manner as expressed in the said order, it shall then be lawful for the council to remove all obstructions, and to sewer, drain, level, flag and pave, or otherwise to complete, as they shall think fit, the said street, or such part thereof as shall not have been done pursuant to the said order, and to charge such respective owners with their several proportionate parts of the charges and expenses thereof, or which are incidental thereto, according to the extent of their respective houses and grounds lying alongside or adjoining to the said street, such share and proportion to be ascertained and settled by or under the direction of the said council; and all the charges and expenses which the council shall thereby sustain, incur or pay, and shall so charge upon such owners respectively, shall, on demand, be forthwith paid and refunded to the council by such owners respectively, and, together with interest from and after the expiration of three calendar months from the date when the completion of the street shall

was wrong, then the respondent was to pay to the said corporation the sum of 8*l.* 12*s.*, and interest after the rate of 5*l.* per cent. per annum from the 31st of August, 1865.

If the Court should be of opinion that he was right, the case was to be dismissed, and the corporation was to pay the respondent his costs of attending the hearing before the Magistrate, and of this case.

Mellish (*R. G. Williams* with him), for the appellants.—The question is whether land at the end of a *cul-de-sac*, bounded by a wall, is land adjoining a street such as that mentioned in the summons so as to render the owner of such land liable, under the Manchester Improvement Act (14 & 15 Vict. c. cxix.), to contribute to the expense of paving and sewerage such street. Section 15. of that act enacts that, after the Borough Council have ordered any street, not being a highway repairable by the inhabitants at large, to be sewered, &c., and paved, "the respective owners of the houses and ground lying alongside or adjoining to the said street," are bound to sewer and pave such street according to such order. If they neglect to do so, then, by section 17, the council may sewer, &c., and pave the street, and charge such owners with their proportionate parts of the expenses, "according to the extent of their respective houses and grounds lying along-

as hereinafter provided be certified by the council, shall be recoverable by action of debt in any court of competent jurisdiction.

Section 28. That if any street already made, or hereafter to be made, within the borough has already been, under any powers in that behalf, or shall at any time hereafter, together with the footways therein, be drained and paved, or put into good order to the satisfaction of the council, then and in such case, on the application of the persons being the owners of the lands lying alongside or contiguous or adjoining to such street, on both sides thereof, or being the owners of the greater part in extent of such lands, by writing under their hands made to the council, it shall be lawful for the council, by writing under the hand of the town clerk, to certify and declare the same to be a public highway, and after such declaration, the same shall be a public highway, and for ever afterwards repaired and repairable by the township or townships in which the same shall be situate, in such and the same manner as public streets and highways are repaired and repairable by law therein; and within two months next after the signing of every such certificate and declaration the same shall be transcribed and recorded amongst the proceedings of the council, and shall be deposited with the clerk of the peace.

side or adjoining to the said street." By the Public Health Act, 1848 (11 & 12 Vict. c. 63. s. 69), a similar liability is put on the "owners or occupiers of the premises fronting, adjoining or abutting upon" a street requiring to be sewered, &c.; and in *The Queen v. the Newport Local Board of Health* (2) it was held that the expense of sewerage and paving such street must be apportioned among the owners or occupiers of all premises fronting, adjoining or abutting upon the street, whether the premises have direct access to the street or not.

[BOVILL, C.J., referred to *Moody v. Corbett* (3).]

It matters not what benefit the respondent may derive from the sewerage or paving; it is sufficient that he comes within the act as owner of land adjoining to the street.—(He was then stopped by the Court.)

Thesiger, for the respondent.—It may be that the *quantum* of benefit is not the test of liability; but still it is manifest that the legislature intended that the persons only who were to benefit by the work were to contribute to the expenses; indeed, it would be most unjust if it were otherwise. In *The Local Board of Health of Kingston-upon-Hull v. Jones* (4), Alderson, B., in delivering the judgment of the Court, says: "Where a road has been made which is not repairable by the parish, it may become a public nuisance or injurious to the public health, because there is nobody bound to put it into a proper state; and the legislature thought it right that those who owned the property for the convenience of which the street is made should be at the expense of preventing it from being a mischief to the public at large." That is the principle which has guided the legislature in passing such acts of parliament. Here it cannot be said that the street is for the convenience of the respondent; he has nothing whatever to do with it, and it is entirely cut off from him by the wall which separates it from his property. This property of his cannot be said to be alongside or even

adjoining the said street within the meaning of the statute. That act shews throughout that the terms "alongside" and "adjoining" are used as synonymous terms. In section 23. the words "adjoining to or abutting upon" are used; and in section 25. the word "adjoining" only is used; whilst sections 32. and 33. speak of owners of houses and ground "alongside" a street. The meaning, therefore, is to impose the liability on the person who is owner of a house or land alongside the street ordered to be paved, &c., which clearly is not the case of this respondent. The 28th section is important; that section provides for making the street a public highway, which the street in question has now been declared to be; but, under this 28th section, it is requisite to have the application for that purpose of the owners of, or of the greater part of, "the lands lying alongside, or continuous, or adjoining to such street on both sides thereof." That would not include the respondent, whose land and wall were at the end of the only two sides the street had. In fact, the respondent, without pulling down his wall, could derive no benefit whatever from the street.

R. G. Williams replied.

BOVILL, C.J.—Upon the best consideration of the act that I have been able to give, I have come to the conclusion that Mr. Chapman was the owner of ground adjoining the street within the meaning of the act; and therefore the decision of the Magistrate must be reversed. The 15th section imposes the duty of sewerage, levelling and paving the street upon "the respective owners of the houses and ground lying alongside or adjoining to the said street," and it seems to me that the words "adjoining to" are intentionally put in to meet the case of a *cul-de-sac* like the present. The fact of there being a wall dividing the land from the street does not affect the question, for the wall is on Mr. Chapman's property, and he is the owner of the ground on which it stands. As a general rule, we would not so construe the act as to apply it to a case in which no benefit could be derived from the works; but no injustice is really done here in putting the construction we have upon the act, for Mr. Chapman may at any time hereafter have the

(2) 32 Law J. Rep. (N.S.) M.C. 97.

(3) 5 Best & S. 859; s.c. 34 Law J. Rep. (N.S.) Q.B. 166.

(4) 1 Hurlb. & N. 489; s.c. 26 Law J. Rep. (N.S.) Exch. 33.

use of the street by opening a communication with it. The expenses are provided for by the 17th section; and by that section the share and proportion of the expenses are to be ascertained by the council and charged upon the owners according to the extent of their respective grounds lying adjoining to the said street. Reliance has been placed by the respondent on some other sections, and our attention was first called to the 23rd section; but I do not think that that varies our judgment on the 15th section. The language there is "ground adjoining to or abutting upon any street," and I see no material difference between that and the words in the 15th section, "ground lying alongside or adjoining to the said street." Next, the 28th section was brought to our notice, by which section provision is made for declaring a street a highway on the application of "persons being the owners of the lands lying alongside, or contiguous, or adjoining to such street, on both sides thereof, or being the owners of the greater part in extent of such lands." That may be to meet the case where the majority of the owners who apply are on one side only of such street; but, however that may be, it is sufficient that it is capable of a construction which does not conflict with the view I have taken of the 15th section. The 32nd and 33rd sections likewise do not affect the present question. Though not without some doubt, I have come to the conclusion that the construction to be put on the act is such as I have already mentioned; that Mr. Chapman is the owner of ground adjoining to the said street; and that he is therefore liable to contribute to the expense of sewerage and paving such street. My judgment, consequently, must be for the appellants.

BYLES, J.—I am of the same opinion. Mr. Chapman's ground is at the end of the street, and forms it into a *cul-de-sac*. At this end there is a wall; but Mr. Chapman is the owner of such wall, and he may pull it down at any time and so prolong the street, or he may open a gate in the wall and so obtain an entrance into the street. Suppose, instead of being a parallelogram, the street had been a square, it is plain that Mr. Chapman would have had to contribute to these expenses. The sewer is a permanent benefit which it is obvious he may at any time obtain the advantage of.

NEW SERIES, 37.—MAG. CAS.

I agree with my Lord that the decision of the Magistrate must be reversed.

Decision reversed.

Attorneys—Chester & Urquhart, agents for W. H. Talbot, Manchester, for appellants; Gregory, Bowcliffes & Rawle, agents for T. Southam, Manchester, for respondent.

[IN THE COURT OF QUEEN'S BENCH.]
1868. } BROUGH, appellant; HOMFRAY
June 3. } AND OTHERS, respondents.

Colliery, Ventilation of—Space in which Ventilation is necessary—"Working Place"
—23 & 24 Vict. c. 151. s. 10.

By the 23 & 24 Vict. c. 151. s. 10. rules 1 and 2,—which direct that "an adequate amount of ventilation shall be constantly produced in all coal mines or collieries and ironstone mines, to dilute and render harmless noxious gases, to such an extent that the working-places of the pits, levels and workings of every such colliery and mine, and the travelling-roads to and from such working-places, shall, under ordinary circumstances, be in a fit state for working and passing therein," and that all entrances to any place not in actual course of working and extension, and suspected to contain dangerous gas of any kind, shall be properly fenced off so as to prevent access thereto,—it is meant, not only that the working-places and travelling-roads of the mine should be kept ventilated, but that all parts of the mine should be ventilated so as to render the working-places and travelling-roads safe.

In a colliery subject to the above rules there was a heading, the top or fore-end of which had not been worked for eighteen months; while this part of the heading was being put in repair, it became filled with explosive gas, in consequence of one of the workmen removing a door so as to divert the ventilation. Danger-signals were at once put up, so as to prevent access to that part of the heading filled with gas, and there was no intention to resume operations in it until it had been ventilated; but the door was not immediately replaced, from a fear that this would be dangerous while the men were in the pit. Three days afterwards, and before the ventilation was restored, an explosion took place in the end of the heading:—Held, that this

2 A

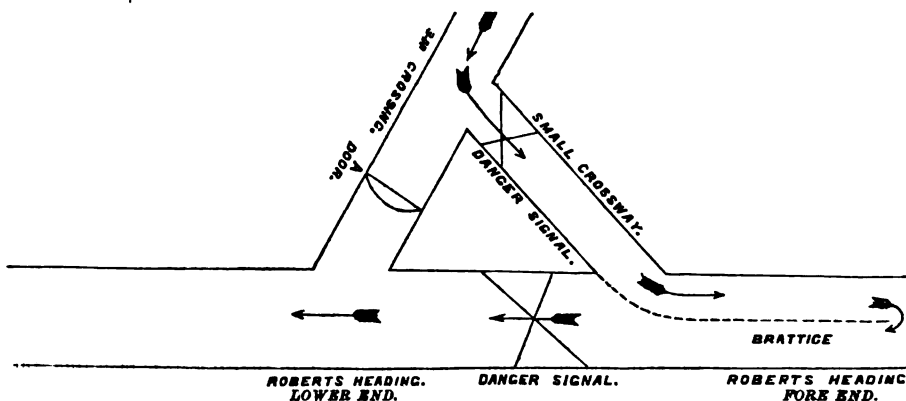
part of the heading was a "working-place" within the meaning of the statute, so that there had been a breach of the rule requiring ventilation to be maintained.

At a Petty Sessions at Tredegar, in Monmouthshire, on the 22nd of September, 1865, an information was preferred by L. Brough (the appellant), under 23 & 24 Vict. c. 151. ss. 10, 22 (1), charging the respondents, as the owners of a colliery called the Bedwelty Pit, with not causing an adequate amount of ventilation to be constantly produced in the colliery, to dilute and render harmless noxious gases, to such an extent that the working-places of the pits, levels and workings of the colliery and the travelling-roads to and from the working-places should, under ordinary circumstances, be in a fit state for working and passing therein.

At the hearing, on the 24th of October, the Magistrates dismissed the information, being of opinion that the top of Roberts's heading mentioned in the evidence was not, under the facts proved, "a working-place," on the 16th of June, 1865, within the meaning of the first general rule in the 23 & 24 Vict. c. 151. s. 10, and the following CASE was stated for the opinion of the Court pursuant to 20 & 21 Vict. c. 43:—

It was proved before the Magistrates that the defendants were the owners of the colliery called the Bedwelty Pit, in the county of Monmouth; and a plan of the workings in the colliery was proved before the Magistrates, which plan was to be taken as part of the case.

(The following plan will sufficiently elucidate the case.)



The ventilation of the colliery passed down the pit until it got into a heading

called Jones's heading, and it proceeded along Jones's heading into the cross-heading called the Third Crossing in the plan, a door

(1) By the 23 & 24 Vict. c. 151, an Act for the Regulation and Inspection of Mines, section 10, "The following rules (hereinafter referred to as the general rules) shall be observed in every colliery or coal-mine and ironstone-mine by the owner and agent thereof: 1. An adequate amount of ventilation shall be constantly produced in all coal-mines or collieries and ironstone-mines to dilute and render harmless noxious gases to such an extent that the working-places of the pits, levels and workings of every such colliery and mine, and the travelling-roads to and from such working-places, shall, under ordinary circumstances, be in a fit state for working and passing therein: 2. All entrances to any place not in actual course of working and exten-

sion, and suspected to contain dangerous gas of any kind, shall be properly fenced off so as to prevent access thereto."

By section 22, "If any coal-mine, colliery, or ironstone-mine be worked, and, through the default of the owner or agent thereof, . . . the general rules, or the special rules for such coal-mine, colliery, or ironstone-mine, . . . the provisions of which ought to be observed by the owner and principal agent or viewer of such coal-mine, colliery, or ironstone-mine, be neglected or wilfully violated by any such owner, agent, or viewer, such person shall be liable to a penalty of not exceeding 20*l*."

in which, marked A, diverted the ventilation thence into and through the small cross-heading marked Small Cross-way in the plan, into the heading marked Roberts's Heading on the plan, and by means of a brattice (that is, a canvas partition), represented by a dotted line on the plan, it was conducted into the upper part or fore-end of Roberts's heading, and then round the brattice in the opposite direction, and along Roberts's heading to the up-cast shaft. The direction of the arrows on the plan shews the course of the ventilation.

This had been the mode of ventilating this part of the colliery for more than a year before Wednesday the 14th of June, 1865. The top or fore-end of Roberts's heading and the top or fore-end of Jones's heading were each in solid unworked coal, and the third crossing and the cross-hole were also driven in solid unworked coal, and the coal was entirely unworked and workable adjoining and around the fore-end of Roberts's heading and Jones's heading and the third crossing and the small cross-way.

The stalls on the left or west side of Jones's heading and other stalls in that heading and the fore-end of that heading were being worked on the 14th, 15th and 16th days of June, 1865, and had been continuously worked previous to those days.

The stalls on the right or east side of Roberts's heading and other stalls in that heading were being worked on the 14th, 15th and 16th days of June, 1865, and had been continuously worked previous to those days.

The driving on the fore-end of Roberts's heading and the working of coal therein had been temporarily discontinued for about eighteen months before the beginning of June, 1865. In the beginning of June, 1865, Mr. W. Beavan, the manager of the colliery, gave directions to put the fore-end of Roberts's heading above the third crossing into order and repair, and one Richard Jenkins was employed for five or six days before the 14th of June, 1865, working at the repairs of the fore-end of Roberts's heading above the third crossing, so as to resume operations therein, and the working of coal therefrom.

The third crossing and small cross-way were part of the air-way, conducting the

ventilation from Jones's heading into the fore-end of Roberts's heading, as before mentioned.

The small cross-way was about three feet high, and four feet wide. In the beginning of June, 1865, the manager of the works gave directions to enlarge and convert the third crossing into a roadway for bringing the coal worked in the fore-end of Jones's heading into Roberts's heading, so that it might be taken down that heading to the level heading for conveyance to the surface.

David Jones and his son, a boy about thirteen years of age, were employed so to enlarge and convert the third crossing into a roadway, and they worked at such alteration until, on the 14th of June, they had completed it up to the door marked "A," which diverted the ventilation into the small cross-way and the fore-end of Roberts's heading. On the 14th of June David Jones mentioned to the foreman of the colliery, John Jehu, who is an under-agent, that he intended taking down the door, but he was told by Reynolds the overman not to do so, as it would withdraw the ventilation from the small cross-way and the fore-end of Roberts's heading, and would be dangerous. Notwithstanding these directions, David Jones took down the door on the morning of the 14th of June, 1865.

The consequence of the taking down of the door was that the ventilation would not pursue its course into the small cross-way and the fore-end of Roberts's heading, but would pass directly along the third crossing into Roberts's heading and down that heading towards the up-take pit.

Within half an hour after taking down the door and this interference with the course of ventilation, the fore-end of Roberts's heading would become filled with explosive gas and be highly dangerous, and in fact, shortly after the door had been so taken down, the foreman, John Jehu, found on examining the fore-end of Roberts's heading that it had become filled with explosive gas as the ventilation therein had ceased. Upon the door being so taken down it became impracticable for Thomas Jenkins to continue his operations in the fore-end of Roberts's heading in consequence of the ventilation there having ceased and explosive gas having accumulated therein, and he discontinued his work, but was to resume it

as soon as the ventilation could be restored. On the foreman, John Jehu, finding on the morning of the 14th of June (which he did immediately it was done) that the door had been so taken down, he put up fences and warning signals across the small cross-way, just above or to the north of the point where the third crossing enters Roberts's heading, so as to prevent access either to the small cross-way or to the fore-end of Roberts's heading.

The Magistrates found that there was no intention to resume work in or allow any one to enter any part of the fore-end of Roberts's heading until the ventilation of it had been properly restored. Beavan, the colliery manager, was informed by Jenkins on the 14th of June, 1865, in answer to an inquiry in the street, why he was not at work, that Jones had taken down the door, and Beavan directed Jenkins to tell Jehu the foreman to replace the door immediately. This direction was given to Jehu, but he did not replace the door, alleging that it would be dangerous to do so till Saturday, when the men would be out of the colliery. On the morning of Thursday, the 15th of July, 1865, Beavan had a conversation with Jehu personally, and also with Reynolds, the overman of the colliery, as to replacing the door, but Beavan, Jehu and Reynolds all agreed that it would be dangerous to do so, from the quantity of gas accumulating in the fore-end of Roberts's heading, while the men were at work in the colliery, and that it would not be safe to do so until the following Saturday-night, when the men would be out of the colliery; and it was delayed accordingly. Jones and his son, on Wednesday the 14th, Thursday the 15th and Friday the 16th, until the explosion hereafter mentioned occurred, continued their work in the third crossing. The other workmen continued their operations on these days (until the explosion) in the lower or southern end of Roberts's heading and the stalls opening out of it, and in Jones's heading and the stalls leading out of it, and in the other parts of the colliery.

On Friday morning a violent explosion occurred in Roberts's heading, but how it occurred could not be ascertained. Jones, his son and several persons were killed, and several others injured. The foreman had, on the morning of the explosion before it

occurred, been through the works to examine the condition of the ventilation, and he had that morning, pursuant to his duty, by pushing his lamp between the fencing, found that the fore-end of Roberts's heading was full with the accumulation of gas, as it was on Wednesday after taking down the door, and also on Thursday. The fencing was put up with a view to prevent access to the gas.

If upon the evidence the Court thought that in point of law there was no wilful violation of the 1st general rule on the 16th of June, 1865, and that under ordinary circumstances an adequate amount of ventilation was produced in the working-places of the colliery to dilute and render harmless noxious gases, and that the fore-end of Roberts's heading was on the day in question not a working-place within the meaning of the 1st general rule, the respondents ought not to have been convicted, and the information was properly dismissed; but if in the opinion of the Court it was otherwise, the respondents ought to have been convicted.

Manisty (H. Matthews with him), for the appellant.—The simple question is, whether the statute meant that the whole mine should be kept ventilated. It is true that the part of Roberts's heading where the gas collected had not been worked for some time when the workmen received orders to repair it, but the working had all along continued in the rest of the heading, which was immediately connected with the part which became dangerous.

[BLACKBURN, J.—The point appears to be whether the liability extends to the whole mine.]

The place where the explosion took place shews that the gas must have escaped from Roberts's heading. It is no defence for the owner to shew that communication with the part of the heading which had become unsafe was cut off. No time ought to have been lost in restoring ventilation while the men were in the mine.—(He was then stopped.)

Henry James, for the respondents.—In this case, it was impossible for the Magistrates to have convicted, as every precaution had been taken by the mine-owner. Rules 1. and 2. must be taken together. Shutting off the part affected by the gas

was quite sufficient, as the poisonous gas does not travel into the rest of the mine, but remains stationary. There is no evidence that the gas ever escaped from Roberts's heading. If the respondents are liable at all, it is for a breach of rule 2. in not fencing off a place containing dangerous gas. Ventilation is only required to be maintained where the working is actually going on, and it was not meant that every crevice in the mine should be kept ventilated.

[BLACKBURN, J.—Why could not the respondents have put up an air-tight partition?]

COCKBURN, C.J.—I think that there is evidence enough before us to shew that the working-places of this mine were not sufficiently ventilated so as to be in a fit state for working and passing in them. I think that it was the intention of the legislature that so much of the mine should be ventilated as might operate on these places, in other words, that so much of the mine must be ventilated as is essential to the safety of those working in it. It was owing to defects in such ventilation that this accident occurred. The case must go back to the Justices to be reheard, with an intimation of the opinion of the Court that it is not enough to ventilate the working-places and travelling-roads of the mine, but that the first rule requires all the parts of the mine to be ventilated so as to render the working-places and travelling-roads safe.

BLACKBURN, J. and LUSH, J. concurred.
Case remitted.

Attorneys—Sharp & Ullithorne, for appellant; T. Clark, for respondents.

[IN THE COURT OF QUEEN'S BENCH.]
1868. } THE QUEEN v. THE JUSTICES FOR
June 12. } MARYLEBONE.

Special Constables—Order for Payment of Expenses out of County Rate—Special Session of Justices—"Division or Limits"—1 & 2 Will. 4. c. 41. ss. 1, 13.

Under the act for amending the laws relating to the appointment of special constables,—which, by section 13, enables the Justices of the Peace, acting for the

division or limits within which such special constables shall have been called out to serve, at a special session to be held for that purpose, to order the expenses of such special constables, if the Justices so ordering are Justices for any county, riding or division having a separate commission of the peace, to be paid by the county treasurer out of the public money then in his hands,—the order for payment may be made by Justices at a special session in and for a petty sessional division, and need not be made at a special session of Justices acting for the whole county, riding, or division within which special constables are appointed.

Rule, calling upon certain Magistrates acting for the petty sessional division of Marylebone and their clerk, to shew cause why a *certiorari* should not issue to bring up an order made by the Magistrates, at a special session for the petty sessional division of Marylebone, on the 11th of May, 1868, in order that it might be quashed.

It appeared from the affidavits that in December, 1867, an information upon oath was laid before certain Justices of the Peace for the county of Middlesex, acting for the division of Marylebone, to the effect that there were reasonable grounds for apprehending that tumults, riots and felonies might take place in the parish of St. Marylebone, whereby it was necessary that special constables should be appointed for the better preservation of the peace, according to 1 & 2 Will. 4. c. 41. (1).

(1) By 1 & 2 Will. 4. c. 41, an act for amending the laws relative to the appointment of special constables, and for the better preservation of the peace, section 1, "In all cases where it shall be made to appear to any two or more Justices of the Peace of any county, riding or division, having a separate commission of the peace, or to any two or more Justices of the Peace, of any liberty, franchise, city or town in England or Wales, upon the oath of any credible witness, that any tumult, riot or felony has taken place, or may be reasonably apprehended in any parish, township or place, situate within the division or limits for which the said respective Justices usually act, and such Justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace and for the protection of the inhabitants and the security of the property in such parish, township or place as aforesaid, then, and in every such case,

In consequence of this information certain persons were duly sworn in to act as special constables, and expenses amounting to 54*l*. 18*s*. 3*d*. were incurred in providing staves and other necessary articles for them, &c. An account of these expenses was laid before a special session of the Justices in and for the petty sessional division of Marylebone, and an order was made by them upon the treasurer of the county of Middlesex for the payment of the expenses so incurred.

A question was thereupon raised whether the order for these expenses should not have been made at a special session of Justices acting for the whole county or division within which special constables were appointed.

At the time of the passing of the act 1 & 2 Will. 4. the county of Middlesex was divided into six hundreds, and four extra-parochial places; of these the hundred of Ossulston was divided into five divisions. One of these divisions, the Westminster division, was conterminous with the liberty of Westminster, for which there was and still is a separate commission of the peace, which, however, does not exclude the juris-

diction of the Justices in the commission of the peace for the county. In the county of Middlesex there are two commissions of the peace, one for the county proper, the other for the city and liberty of Westminster. At the date of the act 1 & 2 Will. 4. c. 41, separate sessions were held for the county and the liberty respectively, the former at Clerkenwell, the latter at the sessions house Westminster. In July, 1853, the county was divided into seventeen petty sessional divisions, by an order of sessions pursuant to 14 & 15 Vict. c. 55. s. 17. The Marylebone division was one of the new divisions constituted by this order.

Poland (*Mellish* with him) shewed cause.—The order in dispute was valid. The question turns upon the meaning of the words “division or limits,” in 1 & 2 Will. 4. c. 41. ss. 1, 13. The word “division” appears to be used in two senses in section 1; first, as indicating a division having a separate commission of the peace, and secondly, a division for which Justices usually act, that is, a petty sessional division, such as Marylebone. The words “Justices of the Peace acting for the division or limits within which any

such Justices, or any two or more Justices acting for the same division or limits, are hereby authorized to nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of constable), residing in such parish, township or place as aforesaid, or in the neighbourhood thereof, to act as special constables, for such time and in such manner as to the said Justices respectively shall seem fit and necessary for the preservation of the public peace, and for the protection of the inhabitants and the security of the property in such parish, township or place; and the Justices of the Peace who shall appoint any special constables by virtue of this act, or any one of them, or any other Justice of the Peace acting for the same division or limits, are and is hereby authorized to administer to every person so appointed the following oath,” &c.

By section 5, every special constable so appointed shall have the powers of a constable at common law, not only within the parish, &c. for which he shall have been appointed, but throughout the entire jurisdiction of the Justices appointing him.

By section 13, “The Justices of the Peace acting for the division or limits within which any such special constables shall have been called out to serve, at a special session to be held for that purpose, or the major part of the Justices at such special session, are hereby empowered to order from time to time such reasonable allowances for their

trouble, loss of time and expenses, to be paid to such special constables who shall have so served or be then serving, as to the said Justices or such major part of them shall seem proper; and the said Justices or such major part of them may also order the payment of such expenses as may have been incurred in providing staves or other necessary articles for such special constables, and the said Justices so ordering, if Justices for any county, riding or division having a separate commission of the peace, or if Justices for any liberty, franchise, city or town, which shall be contributory to the public rate for any county, riding or division, shall make every order for the payment of such allowances and expenses upon the treasurer of such county, riding or division, who is hereby required to pay the same out of any public money which shall then be in his hands, and the said treasurer shall be allowed all such payments in his accounts; and where the Justices of the Peace assembled at such special session are Justices for any liberty, franchise, city or town which is not contributory to the public rate for any county, riding or division, but which raises a rate or other similar fund in the nature of a county rate, in every such case the said last-mentioned Justices shall make every order for the payment of such allowances and expenses as aforesaid upon the treasurer or other officer, having the collection or disbursement of such last-mentioned rate or fund, who shall forthwith pay every such order out of such rate or fund, and shall be allowed all such payments in his accounts.”

such special constables shall have been called out to serve, at a special session to be held for the purpose," in section 13. mean Justices acting for a petty sessional division; but the words "division having a separate commission of the peace," which occur later, mean, no doubt, divisions of a county. The order is to be made on the treasurer of the county having a separate commission of the peace. The act 9 Geo. 4. c. 43. enabling the Justices of a county, with a separate commission of the peace to form new divisions, within which special sessions should be held, did not apply to Middlesex. But this exception was removed by the act 14 & 15 Vict. c. 55. s. 17. The petty sessional divisions made in pursuance of this act are those within which the order may be made. It would be inconvenient to give notice to every Justice in the county on the occasion of considering the expenses of every district. The words "for which the Justices usually act," in section 1, are applicable only to a petty sessional division.

J. Brown and Channell, in support of the rule.—The order should have been made by a special session of Justices for the county. If a different construction be adopted it will cause great inconvenience by leading to unequal rates of allowance and remuneration in the different districts. In *The Queen v. Hulton* (2), where it was held that a similar order by the Justices of the borough of Manchester, which had a separate commission of the peace, and contributed to the county rate, was good, Coleridge, J. says, "The word 'division' in the 13th section, may not necessarily have the same meaning as in the 1st section." In that case the point here in question does not seem to have been decided, but appears to have been considered worthy of argument by the Court.

Per Curiam (3).—There can be no doubt but that the proper construction to be put on section 13. is, that the order for payment of the expenses is to be made by the Justices who acted for the petty sessional division in the appointment of special con-

stables. This construction is borne out by the sense in which the word "division" is used in 9 Geo. 4. c. 43.

Rule discharged.

Attorneys—H. Greenwell, for the Justices of Marylebone; Allen & Son, for the Treasurer of Middlesex.

[IN THE COURT OF QUEEN'S BENCH.]

1868.
June 3;
July 3.

{ THE NORTH-EASTERN RAIL-
WAY COMPANY, appellants;
THE MAYOR, ALDERMEN,
&c. OF TYNEMOUTH, respon-
dents.

Public Health Act—Partial Adoption of the Act—Provisional Order varying the mode of Rating prescribed by the Act.

Section 10, of the Public Health Act, 11 & 12 Vict. c. 63, which enables the act to be applied to any city, town, borough, parish or place wherein there is no local act for cleansing, watching, &c., otherwise than for the profit of the proprietors and shareholders, and directs that the General Board of Health shall make a provisional order accordingly, with such provisions, regulations, conditions and restrictions with respect to the application and execution of the act or any part thereof, and with respect to any such local act, and the repeal, alteration, extension or future execution of the same, and in all respects whatsoever as they may think necessary,—does not authorize the board to make an order applying the Public Health Act, but excepting so much of section 88. as provides that railways, &c. shall be rated upon only one-fourth of their annual value; as the effect of such an order is not to apply the act or any part of it, but to make a new and substantially different enactment, materially altering the rights of parties in the district to which the act is applied.

This was a SPECIAL CASE stated for the opinion of the Court by consent of the parties, and by an order of Blackburn, J., under 12 & 13 Vict. c. 45. s. 11.

The facts are so fully noticed in the judgment of the Court that it will be necessary only to state that a portion of the borough of

(2) 13 Q.B. Rep. 592; s. c. 19 Law J. Rep. (N.S.) M.C. 32.

(3) Cockburn, C.J., Blackburn, J., Lush, J. and Hannen, J.

Tynemouth, consisting of the township of North Shields and of parts of each of the three townships of Tynemouth, Preston and Chirton, were, before the making of the provisional order hereafter mentioned, under the management of Commissioners, constituted under 9 Geo. 4. c. xxxvii. for paving, lighting, watching, cleansing, regulating and improving the town of North Shields, in Northumberland. The appellants, in accordance with the mode of rating prescribed by sections 74, 75, and 80. of this act, were from time to time rated by the Commissioners upon the full improved yearly value of their lands and premises, including their railway, within the limits of the act. In 1849 the townships comprising the parliamentary borough of Tynemouth were formed into a municipal borough, called the borough of Tynemouth, by royal charter, granted in pursuance of the Municipal Corporation Act, 5 & 6 Will. 4. c. 76. Shortly after the incorporation of the borough the Commissioners under the local act, in pursuance of the powers created by section 75. of the Municipal Corporation Act, transferred by deed the powers vested in them to the corporation of Tynemouth,

In July, 1857, a provisional order, purporting to be an order under the provisions of the Public Health Act, 1848 (1), was

made by the General Board of Health, by which,—after reciting the local act and the transfer of its powers to the corporation, and that it appeared to the General Board to be expedient that the Public Health Act, except as thereafter mentioned, should be applied to the borough and its boundaries, so defined as aforesaid, and that provision should be made with respect to the local act and the partial repeal thereof,—it was ordered “that from and after the passing of any act of parliament confirming the order, the Public Health Act, 1848, and every part thereof, except the section numbered 50, and except so much of section 88. as provides that the occupier of any land used as arable, meadow or pasture ground only, &c., or as a railway, constructed under the powers of any act of parliament for public conveyance, shall be assessed in respect of the same in one-fourth part only of such net annual value thereof, should apply to and be in force within and throughout the entire area, places and parts of places comprised within the boundaries of the borough of Tynemouth so fixed as aforesaid, and that the corporate borough and places and parts of places should be and constitute one district for the purposes of the Public Health Act accordingly.” The order contained other provisions which

(1) By the Public Health Act, 11 & 12 Vict. c. 63. ss. 8, 9, provision is made for official inquiries as to the sewerage, &c. of cities, towns, boroughs, parishes, or places having a known or defined boundary.

By section 10.—“If, after such inquiry or further inquiry as aforesaid, it appear to the said General Board of Health to be expedient that this act or any part thereof should be applied to the city, town, borough, parish, or place with respect to which inquiry has been made, upon the petition of such inhabitants as aforesaid, and within the same boundaries as those of such city, town, borough, parish, or place, and within which there is no local act of parliament in force for paving, lighting (otherwise than for the profit of proprietors or shareholders), cleansing, watching, regulating, supplying with water, or improving such city, town, borough, parish, or place, or any part thereof, or in anywise relating to the purposes of this act, they shall report to Her Majesty accordingly; and at any time after presentation of such report it shall be lawful for Her Majesty,

by and with the advice of her Privy Council, to order that this act or any part thereof shall be applied to and be put in full force and operation within such city, town, borough, parish, or place; and if after such inquiry or further inquiry as aforesaid it appear to the said general board to be expedient that this act or any part thereof should be put in force within boundaries not being the same as those of the city, town, borough, parish, or place from which the said petition proceeded, or within boundaries where no petition has been presented from such inhabitants as aforesaid, or within any city, town, borough, parish, or place in which any such local act of parliament as aforesaid is in force, they shall make a provisional order under their hands and seal of office accordingly, with such provisions, regulations, conditions, and restrictions with respect to the application and execution of the same, and in all respects whatsoever as they may think necessary under all the circumstances of the case.”

By section 88. “The said special and general district rates shall be made and levied upon the

are sufficiently described in the judgment of the Court, and provided for the repeal of sections 74, 76. to 85. inclusive, all of the local act.

By the Public Health Supplemental Act, 1851, (No. 3.) it was enacted that the provisional order should, from and after the passing of that act, so far as such order was authorized by the Public Health Act, 1848, be absolute, and be as binding and of the like force and effect as if the provisions of the same had been expressly enacted in the supplemental act.

The question for the opinion of the Court was, whether the appellants could legally be rated or assessed to rates or assessments imposed by the respondents under their powers as the local board of health for Tynemouth, in respect of so much of their lands as were used only as a railway, exclusive of stations, dwelling-houses, warehouses, sheds and the other adjuncts of a railway, as distinguished from the railway itself, otherwise than in the proportion of one-fourth part only of the full net annual value thereof, so ascertained as aforesaid.

Manisty (*Raymond* with him), for the respondents, contended that as the rating powers of the local act made no distinction between railway and other property the provisional order might legally dispense with the reduced scale of rating prescribed

occupier (except in the cases hereinafter provided) of all such kinds of property as by the laws in force for the time being are or may be assessable to any rate for the relief of the poor, and shall be assessed upon the full net annual value of such property ascertained by the rate (if any) for the relief of the poor made next before the making of the respective assessments under this act. . . . Provided also, that the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal, or towing-path for the same, or as a railway, constructed under the powers of any act of parliament, for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof."

By 21 & 22 Vict. c. 98. ss. 55, 88. of 11 & 12 Vict. c. 63. are repealed, but the privilege in the mode of rating railway property is re-enacted.

New Series, 37.—*MAG. CAS.*

by the Public Health Act. That this was the case was evident from the fact that the respondents might if they pleased have adopted the act excluding the whole of section 88. and retaining unimpaired the rating powers of the local act. They cited *Clayton v. Fenwick* (2).

Kemplay (*Mellish* with him) for the respondents, contended that a provisional order could not be made incorporating the Public Health Act in this partial manner. That the words "or any part thereof" in section 10. of the Public Health Act could not mean any part of any section, but must be held to mean that in case any of the provisions of the act were not applicable to a particular place, then the board might by their order extend to that place those provisions only which were applicable to the particular district.

Cour. adv. vult.

The judgment of the Court (3) was delivered on the 3rd of July, by

LUSH, J. — The rate appealed against is assessed upon the full annual value of such part of the appellants' railway as lies in the township of Tynemouth, and upon two-thirds of the annual value of that part which lies in the township of Chirton (including in each case the stations, dwelling-houses, warehouses, sheds, and the other adjuncts of a railway), and the appellants contend that they are entitled to the benefit of the proviso to section 88. of the General Health Act (11 & 12 Vict. c. 63), and to have so much of their road as consists merely of the railway assessed in one-fourth of the annual value notwithstanding that the provisional order declares that such proviso shall not apply to the borough of Tynemouth. The contention is that that part of the order is *ultra vires*. It is hardly necessary to say that if this part of the order be beyond the powers of the General Board of Health, it is not rendered valid by 14 & 15 Vict. c. 103, inasmuch as that statute only confirms the provisional order so far as it is authorized by the Public Health Act.

Before proceeding to consider the terms of the Public Health Act, which confer the

(2) 6 El. & B. 114; s.c. 25 Law J. Rep. (N.S.) Q.B. 226.

(3) Cockburn, C.J., Blackburn, J. and Lush, J.

authority on the board to make provisional orders, it is desirable to bring clearly to view the alterations which the provisional order proposes to effect. By section 74. of the local act (9 Geo. 4. c. xxxvii.), which, as appears from the third paragraph of the case, extended over the township of North Shields and part of each of the townships of Tynemouth, Chirton and Preston, the occupiers of all lands, &c. in North Shields, of all detached houses not in a street, and all gardens and lands for husbandry throughout the district, were liable to be assessed to an annual rate in any sum not exceeding 1s. 4d. in the pound, and the occupiers of all property other than the above (except schools, &c.), in any sum not exceeding 2s. in the pound. There is nothing in the act which required that the several properties should be rated in the proportions above indicated. It was only in the event of *maximum* rates being imposed that the property in North Shields, detached houses, gardens, &c., had any preference. Up to that point each might have been assessed at its full annual value.

The appellant railway, not being in North Shields, was, up to the passing of the 15 & 16 Vict. c. 103, rated at its full value. The provisional order (section 5.) repeals section 74. of the local act altogether, and this was clearly within the power of the board—11 & 12 Vict. c. 63. s. 10. and *Turner v. the Mayor of Halifax* (4). It also enlarged the area of the local act, and extended its unrepealed provisions over the whole municipal borough of Tynemouth, and this also was within the competence of the board. This is the extent to which it repeals, alters and extends the local act so far as concerns the question before us. And if it had then done no more than “apply” section 88. of the general act, the consequence would have been that the stations, dwelling houses, &c. would have been separately rateable at their full annual value; but the line of railway, with the sidings, turn-tables and so much of the platform as was to be considered as the side of the railway—see *The South Wales Railway Company v. the Swansea Local Board of Health* (5)—would have been

rateable at only one-fourth of such value. But the order, while it “applies” section 88. to the borough, excepts so much of that section as thus favours railway and canal property; and by section 14. orders that “all houses, buildings, yards, gardens, lands, tenements and hereditaments in the township of North Shields, and all detached houses not forming part of a street, and all lands occupied solely by gardens or for the purpose of husbandry, shall be rated and assessed only upon two-thirds of the full net annual value, and re-enacts the exemption of charity and other lands which was contained in the local act, thus subjecting those parts of the line of railway which are not in the township of North Shields to a rating at full value, contrary to the terms of section 88. of the general act.

The authority of the board of health is given by the 11 & 12 Vict. c. 63. s. 10, and it is in these terms: “If after such inquiry it shall appear to the said general board that this act or any *part thereof* should be ‘put in force’ within any city, town, borough or place in which any local act is in force, they shall make a provisional order accordingly, with such provisions, regulations, conditions and restrictions with respect to the application and execution of this act, or any part thereof, and with respect to such local act, and the repeal, alteration, extension or future execution of the same, and in all respects whatsoever as they may think necessary under all the circumstances of the case.” Is such a severing of the 88th section justified as a “putting in force,” or to use the term which is employed in the earlier part of the section as denoting the same thing, as “applying” a part of the act to this borough? We think not. Section 88. fixes the proportion in which certain descriptions of property shall contribute towards the expenses of the sanitary measures contemplated by the act, and, it must be supposed, according to the amount of benefit to be derived from these measures; and although the stipulation in favour of railways, canals, &c. is put in the form of a proviso, it is in substance an exception. The section says, in effect, “The occupiers of all property except canals, railways, arable, meadow and pasture ground, &c. shall be rated at full value, and the

(4) Not reported.

(5) 4 El. & B. 189; s. c. 24 Law J. Rep. (N.S.) M.C. 30.

excepted properties at one-fourth of such value." To say that the excepted properties shall be rated at full value or at two-thirds their value is not to "apply" or "put in force" the act, or any part of the act, but to make a new and substantially different enactment, materially altering the rights of parties in the district to which the act is applied. It appears to us that the board have no more power to make this alteration in the act than they have to order that rates which the act says shall be paid by the occupier, shall not be paid by the occupier but by the owner. Is it then warranted by the general words which follow? What these words were intended to include is not clear. As observed by Mr. Justice Coleridge, in *Clayton v. Fenwick* (2), "they are so general that they must receive some limitation." Whatever they may have been intended to mean, it seems obvious that they did not mean to give such a power as this, for while the word "alteration" is inserted with reference to dealing with the local act, no such word is found with reference to the general act.

It was contended in the argument that

the order construed as a whole amounted to no more in effect than the perpetuating section 74, and preserving the rights given by that section. We cannot accede to this view. If section 74. remained in force, no more than 2s. in the pound could have been assessed in one year on so much of the railway as lies within the area of that act, and for aught we know, the rates under the order may exceed this amount. Upon the different effect of the two sections, the 74th of the act and the 14th of the order, we have already observed. But even this argument applies only to North Shields. The substantial objection remains, that the properties beyond that limit which, by the general act are assessed at one-fourth, are by the order rateable at full value. For these reasons we are of opinion that the rates are bad, and must be amended.

Judgment for the appellant.

Attorneys — Williamson, Hill & Co., agents for Richardson, Gutch & Cowling, York, for appellants; Young, Maples & Co., agents for Leitch, Kewney & Dodd, North Shields, for respondents

INDEX

TO THE REPORTS OF CASES

CONNECTED WITH

THE DUTIES AND OFFICE OF MAGISTRATES

FROM TRINITY TERM, 1867, TO MICHAELMAS TERM, 1868.

ADJOURNMENT—Power of. See Quarter Sessions.

ALE AND BEER HOUSE—*licence to sell beer "not to be consumed on the premises": handing beer to customer through a window*—An information was preferred against a licensed seller of beer by retail, not to be drunk on the premises, for selling beer on his premises contrary to the statutes 4 & 5 Will. 4. c. 85. s. 4. and 3 & 4 Vict. c. 61. s. 13. It appeared that a constable tapped at a window of defendant's premises, which were about three yards from the highway, and upon its being opened by the man in charge of the house, asked him for a pint of beer. The beer was handed in a mug to the constable, who drank part of it, standing as close to the window as he could, and the remainder while sitting on the window-sill. The window was open all the time and the attendant present:—*Held*, that there was not sufficient evidence to justify the Magistrates in convicting the defendant. *Deal v. Schofield*, 15

AMENDMENT—of variance in description of a person described in an indictment. See Perjury—*R. v. Western*.

APPEAL—Costs on. See Salmon Fishery Acts.

— against order of maintenance; who to appeal. See Pauper Lunatic.

ARREST—Unlawful apprehension. See Wounding.

BASTARDY—*service of summons at last place of abode*—On the 3rd of October E. F. applied for and obtained a summons against D, as the father of a bastard child of which she was then pregnant, and which was born on the 29th. On the 4th, the summons was left at a house in which D. had lived up to the 1st, upon which day he went away to go to America. He sailed on the 14th, and did not hear anything of the proceedings till about two months after arriving in America. On the 6th of December E. F. appeared in support of the summons, and, after hearing the case, the Justices made an order adjudicating D. to be the father of the child, and ordering him to pay money for its maintenance. The order recited that it was proved

that the summons had been duly served, the same having been left at the last place of abode. D. having returned to England, the order was brought up by *certiorari* for the purpose of being quashed:—*Held*, that this Court could not interfere, there being nothing to shew that the order was illegal, although D. had not had any opportunity of objecting to its being made. *R. v. Damarell*, 21

— See Perjury.

BETTING HOUSES—*construction of Act for Suppression of: what is an "office or place"*—Upon a slip of land adjoining a race course, during the races, there was erected a temporary wooden structure, four feet high, without a roof. Over it a board was exhibited upon which was the name of the proprietor and betting lists containing the odds upon and against each horse which he was willing to bet. The structure had two frontages, and boards used as deaks fronting each way. At each deak a man sat with a book for the purpose of recording the bets made with persons outside. Persons betting deposited money and received a card containing the terms of the bet:—*Held*, that this was an "office or place" within the meaning of the Act for the Suppression of Betting Houses. *Shaw v. Morley*, 105

BOROUGH FUND. See Penalties.

BURIAL-GROUND—*right to plant flowers on the graves*—A burial board established under the Metropolitan Interment Acts granted to A. R. the right of making a private grave, and the exclusive right of burial therein, in a certain part of their cemetery, to hold the same in perpetuity for the purpose of burial and of erecting thereon a monument, with a proviso that if the monument with its appurtenances should not from time to time be kept in repair by the owner according to such rules, orders and regulations as had been or should be from time to time made by the burial board for the management and regulation of the cemetery and the vaults, graves and monuments therein, the grant should be void. A. R. buried her husband in this part of the cemetery, erected a headstone and surrounded the grave with a curbstone. The board afterwards made a regulation that no person should be allowed to plant flowers, &c. on the graves, but that they themselves should alone do

it at certain prices which they fixed, and they prevented A. R. from planting the said grave with flowers:—*Held*, that they had no right to prevent A. R. from so planting the said grave. *Ashby v. Harris*, 164

By-Law—dwelling-house not to be erected without a back street or roadway: *Local Government Act* [—A local board of health, purporting to act under the Local Government Act (21 & 22 Vict. c. 98. s. 34),—which enables local boards to make by-laws with respect to the level, width and construction of new streets, with provisions for the sewerage thereof, and with respect to the drainage of buildings, to water-closets, privies, ashpits and cesspools in connexion with buildings,—made a by-law as follows: "No dwelling-house shall be hereafter erected, without having at the rear or side thereof a good and sufficient back street or roadway, at least twelve feet wide, communicating with some adjoining public street or highway, in such situation as shall be approved by the local board for the purpose of affording efficient means of access to the privy or ashpit belonging to such house; and every plan which shall be left at the office of the local board, in pursuance of the 64th by-law, shall show the position, width and direction of such roadway as intended to be made, and its mode of communication with adjoining streets or highways: provided always, that it shall be lawful for the local board, at their discretion, in special cases, to modify the requirement hereinbefore contained, and to dispense with strict compliance with the terms of this by-law on such conditions as they may deem fit and reasonable":—*Held*, that the by-law was unreasonable, and could not be enforced by the board, as it imposed a general and unnecessary restriction upon the building of all houses, instead of being limited to the particular nuisances which it was the object of the statute to prevent. *Waite v. the Garton Local Board of Health*, 19

CASE FROM JUSTICES—Power to state. See Jurisdiction of Justices.

CATTLE—Injuries to. See Maliciously Wounding Cattle.

CEMETERY. See Burial Ground.

CHILDREN—Neglect of. See Parent and Child.

COLLIERY—*space in which ventilation is necessary* [—By 23 & 24 Vict. c. 151. s. 10, rules 1 and 2,—which direct that "an adequate amount of ventilation shall be constantly produced in all coal-mines or collieries and ironstone-mines, to dilute and render harmless noxious gases, to such an extent that the working-places of the pits, levels and workings of every such colliery and mine, and the travelling-roads to and from such working-places, shall, under ordinary circumstances, be in a fit state for working and passing therein, and that all entrances to any place not in actual course of working and extension, and suspected to contain dangerous gas of any kind, shall be properly fenced off so as to prevent access thereto,—it is meant, not only that the

working-places and travelling-roads of the mine should be kept ventilated, but that all parts of the mine should be ventilated so as to render the working-places and travelling-roads safe. *Brough v. Homfray*, 177

In a colliery subject to the above rules there was a heading, the top or fore-end of which had not been worked for eighteen months; while this part of the heading was being put in repair, it became filled with explosive gas, in consequence of one of the workmen removing a door so as to disturb the ventilation. Danger signals were at once put up, so as to prevent access to that part of the heading filled with gas, and there was no intention to resume operations on it until it had been ventilated; but the door was not immediately replaced, from a fear that this would be dangerous while the men were in the pit. Three days afterwards, and before the ventilation was restored, an explosion took place in the end of the heading:—*Held*, that this part of the heading was a "working-place" within the meaning of the statute, so that there had been a breach of the rule requiring ventilation to be maintained, *Ibid*.

CONFESSION. See Evidence.

COSTS—of prosecution of indictment for non-repair of highway. See Highway.

EMBEZZLEMENT—*indictment for embezzling money not supported by proof of embezzlement of a cheque* [—An indictment for embezzlement alleged the property embezzled to be money. The proof was that the prisoner had received a cheque, but no evidence was given that the cheque had ever been presented or cashed, nor did it appear that the maker had an account or balance at the bank on which it was drawn, but it was proved that he had received no notice of its dishonour:—*Held*, (*Pigott, B. hesitante*) that in the absence of any proof that the cheque had been converted into money, the allegation in the indictment was not sustained, and a conviction upon such indictment must be quashed. *R. v. Keena*, 43

EVIDENCE—*admissibility of confession: inducement or threat* [—One of a firm who employed the prisoner, having called him up into the private counting-house of the firm, in the presence of another of the firm and two officers of police, said, "I think it is right that I should tell you that, besides being in the presence of my brother and myself, you are in the presence of two officers of the police; and I should advise you that to any question that may be put to you you will answer truthfully, so that if you have committed a fault you may not add to it by stating what is untrue;" and having shewn a letter to him, which he denied to have written, added, "Take care; we know more than you think we know." The prisoner thereupon made a confession:—*Held*, that these words did not import an inducement or threat; and that evidence of the confession was admissible. *R. v. Jarvis*, 1

EVIDENCE—(continued)—Proof of bastardy summons on indictment for perjury. See Perjury.

— Secondary evidence of a written document without notice to produce it. See Perjury.

— See False Pretences.

FACTORY—*accident preventing the person injured from returning to work: notice by occupier*—By the Factories Act (7 Vict. c. 15), s. 22, "If any accident shall occur in a factory which shall cause any bodily injury to any person employed therein, which shall have been of such a nature as to prevent the person so injured from returning to his work in the factory before nine of the clock of the following morning, the occupier of the factory, or in his absence his principal agent, shall within twenty-four hours of such absence send a notice thereof in writing to the surgeon appointed to grant certificates of age for the district in which the factory is situated," &c. A girl employed in a factory was tripped up by a rope placed in her way as a practical joke, and falling against some machinery not in motion, sprained her arm. She returned to the factory before nine o'clock on the following morning, having arranged that her mother should take her place as soon as possible, and came away after attempting to work for about an hour, using her knee and mouth instead of her injured arm:—*Held*, first, that the accident was one of which the occupier was bound to give notice according to the section above stated; secondly, that the girl was prevented from returning to her work within the meaning of the section, as it is necessary, in order to excuse the occupier from giving notice, that the person injured should return, not merely with the intention, but with the ability to resume work. *Lakeman v. Stephenson*, 57

FALSE PRETENCES—*passing as good the note of a bank which had become bankrupt*—An indictment charged the prisoner with obtaining money by falsely pretending that a five pound bank note was of the value of 5*l*. It appeared in evidence that the note was a five pound note of a bank which had been made bankrupt forty years before, and had not re-opened, and the prisoner knew this when he passed it. The bankruptcy proceedings were not produced, and there was no evidence as to what dividend, if any, had been paid:—*Held*, that the evidence was sufficient to justify the conviction of the prisoner. *R. v. Dowey*, 52

— See Larceny—*R. v. M'Kale*.

FISHERY. See Salmon Fishery Act.

FORGERY—*engraving part of a bank note of a Scotch bank*—To engrave upon a plate part of a note purporting to be a note of a Scotch banking company, is an offence within 24 & 25 Vict. c. 98, s. 16, and such effect of the section is not prevented by section 55, which provides that nothing in the act contained shall extend to Scotland. *R. v. Brackenridge*, 86

GAMING—"Office or place." See Betting Houses.

HIGHWAY—*conviction for driving on a footpath not by the side of a highway*—Under the 72nd section of the General Highway Act, "If any person shall wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot-passengers, or shall wilfully lead or drive any horse, ass, sheep, mule, swine or cattle, or carriage of any description, or any truck or sledge upon any such footpath or causeway," he shall for every such offence forfeit and pay any sum not exceeding 40*s*. over and above the damages occasioned thereby:—*Held*, that this enactment does not apply to the case of a footpath *simpliciter*, but only to such a footpath as is by the side of a road made, &c. *R. v. Pratt*, 23

— *indictment for non-repair: costs of prosecution: certiorari*—Where an indictment for non-repair of a highway has been preferred by order of Justices under 5 & 6 Will. 4. c. 50. s. 95, and has been removed by *certiorari* into the Court of Queen's Bench at the instance of defendants, the Judge who tries the indictment has no power, under that section, to direct that the costs of the prosecution shall be paid out of the rate. The costs in such a case are provided for by 5 W. & M. c. 11. *The Queen v. Eardisland* dissented from. *R. v. Inhabitants of Ipton*, 37

— *animals lying about*—By section 25. of the Highway Act, 1864, if any horse, mare or sheep is at any time found lying about a highway, the owner shall be liable to a penalty:—*Held*, that this liability may be incurred if sheep are allowed to lie about a highway, although they were under the control of a keeper at the time they were so found lying about. *Lawrence v. King*, 78

INDICTMENT—for not providing food for child. See Parent and Child.

— for non-repair of a highway. See Highway.

— See Amendment.

INFORMATION—for selling beer on the premises. See Ale and Beer House.

JURISDICTION OF JUSTICES—*warrant of distress for local rates: limitation of six months under Jervis's Act: power to state a case*—A local act provided that if any person rated under its powers should for ten days after demand neglect to pay the rate, it should be lawful for any Justice of the Peace of the borough, by warrant under his hand and seal, to authorize the collector to levy the rate by distress and sale:—*Held*, that the issuing of a warrant under this act was not within the limitation of Jervis's Act (11 & 12 Vict. c. 48), s. 11, which enacts that, in the absence of special limitation, complaints under the act are to be made within six months from the time when the matter of complaint arose. *Sweetman v. Guest*, 59

Semble—that upon application for such a warrant

of distress as above mentioned, the Justices may state a case for the opinion of the Court under 20 & 21 Vict. c. 43. s. 2. *Ibid.*

— *jurisdiction over offence committed out of Great Britain by officer of the government: power to bind over prosecutor and witnesses to appear in the Queen's Bench: court of oyer and terminer*—By 11 & 12 Will. 3. c. 12. and 42 Geo. 3. c. 85, offences committed out of Great Britain by governors of colonies and officers of the government under colour of, or in exercise of, their offices, may be prosecuted or inquired of, heard and determined in Her Majesty's Court of Queen's Bench here in England, either upon information or indictment, and the offence may be laid to have been committed in Middlesex:—*Held*, that the power conferred upon Justices by 11 & 12 Vict. c. 42. s. 2, 17, 20, of binding over the prosecutor and witnesses to prosecute or give evidence against any person charged with an indictable offence, committed on land beyond the sea, at the next court of oyer and terminer or gaol delivery, or superior court of a county palatine, or court of General or Quarter Sessions of the Peace, extends to cases where the offence is one of those specified in 42 Geo. 3. c. 85, and that the description "court of oyer and terminer," in 11 & 12 Vict. c. 82. s. 20, applies to the Court of Queen's Bench. *R. v. Eyre*, 159

— See Special Constables.

JUSTICE OF THE PEACE. See Jurisdiction of Justices.

LARCENY—*jurisdiction to try: constructive possession: receiving stolen property: aiding and abetting*—A chattel was stolen in L, out of the county of M, and was consigned thence as a parcel by the thief in the ordinary course through a railway company, and was delivered by them to the receiver in the county of M. for the purpose of being sold and disposed of by him there, and there was no evidence of any possession by the thief in the county of M, unless either the possession by the railway company or of the receiver could be deemed his possession:—*Held*, that the thief retained control over the article in M, and was therefore in possession of it in M, and was liable to be tried in M. under 24 & 25 Vict. c. 96. s. 114. *R. v. Rogers*, 83

Two prisoners were convicted under a count charging them with receiving goods knowing them to have been stolen, upon proof that they were present aiding and abetting a third receiver who was found in actual possession of the box containing the goods, but the two former never had manual possession of the box:—*Held*, that the conviction was right. *Ibid.*

— *or obtaining money by false pretences: inchoate transaction*—A. and B. went into a shop, and A. bought a pennyworth of sweets, and gave a florin in payment. The prosecutrix put the florin into the till and took out of the till one shilling and sixpence in silver, and fivepence in copper, and put the change on the

counter. A. took up the change. B. said to A. that he need not have changed, and threw down a penny. A. took up the penny and then put down sixpence in silver and sixpence in copper, and asked the prosecutrix to give him a shilling in change. She took a shilling from the till and put it on the counter beside the sixpence in silver and sixpence in copper. A. then said to the prosecutrix that she might as well give him the florin and take it all. She took the florin from the till and put it on the counter, expecting she was to receive two shillings of the prisoner's money. The prisoner went away with the florin. The prosecutrix did not discover her mistake till she was putting the change into the till, but at the same moment B. distracted her attention by asking the price of some sweets:—*Held*, that the transaction was inchoate when the prosecutrix discovered her mistake, and that she never intended finally to part with her property in the florin till she received two shillings of the prisoner's money, and that the offence was larceny, and not obtaining money by false pretences, and that the conviction was right. *R. v. M'Kale*, 97

— *finding lost property: no reasonable means of knowing the owner*—The finder of a lost sovereign in the high road who, at the time of the finding, had no reasonable means of knowing who the owner was, but who at that time intended to appropriate it even if the owner should afterwards become known, and to whom the next day the owner was made known, when he refused to give it up, was held not guilty of larceny upon the authority of *The Queen v. Thurborn*. *R. v. Glyde*, 107

LIMITATION OF TIME. See Jurisdiction of Justices. Merchant Shipping Act.

LOCAL ACT—*liability to expenses of paving street: owner of ground adjoining street: cul-de-sac*—By a local act the liability to pave and sewer any street within the borough was cast upon the "owners of houses and ground lying alongside or adjoining to the said street," and in case of neglect power was given to the borough council to sewer and pave the street, and to charge the owners with their proportionate parts of the expenses thereof, according to the extent of their respective houses and grounds lying alongside or adjoining to the said street:—*Held*, that an owner of ground at the end of a street which was a cul-de-sac, and which ground was only separated from such street by a wall, the property of such owner, is the owner of ground adjoining to the said street within the meaning of the act, and therefore liable to contribute his proportionate part of the expense of sewerage and paving such street. *The Mayor, Aldermen and Citizens of the City of Manchester, v. Chapman*, 173

LOCAL GOVERNMENT ACT. See By-Law.

LUNACY—*meaning of "unsound mind"*—By the 8 & 9 Vict. c. 100. s. 90, "every person who shall receive into an unlicensed house, not being a registered hospital nor an asylum, or take the

care or charge of any person therein as a lunatic," without having such order and medical certificates as are mentioned in the section, shall be guilty of a misdemeanor. By section 114, "lunatic" is to mean every insane person and every person being an idiot or lunatic, or of unsound mind:—*Held*, that imbecility arising from natural causes, such as intemperance, or from the natural decay of the faculties through old age, would constitute the patient so affected a person of unsound mind within that section. *R. v. Shaw*, 112

— See Pauper Lunatic.

LUNATIC PRISONER—*order of Secretary of State: removal to asylum: cost of maintenance: retrospective order: time for making order*—*H. L.* was convicted of felony at the Lent Assizes for Wilts, 1864, and was sentenced to be imprisoned in the gaol at D. for twelve calendar months. While undergoing his sentence he became insane, in June, 1864, and was removed by an order of a Secretary of State to a lunatic asylum, under 3 & 4 Vict. c. 54. On the 28th of March, 1867, two Justices of the county of Wilts, sitting in the borough of D, adjudicated the place of the last legal settlement of *H. L.* to be in the parish of B. in the union of B, and they ordered the guardians of the union to pay to the keeper of the gaol 5*l.* 15*s.* 3*d.*, for the reasonable charges of inquiring into the settlement, and of conveying him to the asylum, and to pay to the keeper of the asylum 11*l.* 15*s.* 4*d.*, for the costs of maintenance from the 23rd of June, 1864, to the 25th of March, 1867, and the weekly sums which should from time to time be ordered for his maintenance:—*Held*, first, *per totam Curiam*, that the order was not bad by reason of its having been made after the expiration of the term of the sentence. Secondly, that the county Justices had jurisdiction to make it, although they were sitting in the borough which possessed an exclusive jurisdiction. Thirdly, *Blackburn, J. dubitante*, that the order was bad as to the 11*l.* 15*s.* 4*d.*, on the ground that it was retrospective. *Held*, *per Mellor, J.*, that it was not bad simply because it was retrospective, but because the keeper of the asylum ought to have applied for it in a more reasonable time, and that, after so great a lapse of time, the Justices ought not to have made it. *Guardians of Bradford Union v. the Clerk of the Peace for Wilts*, 129

MALICIOUS INJURY—*cutting trees with intent to steal: injury done exceeding in amount 5*l.**—Upon an indictment for cutting eight trees with intent to steal, whereby an amount of injury was done to them exceeding 5*l.*, framed upon the latter part of section 32. of 24 & 25 Vict. c. 96, proof that the aggregate value of a number of trees cut at one time exceeded the amount of 5*l.* will satisfy the indictment, though no one tree was of the value of 5*l.* *R. v. Shepherd*, 45

MALICIOUSLY WOUNDING CATTLE—*evidence of wounding*—Upon an indictment for wounding a gelding, contrary to 24 & 25 Vict. c. 97.

s. 40, the prisoner was convicted upon evidence which shewed that the gelding had suffered a laceration of the roots of the tongue, which protruded, and a tearing of the mouth, which injuries might have been caused by a pull of the tongue by the hand; but there was no evidence to shew that any other instrument than the hand had been used:—*Held*, that there was sufficient evidence of a wounding; and the conviction was affirmed. *R. v. Bullock*, 47

MERCHANT SHIPPING ACT—*attempting to persuade a seaman not to join his ship: limitation of time for prosecution*—The 267th section of the Merchant Shipping Act, 1854, makes it an offence to persuade or attempt to persuade a seaman to neglect to join his ship; and the 525th section, which limits the time for instituting proceedings, enacts, that "no conviction for any offence shall be made under this act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the commission of the offence; or if both or either of the parties to such proceeding happen during such time to be out of the United Kingdom, unless the same is commenced within two months after they both first happen to arrive, or to be at one time within the same":—*Held*, that if both parties, the seaman and the offender, remain in the United Kingdom, the proceeding against the offender must be commenced within six months after the commission of the offence; but that if one of them goes away within six months after the offence is committed, and afterwards returns, so that he and the other are in the United Kingdom at one time, a further period of two months is allowed within which the proceedings may be commenced. *Austin v. Olsen*, 84

Held, also, that the offence may have been committed although there was an informality in the engagement entered into by the seaman. *Ibid.*

METROPOLIS MANAGEMENT ACTS—*laying out road for building: width of street*—Respondent was owner of land lying between roads A. and B; he built houses along road A. with back gardens running down to road B, and he then took down the old fence of road B, and placed an oak fence with gates 3 feet back on his land:—*Held*, that he could not be compelled, under 25 & 26 Vict. c. 102. s. 98, to put back his fence to 20 feet from the centre of road B. *The Metropolitan Board of Works v. Clever*, 126

— *non-rateability of church to expenses of paving new street*—A church, together with the land appurtenant to it, is not rateable either as a house or land to the expenses of paving a new street, under the powers of the Metropolitan Management Acts, 18 & 19 Vic. c. 120. s. 105, and 25 & 26 Vict. c. 102. s. 77. *Angell v. the Vestry of Paddington*, 171

MISDEMEANOR—*publication of obscene book with intent to expose errors of a religious sect: misdemeanor "proper to be prosecuted as such" under Lord Campbell's Act*, 20 & 21 Vict. c. 83—A

society of persons called "The Protestant Electoral Union,"—whose objects were stated to be (amongst others) "to protest against those teachings and practices of the Romanist and Puseyite systems which are un-English, immoral and blasphemous," to "maintain the Protestantism of the Bible and the liberty of England," and "to promote the return to parliament of men who will assist them in these objects; and particularly will expose and defeat the deep-laid machinations of the Jesuits, and resist grants of public money for Romish purposes"—exposed for sale at their office a pamphlet entitled 'The Confessional Unmasked, shewing the depravity of the Romish priesthood, the iniquity of the confessional, and the questions put to females in confession.' This pamphlet consisted of extracts from the works of theologians on the doctrines and discipline of the Church of Rome, and particularly on the practice of auricular confession. On one side of the page were printed passages in the original Latin, correctly extracted from the works of these writers, and opposite each extract was placed a free translation of it into English. The pamphlet also contained a preface and notes, and comments condemnatory of the tenets and principles of the authors of the works from which the extracts were made. About one-half of the pamphlet related to casuistical and controversial questions which were not obscene, but the remainder of the pamphlet was obscene, relating to impure and filthy acts, words and ideas. A member of the society kept and sold these pamphlets with the purpose of promoting the objects of the society, and exposing what he deemed to be errors of the Church of Rome. Two Magistrates, purporting to act under the 20 & 21 Vict. c. 83, ordered a number of these pamphlets while in his possession to be seized and destroyed:—*Held*, that, notwithstanding the object of the defendant was not to injure public morals, but to attack the religion and practice of the Roman Catholic Church, this did not justify his act nor prevent it from being a misdemeanor proper to be prosecuted, as the inevitable effect of the publication must be to injure public morality; and although he might have had another object in view, he must be taken to have intended what was the natural consequence of his act, and had therefore been guilty of an offence within the meaning of the statute. *R. v. Hicklin*, 89

— See Lunacy. Merchant Shipping Act. Parent and Child.

NUISANCE—*Nuisances Removal Act: order for abatement: nuisance caused by one landowner but arising on the premises of another: "person by whose act": tenants*—By the Nuisances Removal Act (18 & 19 Vict. c. 121), s. 12, in any case where a nuisance (a term which includes ditches and drains injurious to health) is ascertained by the local authority to exist, they shall cause complaint thereof to be made before a Justice of the Peace, and the Justice shall thereupon issue a summons requiring the person by whose act, default, permission or sufferance the nuisance arises or is continued,

or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises to appear before any two Justices, who shall proceed to inquire into the complaint, and if it be proved to their satisfaction that the nuisance exists, shall make an order on such person, owner or occupier, for the abatement, discontinuance and prohibition of the nuisance. By section 13. the Justice may require the person upon whom the order is made to drain, empty, cleanse, fill up, amend or remove the injurious ditch, drain, &c. The occupiers of a brewery had for upwards of twenty years discharged the refuse from it into a barrel drain, which, after passing along a turnpike-road, entered land belonging to another proprietor. The proprietor of this land did not get rid of the refuse as his predecessors had done, and it became after it had reached his land a nuisance:—*Held*, that the occupier of the brewery was a person by whose act, default, permission or sufferance the nuisance was caused, and that an order of Justices directing him to abate the nuisance by cutting off all communication between the drains of his premises and the barrel drain was valid. *Broton v. Bussell and Francomb v. Freeman*, 65

The defendant, having obtained the necessary consent, made a drain leading from his own premises through adjoining land. This drain, which received the refuse from several houses and pigsties belonging to the defendant, and let to yearly tenants, polluted the water of neighbouring streams, and became a nuisance:—*Held*, that the defendant must be taken to be a person by whose act, &c., the nuisance was caused, and might be ordered to abate and discontinue the nuisance. *Ibid*.

OBSCENE BOOK. See Misdemeanor.

PARENT AND CHILD—*indictment for neglect to provide food: averment of means*—An indictment for neglecting to provide sufficient food and sustenance for a child of tender years, whereby the child became ill and enfeebled, averred that it was the duty of the prisoner to provide for, give and administer to the said child wholesome and sufficient meat, drink and clothing for the sustenance, &c. of the said child, and that he unlawfully, and contrary to his said duty in that behalf, did omit, neglect and refuse to provide for, &c., the child:—*Held*, by the majority of the Court, that the indictment sufficiently alleged the breach of duty, and that the prisoner had the ability to provide, but omitted to exercise it. *R. v. Ryland*, 10

PAUPER LUNATIC—*appeal against order of adjudication of settlement and maintenance: party to appeal*—By an order of Justices, dated the 29th of September, 1865, the last legal settlement of a pauper lunatic was adjudged to be in the parish of A, in the union of F, and the guardians of F. were ordered to pay certain costs of maintenance to the guardians of the Medway Union, who had obtained the order, and certain other costs to the treasurer of the asylum in which the lunatic was confined:—

Held, that the overseers of A. had, by 16 & 17 Vict. c. 97. s. 108, a right to appeal against the order, and that there was nothing in 24 & 25 Vict. c. 55. to deprive them of such right. *R. v. the Guardians of the Medway Union*, 100

PAVING ACT. See Local Act.

PENALTIES—*payment to treasurer of county or borough: borough without a separate Court of Quarter Sessions*—By 11 & 12 Vict. c. 43. s. 31, the amount of any penalty ordered to be paid by Justices according to the act is to be paid, in the absence of specific directions in the statute on which the information shall have been framed, to the treasurer of the county, riding, division, liberty, city, borough or place for which the Justices shall have acted. A borough formed part of the petty sessional division of the county in which it was situated, but had no separate Court of Quarter Sessions, the Justices for the county acting as Justices for the borough, concurrently with the mayor, according to the Municipal Corporation Act, 5 & 6 Will. 4. c. 76. s. 57, and there was a treasurer of the borough:—*Held*, that the mayor, while acting as a Justice for the borough, was in the nature of a Justice for the county with powers limited to a special locality, and that penalties imposed by the borough Justices must, in the absence of directions in the penal statute, be paid to the county treasurer. *The Mayor, &c. of Reigate v. Hunt*, 70

PERJURY—*secondary evidence of written document without notice to produce: indictment not notice*—Upon an indictment for perjury in falsely swearing on a former trial that there was no draft of a statutory declaration, the materiality of the existence of such draft turned upon its contents and the fact of certain alterations having been made in it. Parol evidence was admitted, not only of the fact of the existence of the draft, but of its contents and of alterations made in it which were not in the declaration itself, without any notice to produce the draft having been given to the prisoner:—*Held*, that such parol evidence of the draft and its contents was inadmissible, and that the nature of the indictment was not such as of itself to operate as a notice to produce, and the conviction upon such indictment was quashed. *R. v. Elworthy*, 3

—*evidence of proceedings before Justices on bastardy summons: information proved, but not summons*—Upon an indictment for perjury committed at the hearing of an information in bastardy, which indictment alleged the application for a summons, the issuing thereof and the hearing upon it, proof of the information, of the appearance of the defendant, of the hearing, of evidence being given on both sides, and of no objection being made of the want of a summons, is sufficient to shew jurisdiction in the Justices who heard the information, without proof of the summons which issued upon that information; and a conviction for perjury upon the above indictment was upheld. *R. v. Smith*, 6

—*evidence: materiality of statement on which perjury assigned*—Upon an indictment for robbery committed on the 12th of April, between eight and ten o'clock at night, a witness for the prisoner swore, not only that the prisoner was at home at that time, but in answer to the Judge said, that the prisoner had lived in the same house for the two years previous, and that during the whole of that time he had not been absent from the same house for more than three nights together. The last two statements were proved to be false, as the prisoner, for a whole year of the period spoken to, had been in prison:—*Held*, that the evidence so last given was material to the inquiry, and the proper subject of assignments of perjury, inasmuch as those latter statements tended to render more probable the previous statement made, that the prisoner was at home on the night of the 18th of April. *R. v. Tyson*, 7

—*description of Justices: variance: amendment: informal complaint before Justices: jurisdiction*—Perjury was assigned to have been committed on the hearing of a complaint for trespass in pursuit of game alleged to have been committed in a close in the parish of T, in the borough of T, before certain Justices assigned to keep the peace in and for the county, and acting in and for the borough of T. in the said county. It appeared in evidence that the Justices were Justices for the borough of T. only, and were not Justices for the county. The indictment was amended at the trial by striking out the words "the said county," so as to make the averment be that they were Justices assigned to keep the peace in and for, and acting in and for, the borough of T. in the said county. The complaint alleged that the defendant was in the close for the purpose of destroying game, but omitted to allege that it was for the purpose of destroying game there:—*Held*, that the amendment was properly made as a variance in the description of a person described in the indictment under 14 & 15 Vict. c. 100. s. 1, and that the complaint was sufficient in form to give the Justices jurisdiction to inquire into it, so as to make false evidence wilfully given on the hearing the subject of an assignment of perjury. *R. v. Western*, 81

POOR-RATE—*exemption: rateability of Assize Courts beneficially occupied*—By act of parliament the Justices of the county of L. were empowered to provide courts, Judges' lodgings, offices, &c., necessary and convenient for carrying on the civil and criminal business usually transacted at Courts of Assize. They were further empowered to permit the use of the buildings for any lawful purpose for such consideration as they might think proper, but so as not to interfere with the use of such buildings and premises for the purposes primarily contemplated. They did allow the corporation of M. to use part of the buildings for the city Quarter Sessions, and for the city Court of Record, and they received 900*l.* a year in respect of such use. This sum of 900*l.*, together with all sums

received for the use of the buildings, was insufficient to defray the average annual expenses of maintenance and management:—*Held*, that the Justices were rateable to the poor-rate in respect to the part so let off to the corporation. *The Justices of Lancashire v. the Overseers of Chetnam*, 12

— *exemption: Commissioners of Works and Public Buildings incorporated for constructing public local works: servants of the Crown: beneficial occupation*—The Commissioners of Her Majesty's Woods and Forests were, by act of parliament, incorporated for the purpose of making a bridge over the Thames, which had been recommended by the Commissioners for Improving the Metropolis, and the plans of which had been approved of by the Commissioners of the Treasury. Power was given to obtain an advance of money from the Consolidated Fund, such advance to be repaid out of the money collected by way of tolls which the corporation were authorized to take by means of toll-houses and collectors to be established on the bridge. These tolls were to be applied, first, in payment of all expenses of management and collection of the tolls; secondly, in maintaining the bridge; thirdly, in repayment of the money advanced; and the surplus, if any, was to form a fund for such metropolitan improvement as the legislature should determine. By a subsequent act this provision as to the surplus was repealed, and it was provided that when a sum of 80,000*l.* and interest had been paid off no toll should be demanded of foot-passengers. The bridge was built, and vested in the Commissioners, and the tolls taken exceeded the cost of maintaining the bridge. 13,500*l.* of the 80,000*l.* advanced had been repaid, and not more than 2,500*l.* towards the said sum of 13,500*l.* was received from the tolls and proceeds of the bridge. The Commissioners were assessed in a rate for the relief of the poor of the parish in which part of the bridge and of its approaches was situate:—*Held*, by the Court of Exchequer Chamber, affirming the decision of the Court below (page 25), that they were not liable, the only occupation being by the Crown or by the Commissioners, as servants of the Crown, acting for and on behalf of the Crown. *R v. M'Cann*, 123

— *exemption of corporate property*—The exemption created by 4 & 5 Vict. c. 48. s. 1. of the property of municipal corporations from liability to poor-rate, where this property is in a parish wholly within a borough, the poor of which are relieved by one entire rate, is not affected by the decision in *Jones v. the Mersey Docks*, nor by the Union Chargeability Act, 28 & 29 Vict. c. 79. *R. v. the Mayor, &c. of Oldham*, 169

A corporation not included in the Schedules A. and B. of the Municipal Corporation Act, is by 16 & 17 Vict. c. 79. s. 2. entitled to the benefit of the exemption in 4 & 5 Vict. c. 48. s. 1. *Ibid.*

— *occupation of moorings in the River Thames*

by owner of coal-hulk—The appellant was the owner of a coal-hulk, built for the purpose of being fastened to moorings, which the Thames Conservators undertook to fix in the bed of the river in order that she should be fastened thereto. The Conservators fixed the moorings permanently, and granted to the appellant "liberty and licence to fasten and henceforth keep fastened his coal-hulk or vessel called the *Black Prince* to the moorings placed by the said Conservators in the said river at Gravesend Reach, until either party shall have given to the other one calendar month's notice in writing to determine and put an end to this licence. In consideration whereof the said William Watkins agrees with the said Conservators to pay towards the expenses of the said Conservators of placing, maintaining and repairing the said moorings the annual sum of 30*l.*," &c. The appellant fastened his hulk to the moorings by means of chain cables from the stem, so that she would swing with the tide, and she remained so fastened for several years, although she might have been towed to any other part of the river. She was used as a store for coals for steam-ships in the river:—*Held*, that the appellant had no such occupation of the land or of the moorings as would make him liable to be assessed to the poor-rate. *Watkins v. the Assessment Committee of the Gravesend and Milton Union*, 73

— *rateability of water conveyed by pipes for the purpose of working lead-mines: rateable value*—The proprietors of a lead-mine obtained, in consideration of annual payments, the right of diverting a natural spring upon the land of an adjoining proprietor, and of conveying the water over the land of intervening proprietors to iron pipes laid down to near their own mine. This water was required for steam pumping-engines and other machinery used in working the mine:—*Held*, first, that there was sufficient evidence to shew that the mine owners were so far occupiers of the land covered by the pipes and watercourse as to be rateable in respect of it; secondly, that the rateable value of this land was not its ordinary value for agricultural purposes but the increased value which it had acquired from its use in working the mine, for that, although the mine itself was not rateable, the pipes and watercourse could in no respect be considered as part of it. *The King v. the Overseers of Bilston explained. The Talargoch Mining Co. v. the Guardians of St. Asaph Union*, 149

— *rateability of owner instead of occupiers of lodgings in dwelling-house, under 30 & 31 Vict. c. 102. s. 7: borough vote*—The appellant and five other persons each occupied a room in a six-roomed house in the parish of Sunderland-near-the-Sea, in the parliamentary borough of Sunderland; each had the exclusive possession of his own room, and used in common the street door, &c. The owner occupied no portion of the house. At the time of the passing of 30 & 31 Vict. c. 102. the owner was rated in respect of the whole house instead of the occu-

piers, by virtue of the Small Tenements Act (13 & 14 Vict. c. 99), the provisions of which were then in force in the parish; after the passing of 30 & 31 Vict. c. 102, the churchwardens and overseers of the parish separately rated the six occupiers:—*Held*, that the rate was bad, and that the owner (not the occupiers) was rateable, under the exception which is contained in 30 & 31 Vict. c. 102. s. 7, and which provides that "where the dwelling-house or tenement shall be wholly let out in apartments or lodgings not separately rated the owner...shall be rated...to the poor-rate." *Stamper v. Churchwardens, &c., of Sunderland*, 137

POOR-RATE (continued)—*hamlet detached from a township for ecclesiastical purposes, but remaining attached to it for civil purposes*—There is no legal objection to the inference that a hamlet or township once extended into two parishes, and that it afterwards became annexed to the one parish for ecclesiastical purposes, and continued to form part of the other parish for civil purposes. *R. v. Watson*, 153

The hamlet of T. had for a hundred years past, and for anything that appeared to the contrary before that time, been rated to the poor and highway rates of the adjacent township of H, which maintained its own poor and highways separately, and together with another township formed the parish of H. On the other hand, the lands in T, from the earliest period, were titheable to the adjacent parish of K, as being situate in that parish, and the occupiers were rated to and paid church-rates in that parish, and also Easter and other ecclesiastical dues, and never paid tithes, &c. to H:—*Held*, that there was no ground for disturbing the long-established usage of rating T. to the poor-rates of H, as it was impossible to say that this usage could not have had a legal origin from the tithes having been severed from T. and conferred upon the parish of K, while T. itself was associated with H. as one township for rating purposes according to the act 13 Car. 2. c. 12. *Ibid.*

PRISON—Enlargement. See Quarter Sessions.

PUBLIC HEALTH ACT—*partial adoption of the act: provisional order varying the mode of rating prescribed by the act*—The Public Health Act, 11 & 12 Vict. c. 63. s. 10, which enables the act to be applied to any city, town, borough, parish or place wherein there is no local act for cleansing, watching, &c., otherwise than for the profit of the proprietors and shareholders, and directs that the General Board of Health shall make a provisional order accordingly, with such provisions, regulations, conditions and restrictions with respect to the application and execution of the act or any part thereof, and with respect to any such local act, and the repeal, alteration, extension or future execution of the same, and in all respects whatsoever as they may think necessary, does not authorize the board to make an order applying the Public Health Act, but excepting so much of section 88. as provides that railways, &c. shall be rated upon only one-

fourth of their annual value; as the effect of such an order is not to apply the act or any part of it, but to make a new and substantially different enactment, materially altering the rights of parties in the district to which the act is applied. *The North-Eastern Rail. Co. v. the Mayor, Aldermen, &c. of Tynemouth*, 183

QUARTER SESSIONS—*power of adjournment on question of alteration of prison: notice under Prisons Act, 1865*—By 28 & 29 Vict. c. 126. s. 24, the consideration of a presentment of the necessity for the alteration or enlargement, or for the rebuilding of an existing prison, or for the building of a new prison, "shall not be entertained by the prison authority, unless not less than three weeks' previous notice has been given in some one or more public newspaper or newspapers circulating within the district of the prison authority, of their intention to take the same into consideration, at a time and place to be mentioned in such notice," &c. In the county of W. presentments had been made that the house of correction and the gaol in the county were insufficient, and that it was necessary that alterations should be made, or that a new gaol should be built for the county. Notice was duly given, as required by the above section, that at the Easter Sessions the presentments would be taken into consideration. That was done, and a committee of Justices was appointed to consider the question, to consult the Government, and to report at the Michaelmas Sessions in the same year. The proceedings were specially adjourned to the Michaelmas Sessions. The committee made their report, and the Justices at the Michaelmas Sessions made an order that the gaol should be altered and adapted, &c.:—*Held*, that, due notice having been given for the Easter Sessions, and the proceedings having been specially adjourned in order that the committee should consider and make a report, the Justices had jurisdiction to make the order, although no fresh notice had been given that the presentments would be taken into consideration at the Michaelmas Sessions. *R. v. the Justices of Westmorland*, 115

RATE. See Metropolis Management Acta. Poor Rate.

RECEIVING STOLEN GOODS. See Larceny.

SALMON FISHERY ACT—*instruments and devices for catching salmon: licence: evidence of intention*—The bare use of the instruments and devices for catching salmon enumerated in section 36. of the Salmon Fishery Act, 1865, is sufficient to render an unlicensed person using them liable to the penalty therein mentioned, without evidence that they were used for the purpose of taking salmon. *Lyne v. Leonard and Lyne v. Pennell*, 55

SEAMAN—Enticing from service. See Merchant Shipping Act.

SERVICE—of summons in bastardy. See Bastardy.

SESSIONS. See Quarter Sessions.

SETTLEMENT BY PAYMENT OF TAXES—*payment of property-tax*—A pauper gains a settlement in the parish wherein he has been assessed to and paid property-tax, according to 5 & 6 Vict. c. 35, Schedule (A). *The Churchwardens of St. George, Hanover Square, v. the Guardians of the Cambridge Union*, 17

SPECIAL CONSTABLES—*order for payment of expenses out of county rate: special Session of Justices*—Under 1 & 2 Will. 4. c. 41. (the act for amending the laws relating to the appointment of special constables), which, by section 13, enables the Justices of the Peace acting for the division or limits within which such special constables shall have been called out to serve, at a special session to be held for that purpose, to order the expenses of these constables, if the Justices so ordering are Justices for any county, riding or division, having a separate commission of the peace, to be paid by the county treasurer out of the public money then in his hands,—the order for payment may be made by Justices at a special session in and for a petty sessional division, and need not be made at a special session of Justices acting for the whole county, riding or division within which special constables are appointed. *R. v. the Justices for Marylebone*, 181

STREET—Paving, &c. See Local Act. Metropolitan Management Acts.

TOLL. See Turnpike.

TURNPIKE—*exemption from toll: stores for the use of troops*—The exemption from toll in the Turnpike Act, 3 Geo. 4. c. 126. s. 32, in favour of carts conveying stores belonging to Her Majesty, or for the use of Her Majesty's forces, applies where stores are being *bona fide* conveyed for the use of such forces, although at the time of claiming the exemption no property in such stores has passed to the Crown, and there has been no irrevocable appropriation of them for the use of such forces. *Toomer v. Reeves*, 49

— *exemption from toll: curate: parochial duties*—The curate of a parish was engaged by the rector of a neighbouring parish of C. to discharge his clerical duties during his temporary absence from illness. There was no licence from the bishop or other authority by which the curate was empowered to perform the duties. He rode through a turnpike-gate on his way to the parish church of C. to perform the ceremony of marriage:—*Held*, that he was not entitled to the exemption from toll given by 3 Geo. 4. c. 126. s. 32. to the curate of a parish on parochial duty within his parish. *Brunskill v. Watson*, 103

— *exemption from toll of clergyman visiting sick parishioner*—A clergyman driving out to visit a sick parishioner is exempted by 3 Geo. 4. c. 126. s. 32. from paying toll in respect of his carriage and horse, although accompanied by his wife and family. *Layard v. Ovey*, 148

TURNPIKE-ROAD—*cleansing and scouring water-courses*—The duty of cleansing, scouring and keeping open ditches and watercourses for the keeping of turnpike-roads dry, is cast by section 113. of 3 Geo. 4. c. 126. (the General Turnpike Act), not upon the occupiers of the adjoining lands, but upon the trustees themselves. *Merivale v. the Trustees of the Exeter Turnpike-Roads*, 40

WEIGHTS AND MEASURES—*scales "incorrect or otherwise unjust": adjustment not part of machine*—A shopkeeper made use of a pair of scales which had a hollow brass ball hanging upon the weight-end of the beam. These balls were constructed with a neck which could be unscrewed, so as to allow shot to be placed in the interior, and, although hung by a stout brass wire hook upon the beam, were easily removable from it by merely lifting them off. When one of these balls had been removed and replaced, after the shot with which it was partly filled had been removed, it was found that the scale was unjust and against the purchaser:—*Held*, that there was evidence upon which the Magistrates might reasonably find that these scales were weighing-machines incorrect or otherwise unjust, within the meaning of 5 & 6 Will. 4. c. 63. s. 28. *Carr v. Stringer*, 120

WORDS—"Office or place," 105

— "Person by whose act," 65

— "Unsound mind," 112

WOUNDING—*with intent to resist lawful apprehension: fresh pursuit*—The prisoner was indicted for wounding W. with intent to resist his lawful apprehension. The prisoner was engaged in a disturbance in the street, when R, a police constable, interfered to prevent it. A struggle ensued between R. and the prisoner. R. retired, and the prisoner went into his father's house, where he lodged, and fastened up the house. After an interval of an hour R. returned with W. and two other constables to the house, which was then fastened and all quiet. The prisoner, from inside the house, refused to admit the constables, who spent ten minutes to a quarter of an hour trying to get in. They then sent for a sergeant of police, and in about another quarter of an hour he came, and they then burst open the door of the house. They found the prisoner on the top of the stairs with a bill-hook in his hand, which he used against the policemen to resist his apprehension, and with which in so doing he wounded W, one of the policemen:—*Held*, that the apprehension was not, lawful, as the first disturbance was at an end and there was no fear of its renewal; nor was there a fresh pursuit by the constables; and the conviction must be quashed. *The Queen v. Walker* followed. *R. v. Marsden*, 80

— See Maliciously Wounding Cattle.

TABLE OF CASES.

-
- Angell v. Paddington Vestry, 171
 Ashby v. Harria, 164
 Austin v. Olsen, 34

 Bradford Union Guardians v. Clerk of the Peace
 of Wilts, 129
 Brown v. Bussell, 65
 Brough v. Honfray, 177
 Brunskill v. Watson, 103

 Carr v. Stringer, 120

 Deal v. Schofield, 15

 Francomb v. Freeman, 65

 Lakeman v. Stephenson, 57
 Lancashire (Justices) v. Cheetham (Overseers), 12
 Lawrence v. King, 78
 Layard v. Ovey, 148
 Lyne v. Fennell, 55
 — v. Leonard, 55

 Manchester, Mayor, &c. of, v. Chapman, 173
 Merivale v. the Exeter Turnpike Roads (Trustees), 40
 Metropolitan Board of Works v. Clever, 126

 North-Eastern Rail. Co. v. Tynemouth, Mayor,
 &c. of, 183

 Regina v. Brackenridge (C.C.R.), 86
 — v. Bullock (C.C.R.), 47
 — v. Damarell, 21
 — v. Dowe (C.C.R.), 52
 — v. Elworthy (C.C.R.), 3
 — v. Eyre, 159

 — v. Glyde (C.C.R.), 107
 — v. Hicklin, 89
 — v. Ipstones (Inhabitants), 37
 — v. Jarvis (C.C.R.), 1
 — v. Keena (C.C.R.), 43
 — v. M'Cann, 25; Ex. Ch. 123
 — v. M'Kale (C.C.R.), 97
 — v. Maraden (C.C.R.), 80
 — v. Marylebone (Justices for), 181
 — v. Medway Union, 100
 — v. Oldham, Mayor, &c. of, 169
 — v. Pratt, 23
 — v. Rogers (C.C.R.), 83
 — v. Ryland (C.C.R.), 10
 — v. Shaw (C.C.R.), 112
 — v. Shepherd (C.C.R.), 45
 — v. Smith (C.C.R.), 6
 — v. Tyson (C.C.R.), 7
 — v. Watson, 153
 — v. Western (C.C.R.), 81
 — v. Westmorland (Justices of), 115
 Reigate, Mayor, &c. of, v. Hunt, 70

 St. George, Hanover Square, v. Cambridge Union,
 17
 Shaw v. Morley, 105
 Stamper v. Sunderland-near-the-Sea (Churchwar-
 dens of), 137
 Sweetman v. Guest, 59

 Talargoch Mining Co. v. St. Asaph Union, 149
 Toomer v. Reeves, 49

 Waite v. Garston Local Board of Health, 19
 Watkins v. Gravesend and Milton Union Asses-
 sment Co., 73



THE
LAW JOURNAL REPORTS

FOR
THE YEAR 1868:

CASES
IN THE COURT OF
Probate,

IN THE COURT FOR
Divorce and Matrimonial Causes,

REPORTED BY
GEORGE HENRY COOPER, Esq., BARRISTER-AT-LAW,
AND
JOHN GEORGE MIDDLETON, Esq., D.C.L., BARRISTER-AT-LAW;

AND ON APPEAL THEREFROM
TO THE

House of Lords,

By EDMUND STORY MASKELYNE, Esq., BARRISTER-AT-LAW.

MICHAELMAS TERM, 1867, to MICHAELMAS TERM, 1868.

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CASES ARGUED AND DETERMINED

IN THE

Probate,

IN THE COURT FOR

Divorce and Matrimonial Causes,

AND IN THE HOUSE OF LORDS ON APPEALS FROM THOSE COURTS.

COMMENCING WITH

MICHAELMAS TERM, 31 VICTORIÆ.

PROBATE. } In the goods of DAME A. M.
1867. } COLQUHOUN.
Nov. 5. }

Will — Executor, Substitution—Failing Him.

The deceased by her will appointed as executors A, and failing him, B. By her first codicil she appointed C. in the place of B, and by a second codicil she cancelled the appointment of A, and in his room appointed D. D. declined to act alone, and renounced his right to probate:—Held, that C. was entitled to probate as the substituted executor on the failure of D.

Dame Anna Maria Colquhoun, of Bramblys, Basingstoke, in the county of Southampton, widow, died on the 20th of September, 1867. She duly executed a will and two codicils. The will was dated Thorncroft, Leatherhead, April 6th, 1858, and contained the following clauses relating to her executors: "I appoint as my executors in India, Russell Patinhall Colvin, and failing him Henry Blunt, of the firm of Messrs. Colvin, Cowie & Co. I appoint as my executors in England Bazett David Colvin, and failing him John Cowie, Esq., of the firm of Messrs. Crawford, Colvin & Co." The first codicil was dated Bramblys,

Basingstoke, March 8th, 1864, and referred to the executors as follows: "My executors to indemnify themselves for all expenses, Binny Colvin, Esq., being appointed in the place of John Cowie, Esq., deceased; Bazett Wettenhall Colvin, Esq., or failing him, Eliot Colvin, Esq., in India, in place of Henry Blunt, Esq., deceased, and of Russell Colvin, Esq., leaving India." The second codicil was dated Bramblys, Basingstoke, September 2nd, 1867, and commenced, "Cancelling Mr. Bazett David Colvin, senior, office of executorship, and appointing in his room Clement Worsley Colvin, Esq. In India, now that Mr. Bazett David Colvin, junior, has gone to the office, he being on the spot becomes my natural executor for my Indian affairs. Bazett Wettenhall Colvin, Esq., or Eliot Colvin, Esq., therefore to be considered only provisional lest Bazett David Colvin, junior, should fail." It was objected in the registry that the words *failing him* were equivalent to "in case of his death," and that Mr. Binny Colvin was only appointed in substitution for Mr. Bazett Colvin, and in the one event, namely, that of his death; that as Mr. Bazett Colvin was still alive and his appointment as executor had been cancelled, the claim of Mr. Binny Colvin to act as executor could not be admitted.

Mr. Clement Colvin was willing to act jointly with Mr. Binny Colvin, but declined to act alone, and proposed to sign a renunciation of his right to take probate. It appeared by the affidavit of Mrs. Pitcairn, the sister of Lady Colquhoun, that, on the 31st of August last (two days before the second codicil was executed), the deceased said to her, "I am going to make my nephew Clement one of my executors, as I believe more than one is required. It will be good for him to learn something of business and to have some responsibility; but of course he will be quite second to my brother Binny. Binny will do everything about my affairs, but it will teach Clem. His uncle will make all necessary arrangements, and Clem. will have no charge on himself."

Dr. Middleton moved the Court to grant probate to Messrs. Clement and Binny Colvin as executors named in the will on the suggestion that, from the tenor of the will, coupled with the deceased's declarations before she executed the second codicil, in which Mr. Clement Colvin was appointed executor, it might be determined that the deceased meant to appoint two executors in case one should fail. Or if the Court could not grant it to both, it would to Mr. Binny Colvin alone, (on the renunciation of Mr. Clement Colvin as the substituted executor, in the event which had happened, namely, the refusal of Mr. Clement Colvin to act.—He referred to *Swinburne on Wills*, pt. 4. s. 19.

SIR J. P. WILDE.—I should have great difficulty in deciding that the testatrix had appointed both these gentlemen executors. That point, however, is not pressed, and I see no reason why Mr. Binny Colvin should not take the grant. The whole result to be deduced from the testamentary papers of the deceased is this, that she has appointed one absolute and one substituted executor. The Court is satisfied that under the circumstances stated in the case the substituted executor is let in. The probate, therefore, may issue to Mr. Binny Colvin on the renunciation of Mr. Clement Colvin being filed in the registry.

Attorneys—Freshfields & Newmeh.

PROBATE. } In the goods of S. A. D'ESTÈVE
1867. }
Nov. 19. } DE PRADÉL.

Married Woman—Foreign Settlement—Foreign Decree of Separation—English Will—Practice.

A Frenchman and an English woman, in anticipation of a marriage, which was afterwards celebrated between them in France, entered into a contract, one of the conditions of which was that the survivor should enjoy the usufruct of one-half of the goods of the pre-deceased. Subsequently a separation was decreed between the parties by the proper tribunal of the country of their then domicile. The wife, being resident in this country, executed a will in accordance with the law of this country, by which she disposed of the whole of her property. The husband was still living:—Held, that the Court could decree probate of such will, but limited to such property as the deceased had a right to dispose of.

The deceased, Sarah Anne d'Estève de Pradel, then Sarah Anne Shuter, was married, at Paris, in May, 1850, to Adelbert François Barthélemy d'Estève de Pradel. By a marriage contract, executed between the parties previous to such marriage, it was stipulated that there should be a separation of goods between them, and one of the conditions of the contract was, that the survivor should be entitled to enjoy for life the usufruct of one-half of the goods of the pre-deceased. On the 18th of August, 1854, the Civil Tribunal of the First Instance of the department of the Seine decreed a separation of body between M. and Madame de Pradel, and such decree was confirmed, on appeal, by the Imperial Court at Paris, on the 14th of June, 1855. Between 1854 and 1858 Madame de Pradel travelled about in France, Italy, England, and Australia. From 1858 until her death, which took place on the 15th of September, 1866, she resided with her mother in London. Under the will of her grandfather, John Shuter, Madame de Pradel was entitled to a legacy of 1,500*l.*, which the executors placed in the custody of the Court of Chancery, and since 1856 the interest of that legacy, by direction of the Court of

Chancery, and notwithstanding the opposition of M. de Pradel, had been paid on the separate receipt of Madame de Pradel. By a will, dated the 14th of September, 1866, and executed in accordance with the law of England, Madame de Pradel, without referring therein to any power, disposed of the whole of her property, and appointed Charles Hill executor. The husband, M. de Pradel, is still alive.

M. Brouard, an *avocat*, and acquainted with the testamentary law of France, deposed, that by the law of France the effect of the decree of the 18th of August, 1854, was to enable Madame de Pradel to dispose, by will, of the entirety of her property, notwithstanding the terms of her marriage contract; and that a will executed in England, in accordance with the law of England, would be valid according to the law of France.

Dr. Swabey moved for probate to be granted to the executor.—Madame de Pradel had never lost her French domicile acquired by marriage; and in accordance with the law of that country she was entitled to dispose of the whole of her property notwithstanding the marriage contract.—He referred to *Robins v. Dobbin* (1).

SIR J. P. WILDE.—The deceased, under her marriage settlement, had clearly a right to dispose of one-half of her property, and she has executed a will in accordance with the law of this country. A question may arise by and by, whether, after the separation from her husband, she had a power to dispose of her whole estate. I shall not discuss that now; it may be argued some day before the Court of Chancery. I shall follow the principles laid down in *Barnes v. Vincent* (2), and confine myself to the question whether the will has been duly executed. That being so, I think probate should go limited to such property as she had power to dispose of. In the case of *Levy v. Garland* (3), a similar difficulty having arisen, Sir H. Jenner made such an order, saying it was the usual and

most convenient mode, (in) order (to) give parties an opportunity to make their claim elsewhere.

PROBATE.

1867.

Nov. 19.

PARKINSON v. THORNTON.

Subpœna to bring in a Will—Non-Compliance—Attachment.

Where a subpœna has been personally served upon an individual to bring in a testamentary paper, and such individual fails to comply therewith, the Court will not at once order an attachment to issue against him, but will make a preliminary order that he shall attend in court to be examined in reference to his possession of such paper.

On the 18th of October, 1867, a subpœna issued from the registry of the Court of Probate under 21 & 22 Vict. c. 95. s. 23, calling upon Margaret Thornton, of Sunderland, in the county of Durham, within eight days, to bring into the principal registry of the Court of Probate the will of Jane Shotton, late of Sunderland, widow, who died on the 29th of September, 1861, such will being dated the 6th of September, 1861. This subpœna was founded on the affidavit of Robert Hutton Parkinson, who claimed to be the executor named in such will, and who stated it was in the possession or within the power or under the control of Margaret Thornton. The subpœna was personally served upon Margaret Thornton, but she failed to obey it. On the 9th of November a notice was given to her that on the 19th of November the Court would be moved to order an attachment to issue against her for non-compliance with the subpœna. As the will was not brought into the registry, and no appearance was entered for Margaret Thornton,

Dr. Middleton applied to the Court that the attachment should issue.

SIR J. P. WILDE.—I shall do in this case as I have done in some previous ones. I do not think it right to order an attachment to issue in the first instance, as there

(1) 7 H.L. Ch. 690.
(2) 5 Mees. P. 261 & 262. 6 N.C. Supp. 21.
(3) 7 H.L. Ch. 230.

may be some misapprehension, and this party may not have the will in her possession. I shall make an order that she shall attend personally in court on Tuesday next to be examined on this point.

Attorneys—Shepherd & Skipwith, agents for A. J. & W. Moore, Sunderland.

• PROBATE. }
1867. } KING v. GILLARD AND OTHERS.
Dec. 8. }

Probate—Practice—Costs—Probate of Contents of destroyed Will—Destroyer, a Defendant, condemned in Costs, though he had not appeared.

On decreeing probate of the contents of a destroyed will, the Court condemned in costs a defendant who had destroyed the will, although he had not entered an appearance.

This was a suit for probate of the contents of the last will of J. Saunders, deceased.

The plaintiff propounded the will. The defendants, who were the testator's children and next-of-kin, had been cited, but had not appeared.

This cause was heard by Sir J. P. Wilde on the 26th of November, 1867. The due execution and contents of the will were proved, and it was further proved that it was read over after the funeral of the deceased, and that a daughter of the deceased, one of the defendants, seized it and threw it into the fire, and burnt it.

Sir J. P. Wilde pronounced for the will.

Dr. Tristram, on behalf of the plaintiff, asked that the daughter of the deceased, who had destroyed the will, should be condemned in costs:

Cur. adv. vult.

SIR J. P. WILDE.—The question reserved by the Court was, whether it had power to condemn the defendant who had destroyed the will in costs, although she had not appeared. In *Foster v. Foster* (1), a case similar to the present, Sir J. Nicholl decided

that the Court had power to condemn the defendant in costs, although she had not appeared. Following that precedent, I shall condemn the defendant in costs.

Attorney—E. F. Sealy.

MATRIMONIAL. } BARNES v. BARNES AND OTHERS.
1867. }
Nov. 22. } WADDE (The Queen's Proctor intervening).

Dissolution of Marriage—Queen's Proctor's Intervention—Collusion—Suppression of Material Facts—Costs—23 & 24 Vict. c. 144. s. 7.

A husband having obtained a decree nisi in a suit in which neither of the respondents appeared, the Queen's Proctor intervened, and (inter alia) charged collusion between the petitioner and the respondent, and that material facts had not been brought before the Court.—Held, by the Court, on reversing the decree and dismissing the petition, first, that the fact that the husband before and after the institution of the suit had had frequent interviews with his wife, and had then given her money, and urged her not to oppose the suit, established collusion; secondly, that the fact that the husband had been in the habit of going with his wife and the co-respondent to places of amusement, and of allowing her to dance frequently with the co-respondent there, and then leaving her in the care of the co-respondent, was conduct conducing to the adultery, and as such was a material fact which ought to have been brought before the Court.

A wife being entitled to alimony pendente lite, the voluntary gift of money by a husband to her during the progress of a suit by him for a divorce, does not per se prove collusion.

Where the Queen's Proctor intervenes and charges the suppression of material facts, without specifying such facts, the petitioner is entitled to particulars.

Where the Queen's Proctor intervenes and charges collusion, that material facts had not been brought before the Court, and that the petitioner had been guilty of adultery, and at the hearing established the first two charges and abandoned the last, the Court refused to condemn the petitioner in

costs, on the ground that he had been put to great expense in preparing to defend the charge of adultery.

This was a suit by a husband for dissolution of marriage. Neither of the respondents appeared.

On the 31st of July, 1866, the petition was heard by the Judge Ordinary, and a decree nisi was pronounced. The Queen's Proctor subsequently obtained leave to intervene, and filed pleas, in which he alleged—1. That the petitioner had been acting in collusion with the respondent for the purpose of obtaining a divorce contrary to the justice of the case. 2. That divers material facts respecting the conduct of the petitioner had not been brought before the Court. 3. That the petitioner had connived at the adultery of the respondent. 4. That the petitioner had himself been guilty of adultery.

The petitioner traversed these allegations.

The case was heard by the Judge Ordinary on the 21st and 22nd of November, 1867.

The Attorney General (Sir J. B. Karslake) and Haanen, for the Queen's Proctor.

—It appeared that the petitioner was a valet in the service of a Captain Gough, and that the respondent resided in the house of the co-respondent, who was a baker. All three were in the habit of going to places of amusement, where the respondent frequently danced with the co-respondent, and the petitioner had sometimes gone away late at night, leaving his wife in the care of the co-respondent, although he had been told by a friend, a policeman, that his conduct in doing so was imprudent. It also appeared that after he had ceased to cohabit with his wife, both before and after the institution of the suit, the petitioner had frequently seen her and had given her money; that he had advised her to take no notice of the petition, as it would be better for both the cheaper the divorce could be obtained; that he would be a friend to her afterwards, and that he would not injure the co-respondent. The charge of adultery against the petitioner was abandoned.

Dr. Spinks, for the petitioner.—The bare statement in the Queen's Proctor's second plea, that "material facts respecting the

conduct of the petitioner had not been brought before the Court," is insufficient. The specific facts, upon the suppression of which the Queen's Proctor relies, should have been set out in the plea.

[The JUDGE ORDINARY.—If the petitioner says that he has been taken by surprise, the case may be adjourned.]

Dr. Spinks did not ask for an adjournment. He contended that the petitioner was entitled to the divorce. Connivance to be a bar must be a corrupt connivance—*Phillips v. Phillips* (1). Of that there is no evidence. As to the collusion, the gift of money to the respondent does not prove collusion. A wife is entitled to alimony *pendente lite*; and to save the expense of the proceedings for alimony, it is the constant practice for a husband, by the advice of counsel, to make a voluntary allowance to his wife pending a suit for divorce. With respect to the petitioner's advising the respondent not to defend the suit, that does not amount to collusion. There was no defence to the suit; and the petitioner, being a poor man, was only actuated by a desire to get the divorce as cheaply as he could.

The JUDGE ORDINARY.—When the legislature passed the act under which this Court derives its authority, and for the first time put it in the power of an English Court to grant a dissolution of marriage, they surrounded the granting of that relief with a great many safeguards. There are sections in the act which provide that no man, whatever the conduct of his wife may have been, shall get a divorce if he has been guilty of connivance or condonation or collusion; and further, the legislature placed it in the discretion of the Court to refuse a divorce to a man whose wife has committed adultery if in the opinion of the Court he shall have been guilty of unreasonable delay in bringing his suit, of cruelty, of desertion of his wife, or of such wilful neglect and misconduct as conducted to her adultery. These are, no doubt, most salutary and important provisions. The great difficulty is to apply them, but the legislature has, so far as it could, thrown upon the Court the duty of inquiring into

such charges when brought forward, and of being vigilant, so far as it can be vigilant, that those matters which are made bars to a divorce shall be investigated. By a subsequent act (23 & 24 Vict. c. 144. s. 7), for the furtherance of the ends to which I have alluded, the legislature enacted that "at any time during the progress of the cause or before the decree is made absolute any person may give information to Her Majesty's Proctor of any matter material to the due decision of the case, who may thereupon take such steps as the Attorney General may deem necessary or expedient; and if from any such information or otherwise the said Proctor shall suspect that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce contrary to the justice of the case, he may, under the direction of the Attorney General, and by leave of the Court, intervene in the suit, alleging such case of collusion, and retain counsel and subpoena witnesses to prove it." These are shortly the provisions that the Court has to administer in the case now before it. The petitioner charged his wife with adultery; the petition and citation were served upon her; she entered no appearance. He then came into court with his witnesses, and proved to the satisfaction of the Court that his wife had committed adultery with the co-respondent. Information was conveyed to the Queen's Proctor (I do not consider it material to consider whence that information was derived) which induced him to think that the petitioner had been guilty of collusion with his wife in obtaining the divorce and of conduct which, if it did not amount to connivance, at any rate conduced to her adultery. The Queen's Proctor thereupon intervened and filed pleas. In those pleas he alleges, first, that the petitioner has been acting in collusion with the respondent for the purpose of obtaining a divorce contrary to the justice of the case; secondly, that divers material facts respecting the conduct of the petitioner have not been brought before the Court; thirdly, that the petitioner has connived at the adultery of the respondent; and, fourthly, that at divers times, while in the service of Captain Gough, the petitioner has himself been guilty of adultery. These were the four charges made against the petitioner,

and the petitioner denied each of them. It is upon those charges that the Court has now to determine. What was the case which the petitioner did bring before the Court? He proved that his wife was living in the house of the co-respondent, and that notwithstanding his remonstrance she refused to leave it; that she went out to places of amusement with the co-respondent; and the Court was induced to believe that this going out with the co-respondent did not receive the sanction of the petitioner.

Now comes the case presented by the Queen's Proctor. I may say at once that I am entirely convinced that during the period Mrs. Barnes was living in Grimwade's house she did constantly go out with him; but I am also convinced that her husband as constantly accompanied them, that he was content to see her frequently dance with Grimwade, and that he went away at twelve o'clock at night leaving her still dancing with the co-respondent, and in his charge. It has been suggested that he had to leave in order to return to his master's house, and that that circumstance, as well as the manners of those in his position of life, should be considered. I think that that is true; but there cannot be a better test of what should be expected from a person in his circumstances than what took place between him and the policeman. The policeman on two occasions spoke to him about it. He said it was very curious the petitioner should go away leaving his wife dancing with the co-respondent, and the petitioner's answer was, "Oh! Charlie is a good fellow; he'll do no harm." It seems to me, therefore, that he did expose his wife to temptation with this man in a way which no husband should do, and that he was guilty of conduct conducing to her adultery. As to the plea of connivance, I may dismiss the matter by saying that although the petitioner was reckless in his conduct, still I do not think that the evidence comes up to the point of connivance. Then comes the question of collusion. It appears that after the petitioner had ceased to live with his wife, he saw her on several occasions, and gave her money. I do not think that the fact of a man giving money to his wife ought to be treated as a proof of collusion. She is entitled to support, and can come to the Court for that pur-

prosecution, therefore, seems no inappropriate in the husband voluntarily making her a reasonable allowance, but the proper way in which it should be made is through her solicitor. But without straining the matter too far, or exercising too critical a judgment upon the feelings which prompted the husband to see his wife, if it stood alone I should not think that it was evidence on which to found collusion; but the evidence goes much further. Mrs. Bird, with whom the respondent lived, and who constantly went with her to see her husband, says: "I met Barnes one day as I was walking with her. He was on horseback. They spoke together about the divorce, and I heard him tell her not to take any notice. He said that he could get the divorce for 40*l.* if she would not oppose; that it would be better for both the cheaper, it could be done, and that he could be a friend to her hereafter"; and as to the co-respondent, "that he would not hurt a hair of Charlie Grimwade's head." It is impossible to read that evidence and not to believe that what the petitioner was doing was to endeavour to get the divorce as cheaply as possible. If it is not collusion, I do not know what is. On a subsequent occasion she received the petition and citation, and Mrs. Bird says: "We went to a public-house together, and the petitioner paid for our entertainment. Mrs. Barnes told him that she had received some papers, and asked what she should do. He told her they were of no consequence, and she might burn them; she was to keep quiet." It is obvious from that that he desired she should offer no opposition to the suit. It is said that she had no defence to offer. It is quite true that in respect of her adultery she had not; but if she had come into court, the manner in which she went out night after night with the co-respondent with the knowledge and consent of her husband would have been made known. I think that the charge as to divers material facts not having been brought before the Court has been proved. I think that the collusion has also been proved; and the result is, that the petition must be dismissed.

Hansen left the question of costs to the discretion of the Court.

Dr. Spinks.—It should be remembered

that a charge of adultery was also made, and that the petitioner came here to meet it.

The JUDGE ORDINARY.—I should not be inclined to condemn the petitioner in costs. He came here with witnesses to meet the charge of adultery; and has already been put to great expense.

Petition dismissed. No order as to costs.

Attorneys—Shirreff & Son, agents for J. M. Pollard, Ipswich, for petitioner and the Queen's Proctor; Nicholls & Clark, for respondent and co-respondent.

MATRIMONIAL.

1867.

Nov. 27;

Dec. 10.

U—, falsely called
J—, v. J—

Nullity of Marriage—Impotency of Husband—Surgical Report inconclusive—Un-corroborated Statement of Wife.

In a suit of nullity by reason of the husband's impotency, the surgical report stated that the physical appearances of the wife were such that she might have had regular connexion with her husband during cohabitation. The wife, during the two years cohabitation, had not complained to her family on this matter, and had separated from her husband by reason of his alleged violence. The respondent affirmed on oath that the marriage had been consummated. The Court declined to pronounce the marriage invalid on the unsupported oath of the party seeking to be relieved from its obligations.

In this suit the petition was presented by the wife, and she prayed for a decree of nullity of marriage by reason of the impotency of the respondent. The respondent appeared, and traversed the allegation. The petition was disposed of *in camera*, before the Judge Ordinary, without a jury.

Dr. Spinks and Seale appeared for the petitioner

Dr. Swabey, for the respondent.

The JUDGE ORDINARY, (Dec. 10).—The petitioner in this case has accepted

the burden of proving two propositions: first, that the marriage has never been consummated; and, secondly, that it has failed to be so, in consequence of the incurable incompetency of her husband. I am obliged to declare, that in my opinion she has established neither. In the first place, it is to be observed that her contention rests substantially upon her own oath alone. The physical appearances are, in the language of the medical witnesses, such that no opinion could be formed "whether for two years she had had ordinary connexion with her husband or not." And "that it might have been the case consistently with what was seen." Such evidence does not forward the petitioner's case. Indeed, it would perhaps be more fair to say that it assists the case of the respondent, who asserts on oath that these appearances were the result of ordinary connexion. For it can hardly be denied, as the evidence in cases of this description have constantly shewn, that in general or in the majority of cases virginity does present outward and physical signs and appearances by which it may be recognized and affirmed. Nothing therefore remains but the account given by the petitioner herself; and the question is, whether it is true. To pronounce a marriage invalid on the unsupported oath of the party who seeks to be relieved from its obligations is a serious matter, within the province of the Court, no doubt, but only to be done when the last trace of reasonable doubt as to the truth and *bona fides* of the case has been removed. If there be a direct conflict of testimony between the two parties who alone know the truth, as in this case, the difficulties are much increased. The scales being thus balanced by the direct testimony, the general circumstances of the case acquire additional weight, and the conduct and motives of the petitioner a larger significance. These general circumstances all tell against the petitioner. She saw her mother about every fortnight during the two years of her cohabitation, but she made no complaint. Yet she complained much of other matters, and was by no means satisfied with her husband's treatment. At the end of two years and a few months she left him; but the cause of her doing so was his alleged violence, for which she summoned him before the magistrates. At this period

she had taken refuge with her mother, and plainly desired and intended not to return to cohabitation. But she was still silent as to that of which she now complains. Finally, the suggestion of the respondent's incompetency did not come from herself at all; but after she had been at home three weeks, her parents (so they say) heard some rumours which induced them to have the petitioner questioned, and the first statement of her present grievance was then made by the petitioner in answer to the interrogatories of her aunt. It is impossible not to entertain the suspicion that the desire to be set free from her husband proceeded from the same causes as had rendered her married life unhappy, and that the grievance she now asserts may have been simulated as the sole means of reaching her end. At any rate, these considerations make it difficult for the Court to arrive at the affirmative conclusion that the respondent is to be disbelieved and the petitioner's account to be accepted as true. It remains only to notice the suggestion that the respondent in conversation with a witness did in fact admit his incompetency. The result of the witness's testimony was that the respondent spoke of difficulties in the consummation of the marriage, attributed them to his wife, and (as the witness says) led him on the whole to imagine that connexion never took place. But the same witness admits that in the same conversation the respondent asserted his own competency in the most distinct terms, and he had a short time before distinctly denied his incompetency in his answer to this suit. The Court could hardly conclude from these statements, even if they had not been qualified and explained by the respondent as applying only to difficulties which existed at first, that the petitioner's account is true. The respondent must be dismissed from this suit.

Attorneys—Blakeley & Beeswick, agents for J. P. Cartwright, Chester, for petitioner; Johnson & Weatheralls, agents for Roberts & Dickson, Chester, for respondent.

MARRIAGE. *and dissolution of marriage.*
1867. *John LYNE and LYNE AND*
Nov. 30. *BLACKNEY.*

Dissolution of Marriage.—Claim of Damages.—Appearance by Co-respondent, but no Answer.—Right of Co-respondent to cross-examine, and be heard as to Damages and Costs.

A co-respondent from whom damages are claimed, who has appeared but has not filed an answer, cannot at the hearing cross-examine the petitioner's witnesses, nor address the jury upon the question of damages. He is, however, entitled to be heard upon the question of costs; and when the decree has been pronounced, he will, as to that question, be allowed to recall and cross-examine the petitioner's witnesses, and also address the Court.

This was a petition by a husband for dissolution of marriage, claiming damages against the co-respondent. The respondent did not appear. The co-respondent appeared, but did not file an answer. The petition was now heard by the Judge Ordinary, and a jury was sworn to assess the damages.

Müller, for the petitioner.

A. Rogers, for the co-respondent, claimed to be allowed to cross-examine the witnesses called in support of the petition, and to address the jury on the question of damages.

THE JUDGE ORDINARY.—A co-respondent who has appeared, but has not filed an answer, may, no doubt, be heard on the question of costs, but has he ever been allowed to cross-examine the petitioner's witnesses, and to address the jury on the question of damages?

I know of no authority in my favour; but the effect of the 33rd section of 20 & 21 Vict. c. 85, is to place a co-respondent who has appeared, but has filed no answer to a petition claiming damages, in the same position as a defendant in an action for *crim. con.* who had allowed judgment to go by default, who would have been entitled to take part in the proceedings upon the assessment of damages. That section enacts, that a claim for damages "shall be heard and tried on the same principles, in the same manner, and subject to the same

or the like rules and regulations, as actions for criminal conversation are now tried and decided in Courts of common law."

THE JUDGE ORDINARY. If that clause means that the procedure is to be precisely the same as in an action for *crim. con.*, the proceedings of this Court have been irregular. No doubt, when judgment was allowed to go by default, in an action for *crim. con.*, upon the assessment of damages before the sheriff the defendant was allowed to be heard and to call witnesses. But in this Court there is no such thing as a judgment by default. The mode of proceeding in it is different from that adopted in a Court of common law, viz. by declaration and plea. The system of this Court is to proceed by petition and answer, and the object of pleading in it is to give notice to the other side of the case that will have to be met. In no case has a co-respondent who has appeared, but has not filed an answer, been allowed to cross-examine the petitioner's witnesses, or address the Court on the question of damages. The Court is always liberal in allowing a respondent to file an answer, even at the last moment, in order to give him an opportunity of being heard. Here, no application for leave to file an answer was made; and the petitioner had every reason to suppose that, in accordance with the practice of the Court, the case would be treated as an undefended one. I shall therefore not allow you to cross-examine the petitioner's witnesses, or address the jury on the question of damages; but when the jury have assessed the damages, I will permit you to recall the witnesses and examine them upon the question of costs, and will hear anything you may have to say on that question.

The jury, having assessed the damages at 100*l.*, and a decree not having been pronounced,—

Rogers cross-examined one of the petitioner's witnesses, with the object of shewing that the co-respondent did not know that the respondent was a married woman. He also addressed the Court.

THE JUDGE ORDINARY.—I am satisfied that the co-respondent knew that the respondent was a married woman when he com-

mitted adultery with her. I therefore condemn him in costs.

Note.—See *Norris v. Norris and Gyles*, 1 Sw. & Tr. 174; s.c. 27 Law J. Rep. (N.S.) Prob. & M. 51; *Tourle v. Tourle and Renshaw*, 1 Sw. & Tr. 176; s.c. 27 Law J. Rep. (N.S.) Prob. & M. 53.

Attorneys—Sole & Turner, agents for Whiteford & Bennett, Plymouth, for petitioner; Bolton & Grylls Hill, agents for Rodd & Son, East Stonehouse, for co-respondent.

MATRIMONIAL.	}	MADAN v. MADAN AND DE THOREN.
1867.		
Nov. 26;		
Dec. 3, 10.		

Matrimonial Suit—Alimony—Respondent and Co-Respondent living together.

If the husband can prove that his wife has sufficient means of support independent of him, even although they be derived from the co-respondent, she will not be entitled to an allotment of alimony.

The petitioner, William Madan, prayed for a dissolution of his marriage with the respondent Georgina Maria Madan, by reason of her adultery with the co-respondent, Oscar William de Thoren. A petition for alimony was filed by the respondent, to which the husband answered; and the last paragraph of his answer was to the following effect: "I have been informed and verily believe that the respondent Georgina Maria Madan since she left me has been continuously living with the co-respondent Oscar William de Thoren, and is at the present time still living with him in London, and is being supported by him."

Dr. Spinks (*Sharpe* with him) moved the Court to decree alimony to the respondent on the answers of the petitioner.

Bayford, for the petitioner, submitted that where the Court is satisfied that the respondent and co-respondent are still living together, it will not require the petitioner to contribute to the maintenance of the adulterous establishment. If the facts as stated are true, there is clearly no necessity to grant the wife alimony, and necessity is the only ground for the allotment of alimony—*Coombs v. Coombs* (1). No doubt the Ecclesiastical Courts always refused to enter

on the question of the adultery charged in discussing the alimony; but the adulterous intercourse now going on between the respondent and co-respondent is not the adultery in issue in the cause; it is not the adultery charged in the petition. By 20 & 21 Vict. c. 85. s. 24, in all cases in which the Court shall make any decree for alimony, it may direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient. In this case the Court may order the alimony to be paid to a trustee, who shall satisfy himself (before he hands it over to the respondent) that she is not living with the co-respondent and is in actual want of it.

[The JUDGE ORDINARY.—I think a strong case is made out, and it is in accordance with common sense and justice. But the Court cannot delegate its functions to some one else; it must satisfy itself as to the conduct of the respondent. The broad principle that where the respondent and co-respondent are living together, the husband should not pay alimony is sound; but if there has been a constant practice not to take that matter into consideration, the Court will hardly make an alteration in it.]

Bayford referred to *Crompton v. Crompton and Armstrong* (2) and *Goodheim v. Goodheim and Frankinson* (3).

Dr. Spinks.—If the husband is allowed to swear that his wife is living with the co-respondent, the respondent will be compelled to make an affidavit as to whether she is so or not; but it is contrary to the policy of the law that she should answer yea or nay as to adultery. If she denies that she is so living, the husband will then go into evidence, and although he may not prove precisely the adultery in issue, it will be adultery of the same character.

[The JUDGE ORDINARY.—There would seem to be no occasion to go so far as that. The husband would allege that his wife is living in a particular house, and is amply provided for by some person, who may turn out to be the co-respondent. The wife could then make an affidavit that she was or was not living in such house.]

(2) 32 Law J. Rep. (N.S.) Pr. M. & A. 142.

(3) 3 Sw. & Tr. 250; s.c. 30 Law J. Rep. (N.S.) Pr. M. & A. 162.

(1) 1 Law Rep. P. & D. 218.

Dr. Spinks.—If she made such an affidavit, it could be used against her at the trial.

The JUDGE ORDINARY (Dec. 3).—I deferred my decision in this case in order that I might look at the original papers in *Crampton v. Crampton and Armstrong*. The question raised is, whether a wife who is living, or asserted to be living with the co-respondent, and who is alleged to be supported by him, can come here and ask for alimony. I thought, whatever may be said now on the point, that the Court was concluded by the previous decision; but on consulting the original answer, and reading again the report in *Crampton v. Crampton and Armstrong*, I am satisfied that that case does not touch on the question now under discussion. The question is, whether whilst a wife is living with another person, and has real means of support, the husband is bound to pay her alimony pending suit. On the one hand it was contended that the Court will only grant alimony when required for the necessary support of the wife, and on the other the case of *Crampton v. Crampton and Armstrong* was relied on. In that case, however, it was merely alleged by the husband that he had been informed and believed that the respondent and co-respondent were still living together as man and wife, and the Judge Ordinary held that such a statement was irrelevant and must be struck out. That decision did not touch the present question. The husband here says to his wife, "You do not require alimony, because you receive support from some one else, and need not recur to my purse." In *Goodheim v. Goodheim and Frankinson*, it was determined that where a wife is in actual possession of an income from whatever source, she is not entitled to alimony *pendente lite*. Without at present finally deciding this matter, I will allow the husband a week's further time to amend his answer. He must state some facts upon which he relies to shew that his wife does not require assistance; at present he states in general terms that the respondent is living with, and is supported by, the co-respondent. When the answer is amended, the wife will be entitled to meet it by affidavit.

The answer having been amended, the respondent filed an affidavit, in which she denied that she had lived with the co-respondent, or was then living with him, or that she had been or was supported by him, or that she had any other source of income whatever, except certain sums which she received from her solicitors, and which she undertook to repay from the alimony allotted for her maintenance. This statement was confirmed by the solicitors.

On the 10th of December, *Bayford* said after such an affidavit he could not press the objection any further.

Attorneys—H. Scott, Turner & Son, for petitioner;
Rooks, Kemrick & Harston, for respondent;
W. W. Gwillim, for co-respondent.

MATRIMONIAL. }
1868.
Jan. 14.

HARKER v. HARKER.

*Dissolution of Marriage—Alimony—
Amendment of Petition—Practice.*

The petitioner filed a petition for alimony, in which she set forth certain property which she asserted she held to her separate use, and the respondent answered the petition on oath. The Court subsequently permitted the petitioner to amend her petition for alimony, by adding thereto allegations of further income of the respondent, and a denial of a greater part of the income she had attributed to herself in her petition.

In a suit for dissolution of marriage, the petitioner, Jane Harker, filed a petition for alimony, the two last paragraphs of which were to the following effect: "Fourthly, that the said John George Harker has a balance at his banker's of 500*l.*, and is also possessed of property, over and above the property hereinbefore mentioned, the nature and value of which is unknown to your petitioner. Fifthly, that your petitioner is in receipt of a net income of 31*l.* per annum, settled to her separate use." The respondent filed an answer to this petition on oath. Subsequently, notice was served upon the husband that it was intended to apply to the Court for liberty to amend the petition for alimony *pendente lite* filed on the 27th

of November, 1867, by adding the following paragraphs: "That the above-named John George Harker derives a considerable income by an arrangement with his father, by which he has the investing of all his father's money, and the receiving of the interest, dividends and proceeds of his father's investments; and the collecting of the rents due from his father's property; and the retaining for his the respondent's own use of all annual income derived from his father's investments and property above five per cent., and on the original investments. That the said respondent is also possessed of property, namely, shares of or an interest in a ship or ships or the cargo thereof, and of a share or shares in a public company or companies, and of houses or lands,"—and also, by altering the fifth paragraph of the petition, by alleging that the said petitioner was in receipt of the net income of 31*l.* as therein mentioned, but that the same has long since been reduced to 8*l.* 13*s.* 11*d.* per annum. In support of her application, the petitioner filed an affidavit, in which she stated that she is not, and has not been since the month of January, 1866, in receipt of a net income of 31*l.* per annum; that her only income is derived from money left to her by her brother before her marriage, which at one time produced 31*l.* per annum; but about the month of December, 1865, she was so ill that she thought she could not survive, and for that reason she made over such money to her sister absolutely, trusting to her to spend the same for the benefit of petitioner's child in case of her death, and that since that time the sister had spent for the petitioner and her child about 550*l.* out of such money, and that there now remains only 181*l.*, which produces an income of about 8*l.* 13*s.* 11*d.* per annum. The solicitor also stated that the sources of income of the respondent, proposed to be inserted, were unknown to him until after the husband had answered the petition.

Dr. Tristram moved in accordance with the notice.

Bayford, for the respondent, objected.—The petitioner does not give any sufficient reason why she made, in the first instance, an erroneous statement. To accede to the motion will be to make a serious increase of the costs.

The JUDGE ORDINARY said he must allow the amendment to be made, but he should further order that all the costs of the amendment shall be deducted from the sum which the husband would otherwise have to pay for his wife's general costs.

Attorneys—F. Rolt, for petitioner; Sharp & Ullithorne, agents for Dodds & Trotter, Stockton-on-Tees, for respondent.

PROBATE. }
1867. } *In the goods of ANNE WARREN.*
Nov. 19. }

Administration with Will annexed—Legatee a Married Woman—Refusal of Husband—20 & 21 Vict. c. 77. s. 73.

The deceased left her property to her sister, a married woman, for her sole use, and not to be liable to the control of any husband. She appointed no executor. The husband of the legatee refused, except on certain unreasonable terms, to consent to her taking administration or to join in the bond. The Court, under 20 & 21 Vict. c. 77. s. 73, decreed administration to the attorney of the legatee, without the sanction of the husband.

Anne Warren, late of Rackheath Park, in the county of Norfolk, died on the 22nd August, 1866, leaving her sister, Elizabeth Green, wife of John Green, her only next-of-kin. The deceased executed a will dated the 23rd of May, 1864, in which she did not appoint any executor, but bequeathed to her sister, "solely for her own private, sole and particular use, not to be in any way liable or subject to the influence, control or use of her present or any future husband, or to that of any other person than herself, the above-named Elizabeth Green," the sum of moneys and all the sums, whatever the amount thereof, now standing in the deceased's name, and being her property, in the Canterbury Savings Bank; also all the moneys, shares completed and incomplete, and whatsoever property she was possessed of in the Conservative Land Society, in Norfolk Street, Strand, London. Mrs. Green, since August, 1866, had, personally and by letter, many times applied to her husband, from whom she had lived separated fourteen years, to

enter into the necessary bond to enable her to obtain administration of the effects of the deceased; but he had absolutely refused to do so, stating he wished to deprive her of the benefit of the moneys she was entitled to under her sister's will for her own private use, unless she consented to purchase his compliance by the payment to him of one-half of the property.

Dr. Tristram moved the Court, under these circumstances, to grant administration with the will annexed to Mr. John Callaway, as the attorney for Mrs. Green, the legatee in the will, and the only next-of-kin of the deceased.

SIR J. P. WILDE thought that was the proper course, and made the grant under the 73rd section of the Probate Act.

Attorneys—Duncan & Murton, agents for Callaway & Furley, Canterbury.

PROBATE.	}	LEEMAN v. GEORGE AND ROSSER.
1868.		
Jan. 11.		

Testamentary Suit—Notice—Rules 5, 41.—Sufficiency.

In a testamentary suit the defendants, with their pleas, gave notice that they merely insisted upon the will being proved in solemn form of law, by the production of the attesting witnesses, and that if both such witnesses were produced, they only intended to cross-examine the witnesses produced in support of the will. The plaintiff examined both the attesting witnesses:—Held, that under the rules a sufficient notice had been given, and that the defendants, one of whom was an executor under an earlier will of the deceased than the one propounded, were not liable to be condemned in costs.

In this case, the plaintiff, the Rev. Alfred Leeman, as executor, propounded the will of Henry William Tyler, of No. 11, Ellenborough Crescent, Weston-super-Mare, in the county of Somerset, gentleman, who died at Monmouth on the 16th of February, 1867, such will bearing date the 11th of January, 1867. The defendants, James Gilbert George and the Rev. Charles A'Deane Rosser, the former of whom was an exe-

cutor, and the latter one of the residuary legatees named in the will of the deceased, bearing date the 1st of September, 1857, pleaded that the will propounded was not executed in accordance with the provisions of the statute, 1 Vict. c. 26, and that the deceased in the cause, at the time the said alleged will was executed, was not of sound mind, memory and understanding. With these pleas they gave the following notice: "Take notice, that the defendants merely insist upon the will being proved in solemn form of law, by the production of the attesting witnesses, and that if both such witnesses be produced, they only intend to cross-examine the witnesses produced in support of the will. The 5th rule (Rules and Orders, 1862) is to the following effect: "Next-of-kin and others, who, previously to the passing of the said (Probate) Act, had a right to put executors or parties entitled to administration with will annexed, upon proof of a will in solemn form of law, shall continue to possess the same rights and privileges (1), and be subject to the same liabilities with respect to costs, as heretofore." And the 41st is, "In all cases the party opposing a will may, with his plea, give notice to the party setting up the will, that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been, under similar circumstances, according to the practice of the Prerogative Court.

At the hearing, the witnesses for the plaintiff, including both the attesting wit-

(1) In the case of *Croft v. Day and others*, 1 Curt. 782, in which executors were propounding their testator's will in solemn form of law, against the next-of-kin and others, on an application to compel the production of one of the subscribed witnesses, in order that he might undergo cross-examination, Sir H. Jenner said (p. 848), "It cannot be denied that the general rule of the Court is, that a party propounding an instrument must produce *all* the attesting witnesses to that instrument; if not to examine them himself, still in order that they may be cross-examined by the other party." And in *Tapley v. Kent*, 1 Robert. 403, "To produce other, in addition to the attesting witnesses, is a matter entirely in the discretion of a party propounding a will."

nesses, having been examined and cross-examined, the Court pronounced for the will.

Dr. Deane (*Dr. Swabey* with him) asked the Court to condemn the defendants in the costs. Mr. Rosser, being only a legatee under a previous will, could not, according to the practice, be protected by any notice.

[*SIR J. P. WILDE*.—Has your party been put to any extra costs by Mr. Rosser becoming a party to the suit?]

Dr. Deane could not say he had. He further contended that the notice given in this case was conditional and evasive, and did not satisfy rule 41.

Dr. Middleton (*Bayford* with him) called the Court's attention to rule 5. One of the privileges there mentioned was to examine all the attesting witnesses.

SIR J. P. WILDE.—I think the notice is sufficiently within the intention of rule 41, and protects the defendants. Otherwise, I should certainly have condemned them in costs, for I think they have taken advantage of some confusion in the recollection of one of the attesting witnesses to enter upon very unnecessary litigation.

Attorneys—Jones & Starling, for plaintiff.
Proctors—Rothery & Co., for defendants.

PROBATE. }
1867. } *In the goods of M'MURDO.*
Dec. 17. }

Will—Seaman being at Sea—Ship permanently stationed in Port.

A mate, whilst on board Her Majesty's ship Excellent, which is permanently stationed in Portsmouth Harbour, and when under age, executed a will, of which probate was granted to one of the executors named in it. On an application to revoke the probate, the Court held that the deceased came under the exception contained in 1 Vict. c. 26. s. 11. as a seaman at sea, and, although a minor at the time, that he had legally executed a will.

Henry Robert Douglas M'Murdo, whilst a mate in Her Majesty's service, and serv-

ing on board Her Majesty's ship *Excellent*, executed a will, dated the 8th of December, 1849, by which he appointed Duncan Pringle Burnett and John Wynne executors. The deceased was born on the 30th of May, 1830, and was, therefore, in his twentieth year when he made his will. He died on the 9th of September, 1852, and probate of the will was granted to Mr. Burnett, by the Prerogative Court of Canterbury, on the 10th of March, 1857. The only property to which the deceased was entitled, beyond the pay due to him at the time of his death, was a reversionary interest under his father's and mother's settlement. By the will the whole property was left to the father, Robert M'Murdo; but on an arrangement being suggested for disposing of the reversionary interest, an objection was made by the executor under the will. Thereupon a citation was taken out, calling upon Mr. Burnett to bring in the probate of the will of the deceased, and shew cause why it should not be revoked, and the will declared null and void, by reason that the deceased was under age at the time it was executed. The probate was brought in, and Mr. Burnett did not oppose, but did not consent to its revocation. It was proved by affidavit that Her Majesty's ship *Excellent* is a gunnery ship, permanently stationed at Portsmouth, and that it has been permanently stationed there for twenty years and upwards.

A. E. Miller moved the Court to revoke the probate granted by the Prerogative Court in March, 1857. The deceased was not entitled to the privileges granted under 1 Vict. c. 26. s. 11. He was not, at the time he executed his will, a seaman at sea. There is a great distinction between a ship in commission and about to sail, and one which is permanently stationed in port, and which it is not intended shall at any time start on a voyage.—He referred to the cases *In the goods of Lord Hugh Seymour* (1), *In the goods of E. J. Lay* (2), *In the goods of R. Hayes* (3), *In the goods of Admiral Austen* (4), and *In the goods of H. Corby* (5).

- (1) Prerog. Court, July, 1802.
- (2) 2 Curt. 375.
- (3) 2 Ibid. 338.
- (4) 2 Robert. 611.
- (5) 1 Eccl. & Adm. 292.

SIR J. P. WILDER.—I think I must refuse this application. The facts, as admitted, are as follows, namely, that the deceased, at the time the will was made, was a mate on board the *Excellent*; that the will was executed on board that ship; and that the *Excellent* was at that time laid up in Portsmouth Harbour, without any intention of going to sea. Was this man, then, a mariner at sea? I see a great distinction between this case and that of *In the goods of Corby*. There the vessel was lying in the harbour of Melbourne, and the man stated in a letter which it was proposed to prove as testamentary, that he was shipped on board such vessel. That might have meant nothing more than that he had signed ship's articles on a certain day, and had bound himself, when wanted, to serve as a seaman. In such a case a man could not be said to be at sea. Even if he had joined the ship, he had not commenced his service, or set sail on a voyage. There have been many other cases in which it was proved the man had joined the service, and had commenced a sea voyage, in the course of which he made a will, and such will has been held good, although not executed in accordance with the Wills Act. Such was the case of *Lay*, in which the ship was lying in the harbour of Buenos Ayres, whether to refit, or whether stationed there, or to obtain provisions, does not appear. In the other cases cited, *In the goods of Admiral Austen*, it appeared that the will was made when the Admiral was on an expedition up the river. Practically, in each the deceased was engaged in that maritime service into which he had entered. I now come to this case. It seems to me the case of *Lay* is a direct precedent, and that this will was well executed. It is impossible to draw a distinction between the *Calliope*, lying in the harbour of Buenos Ayres, and the *Excellent*, lying in Portsmouth Harbour, so far as probate under the statute is concerned. Although a seaman may not be out of his own country, he may be subject to the restraints of the service; and not being able to go on shore to obtain legal assistance, he may find some difficulty in properly executing his will.

Attorney—S. F. Noyes.

PROBATE. }
1868. } *In the goods of ANN CADGE.*
Jan. 14. }

Will—Residuary Legatees—Interlineation—Presumption.

The deceased, at the time she executed her will, in the presence of witnesses, covered over the writing with a piece of paper, so that the witnesses could form no opinion whether certain interlineations appearing thereon were written at the time of execution. These interlineations in each case were required to complete the sentences to which they belonged, and did not appear, on inspection of the writing, to have been made at a different time from the body of the will:—Held, that the presumption that unattested additions have been made after execution, does not apply to such a case, and probate was decreed of the will, including the interlineations.

“What is left, my books, and furniture, and all other things,” are words sufficiently comprehensive to cover the general residue.

Ann Cadge, of Haslingfield, Cambridgeshire, widow, died on the 23rd of October, 1867, leaving a sister, Mary Barnes, her only next-of-kin, and three minor children of a brother, James Tuck, namely, Henry James Holden Tuck, Sarah Ann Tuck and Ann Maria Tuck, who, together with Mrs. Barnes, were entitled to the residue of her estate, if undisposed of by her will. She duly executed a will on the 11th of June, 1867, which was in her own handwriting, and on the face of it shewed that the deceased was an illiterate woman. No executor was named in the will. There were several single words interlined, which were required to complete the sentences to which they belonged. By the will, 700*l.* was given to the nephew, and 200*l.* to each of the nieces. The will concluded, “To my sister-in-law Sarah Tuck, widow of my late brother, I give my body *linen* (interlined) and wearing apparel. What is left, my books, and furniture, and all other things, I wish to be equally divided amongst the three children (interlined). If I am buried here or elsewhere, I wish to have a gravestone erected to my memory.” The signatures of the deceased and the witnesses were written on the second side of the sheet of paper.

At the top of the third side were the following words: "Two hundred pounds, placed with James Thorne, of the Westminster Brewery Company, at 5 $\frac{1}{2}$ per cent, I reserve for the present—I may want it myself."

The attesting witness, Margaret Smith, deposed, that at the time of the execution of the will, the testatrix had placed a sheet of paper over the upper part of the second and third sides of the said will, and that, consequently, she and her fellow witness are unable to state whether the interlineations appearing in the said will, or the words on the third side of the paper, were made, or either of them, as they now appear, previously to the execution of the will; that the said Ann Cadge was, up to the time of her death, and had been for many years, living with Sarah Tuck, the widow of her brother, and had expressed great affection for the three children of her brother; that the deponent had heard the testatrix say that the said children should have the principal part of her property, and that neither her sister nor her sister's children should have anything from her; that the testatrix had a sister, Mrs. Barnes, living in London, with whom she was not on friendly terms.

Dr. Middleton, for Mrs. Tuck, as guardian for the children.—Two questions arise: first, whether the words interlined can be admitted into the probate; and secondly, if so, whether the three children are constituted residuary legatees. The words interlined in each case are required to complete the sentence, so that the presumption applicable to unattested alterations, which suggest a change of mind, will not be made as regards such interlineations—*In the goods of A. Swinden* (1). Such a presumption, moreover, would be less strong where the writing was covered over so that the witnesses could not see it than where it was laid open before them and they saw no alteration or interlineation. As regards the second point, there was nothing in the will to raise a doubt that the words *all other things* were not intended to convey the general residue—*In the goods of E. Smith* (2).

(1) 2 Robert. 192.

(2) 3 Swa. & Tr. 561; a.c. 84 Law J. Rep. (N.S.) Fr. M. & A. 15.

SIR J. P. WILDE.—I am satisfied that the testatrix has used words which dispose of the general residue of her estate. As regards the other point, there is a marked distinction, I consider, between an interlineation and an alteration. An interlineation is, in general, merely used to complete an imperfect sentence, whilst an alteration is a disposition differing from that first made by the deceased. In this will several single words are interlined, without which the sentences would be incomplete. "I leave to my sister-in-law . . . my body *linen*," for instance; and the bequest of the residue, "What is left, my books and furniture, and all other things, I wish to be equally divided." All these interlineations are made apparently with the same ink and at the same time as the body of the will. The question arises, is the Court at liberty, taking into consideration the nature of the interlineations, to presume that they were made before the execution of the will? It was decided in *Cooper v. Bochett* (3) that all unattested interlineations and alterations in the first instance must be presumed to have been made after execution; but I do not think I need draw that presumption in this case, and I am confirmed in my decision by what Dr. Lushington did in the case cited—*In the goods of A. Swinden* (1), in which he let in words which interfered with the grammatical structure of a paragraph in the will. There is also another case, *Birch v. Birch* (4), in which the will had originally been drawn with blanks, and in filling them up interlineations had become necessary. Sir H. J. Fust included them in the probate, although there was no evidence when they were made. It is obvious there must be a large class of cases in which interlineations were on the instrument at the time of its execution, and no positive evidence can be produced to prove it. Administration may issue with the will annexed, including the interlineations in the body of the will, but not the memorandum on the third side, to Mrs. Tuck as the guardian of the children, the residuary legatees named in the will.

Attorneys—Toller & Son, agents for Thurnall & Nash, Royston.

(3) 4 Notes of Cases, 685; a.c. 4 Moore's P.C. 419.

(4) 1 Robert. 675.

MATRIMONIAL. }
 1867. }
 Nov. 12. } GEORGE v. GEORGE.

Alimony Pendente Lite—Wife supporting herself—Refusal of Alimony.

Alimony pendente lite refused to a wife, who, for some time before the institution of the suit had been, and still was, supporting herself in service.

This was an application for an allotment of alimony *pendente lite*, in a suit by a wife for dissolution of marriage.

The husband was a contractor in a small way of business, his net annual income being 225*l.* a year. The wife, for some time before the commencement of the suit, had been and still was living separate from her husband in service, and was in the receipt of 14*l.* a year as wages, in addition to her board and lodging.

Inderwick, for the wife, asked the Court to allot alimony *pendente lite*, at the rate of 45*l.* a year.

R. Prichard, contra, contended that, under the circumstances, alimony ought not to be allotted.

The JUDGE ORDINARY.—I think that I ought not to order the payment of alimony. The Court is in the habit of allotting alimony *pendente lite* when the wife is under the necessity of living apart from her husband, and requires alimony for her support. In this case the parties have been long living separate; the wife is in service and is able to support herself, and if I were to allot to her alimony *pendente lite*, the result would be that, because there is a matrimonial dispute, and she has instituted a suit against her husband for relief, she would be placed in a better position than she was in before the suit was instituted. I shall therefore make no order.

Attorneys—Bower & Cotton, agents for H. Bathurst, Faversham, for petitioner; W. Shearman, for respondent.

MATRIMONIAL. }
 1867. }
 Dec. 10. } DAVIES v. DAVIES AND
 1868. } M'CARTHY.
 Jan. 28. }

Dissolution of Marriage—Settlement—22 & 23 Vict. c. 61. s. 5.—Power of Appointment—New Trustees.

The Court refused to carry out alterations, in a settlement, agreed upon between the parties, whose marriage had been dissolved, so as to extinguish the power of appointment given to the respondent by the settlement, or to affect the appointment of new trustees.

In this case a petition was filed by James Davies, praying for a dissolution of his marriage with Mary Davies by reason of her adultery with Dennis M'Carthy. A decree *nisi* was made on the 19th of January, 1866, which was afterwards made absolute. There were two children born of the marriage of the parties, Henry Hanbury Davies on the 28th of August, 1850, and Mary Annette Pakington Davies on the 10th of March, 1856. On the 19th of July, 1866, a petition as to settlements was filed, by which it appeared that by an indenture of settlement, bearing date the 7th of August, 1849, the petitioner transferred to trustees a sum of 6,700*l.* 3*l.* per cent. consols, now represented by a sum of 6,048*l.* 7*s.* invested in railway debentures, a sum of 1,000*l.* East India stock, and a further sum of 5,000*l.* secured by mortgage. That, on the part of the respondent, two sums of 1,000*l.* charged on the estate of her father and 2,905*l.* new 3*l.* per cents. were settled to come into the possession of the trustees only on the death of the father and mother of the respondent, the latter of whom is dead, but the former is still alive. That by the settlement the income of the three sums of 6,048*l.* 7*s.*, 1,000*l.* and 2,905*l.* new 3*l.* per cents. (on the death of the father) was secured to the separate use of the respondent during the joint lives of herself and the petitioner; and, in case the respondent survived the petitioner, the income of those three sums and of the other two, namely, 1,000*l.* East India stock and 5,000*l.* secured by mortgage, was to be paid to the

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respondent; but, as regards the two last funds, on certain conditions in case of re-marriage. The petitioner, during the joint lives of himself and the respondent, was to receive the income arising from 1,000*l.* East India stock and 5,000*l.* lent on mortgage, and if he survived the respondent the income arising from the whole trust fund. Under the trusts of the settlement, the children of the marriage (subject to the usual provisions as to full age and marriage) will become entitled to the said trust funds,—subject, however, to a joint power of appointment to be exercised by the petitioner and respondent during their joint lives; and in default of such appointment, subject to the appointment of the survivor. In case there should be no children of the marriage living on the death of the survivor, it was agreed that the sums settled on behalf of the respondent should go to her, her executors, administrators and assigns absolutely, or in case she died in the lifetime of the petitioner, as if she had died unmarried and intestate. That the said settlement contains the usual powers enabling the trustees thereof, with the consent in writing of the petitioner and the respondent, or the survivor, to advance certain portions for the children of the marriage; also enabling the trustees thereof, with the consent in writing of the petitioner and the respondent, or the survivor, to vary the investments of the funds of the said settlement; and also the usual power of appointing new trustees, to be exercised in the first instance by the petitioner and the respondent, or the survivor of them. The petition proposed that for the future the trustees should pay out of the income of the 6,048*l.* 7*s.* (however invested) the sum of 100*l.* to the respondent so long as she continued chaste and unmarried, and until she became entitled under the provisions of the settlement to the income derived from the moneys and funds settled in her behalf; and from that date they should pay to her 50*l.* per annum so long as she remains chaste and unmarried, the surplus of the income of the 6,048*l.* 7*s.*, to be disposed of as if the respondent were naturally dead; secondly, that the interest of the 1,000*l.* East India stock, and of the 5,000*l.* on mortgage, should be disposed of by the trustees as if the respondent were naturally dead; thirdly, that the power of

appointment in favour of the children or child of the marriage, the power enabling the trustees to advance certain portions to such children, and the powers as to investments and of appointing new trustees contained in the settlement should be read and construed and exercised as if the respondent were naturally dead. In her answer to the petition, the respondent agreed to these terms, with the following alterations, which were afterwards approved by the petitioner: That, as regards one-half the trust funds brought into settlement by the respondent, she should have a power of appointment in favour of her children, to be exercised as if the petitioner were dead. That the respondent should have the sole power of appointing by deed or will such moiety to or amongst the children of the marriage as if the petitioner were dead. That the trustees should have no power to advance any portion of the funds brought into settlement by the respondent during her lifetime, without her consent in writing first had and obtained. That no variation should be made in the investment of the funds brought into the settlement by the respondent, or on her behalf, without her consent in writing; and, lastly, that the order to be made on the petition be subject to a condition that the petitioner do relinquish his contingent life interest on one moiety of the funds brought into settlement by the respondent, or on her behalf, subject to a proviso that in the event of the respondent's death in the lifetime of the petitioner, and of no child living to attain a vested interest in such moiety, the petitioner's life interest shall survive. The Registrar to whom the settlement had been referred having reported to the Court the agreement to which the parties had come, concluded his report as follows: "It is submitted for the consideration of the Court whether, under the provisions of the statute 22 & 23 Vict. c. 61. s. 5, the Court has authority to order that the power of appointment by the said indenture of settlement conferred upon the parties shall be extinguished, or that the trustees or trustee of the said indenture of settlement should make advances to or for any child, issue of the said marriage, out of the said trust funds, or be authorized to sell and re-invest, or otherwise deal with the same, without the consent in writing of

the person or persons whose consent is by the said indenture required for that purpose, or that any person should be nominated and appointed to supply the place of a deceased, retiring or incapacitated trustee of the said indenture of settlement, otherwise than in the said indenture is contained."

Dr. Swabey, for the petitioner, asked the Court to confirm the agreement made between the parties. The 22 & 23 Vict. c. 61. s. 5. gave the Court ample authority to vary the settlements in any way, provided it were for the benefit of the children of the marriage or their parents.

Dr. Tristram, for the respondent, also pressed the Court to carry into effect the agreement.

[The JUDGE ORDINARY.—The Registrar has made such an elaborate report, that I am bound to consult with him, and have his reasons for it before I give a final decision.]

The JUDGE ORDINARY (Jan. 28).—I took time to consider how far a report of the Registrar in regard to the settlements made on the marriage of the petitioner and respondent in this case can be carried out. I have come to the conclusion that it may be so on all points, with two exceptions: First, it is proposed that the power of appointment given to the respondent by the settlement shall be interfered with. I think that that ought not to be. And, secondly, I think no alteration should be made in the manner prescribed in the settlement for the appointment of new trustees. I refer the report back to the same Registrar to make these alterations, and he will give notice to the parties to attend upon him, if they think proper to do so.

The formal minute is to the following effect:

"The Judge Ordinary having taken time to deliberate, confirmed the Registrar's report as to the application of the property in question, and the income arising therefrom; and the report generally, except that he refused to confirm the proposal that the respondent's power of appointment, in default of the children taking a vested interest, should be extinguished; and he further refused to make any order affecting the appointment of trustees, and directed that

the costs of the respondent as to this inquiry and motion, should be paid by the petitioner.

Attorneys—Jones & Starling, agents for Powles & Evans, Monmouth, for petitioner; R. J. Child, agent for W. C. A. Williams, Monmouth, for respondent.

PROBATE. { BOULTON v. BOULTON AND
1867. ANOTHER.
Dec. 10, 17. { (KENDALL AND RICHARDS
intervening.)

Practice—Opponent of Will withdrawing from Suit—Permission to others to intervene in his Place—New Trial—Costs.

A will propounded by the executors was opposed by the plaintiff, one of the next-of-kin. The issues were tried by a jury and were found for the executors, and the will was pronounced for. After an order nisi for a new trial, on the ground that the verdict was against the weight of evidence, had been granted, the plaintiff abandoned further opposition to the will. The Court, upon the application of two of the next-of-kin, who had been cited to see proceedings and had appeared, but had not pleaded, allowed them to plead and adopt the proceedings already had in the suit.

The order for a new trial was ultimately made absolute, the executors being allowed their costs up to that time out of the estate.

The defendants, as executors, propounded the will of Susannah Boulton, deceased. The plaintiff, Joseph Boulton, the eldest son of the deceased, pleaded, 1. Undue execution. 2. Incapacity. 3. Undue influence. 4. Fraud.

Sarah Kendall and Mary Richards, two married daughters of the deceased, who had been cited to see proceedings, appeared but did not plead. The issues were tried, in November, 1867, before Sir J. P. Wilde, by a common jury, and were all found in favour of the defendants, and the will was pronounced for.

On the 3rd of December, 1867, Sir J. P. Wilde granted an order nisi for a new trial, on the ground that the verdict was against the weight of the evidence.

On the 10th of December, *Searle*, on behalf of the defendants, moved that the order *nisi* might be discharged, and the contentious proceedings discontinued. In support of the application an affidavit of the plaintiff was filed, in which he stated that he was satisfied with the verdict, and had instructed his solicitor to proceed no further in the matter.

Dr. Spinks (Waddy with him), on behalf of the two married daughters of the deceased, stated that they were desirous to proceed with the suit and contest the will.

An order was made by consent that Sarah Kendall, wife of Thomas Kendall, and Mary Richards, wife of Joseph Richards, two of the persons cited to see proceedings, and who had entered appearances, should be allowed to plead and adopt the proceedings already had in the suit, upon an appearance being first entered for the said Thomas Kendall and Joseph Richards.

Dr. Deane and *Searle* (Dec. 17) shewed cause against the order for a new trial.

Dr. Spinks and *Waddy*, contra.

SIR J. P. WILDE made the order absolute, and reserved the question of costs until after the new trial.

Searle, for the executors, asked that they might be allowed their costs up to the present time out of the estate.—The executors having obtained a verdict, they ought to be allowed to take their costs of the trial out of the estate. If they take them out of the estate without the authority of the Court, they will run the risk of having to refund them if they should fail to obtain a verdict at the second trial, and the will should be set aside.

SIR J. P. WILDE.—I think the application is a reasonable one. The executors may have their costs out of the estate up to the present time.

Attorneys—Crossfield, for plaintiff; E. Vann, for defendant.

PROBATE.

1867.

Dec. 20.

} In the goods of LANGFORD.

Will—Probate to Substituted Executor.

A testator appointed A, an officer in the Navy, his executor, "and in case of his absence on foreign duty," he appointed B. his executrix. When the testator died A. was in England, but shortly afterwards he went abroad on foreign service, and still remained abroad:—Held, that B. was entitled to probate as substituted executrix, the testator's intention being that she should act if A. were abroad when the necessity for proving the will arose.

A. Langford died on the 12th of September, 1865, leaving a will which contained this clause: "I hereby constitute and appoint my son-in-law, F. L. M. Bedwell (Paymaster in the Royal Navy) to be my executor, and in case of his absence on foreign duty, I appoint my wife Elizabeth Langford to be executrix to this my last will and testament." A codicil to the will contained this clause: "I appoint Mr. R. Mitford executor with my son-in-law F. L. M. Bedwell." When the testator died, F. L. M. Bedwell was at Portsmouth, and shortly afterwards he sailed on foreign service, and at the date of this application he was serving on board H.M. ship *Nassau* in the Straits of Magellan, and would probably remain abroad for four years.

R. Mitford, the executor named in the codicil, had renounced probate.

Dr. Deane moved the Court to decree probate of the will and codicil to be granted to Elizabeth Langford, as the executrix substituted in the will for F. L. M. Bedwell.

SIR J. P. WILDE.—I am of opinion that the intention of the testator was that Elizabeth Langford should be executrix in the event of Bedwell being absent on duty and unable to act when the necessity for proving the will arose. The grant may go as prayed.

Motion granted.

Attorney—E. M. Elderton.

PROBATE
1868.
Jan. 14.

In the goods of GRUNDY.

Administration de Bonis Non—Joint Grant to Next-of-kin and another—20 & 21 Vict. c. 77. s. 73.

A joint grant of administration to the person by law entitled to administration, and to another, is a grant to a person other than the one entitled within the meaning of section 73. of 20 & 21 Vict. c. 77.

A joint grant of administration *de bonis non* was made to the next-of-kin, and a person entitled in distribution under the 73rd section of 20 & 21 Vict. c. 77, where the next-of-kin consented, and there were special circumstances rendering such a grant convenient.

R. H. Grundy died on the 18th of September, 1865, intestate, a bachelor, without parent, leaving him surviving J. C. Grundy and J. L. Grundy, his brothers and next-of-kin, and Lucy Grundy, the daughter of a deceased brother, the only persons entitled in distribution.

On the 9th of October, 1865, letters of administration of the effects of the deceased were granted to J. C. Grundy, who died on the 19th of May, 1867, leaving part of the estate, of the value of about 11,000*l.*, unadministered, and having paid part only of the share to which Lucy Grundy was entitled.

J. L. Grundy, who had resided in Australia for the last fourteen years, had returned to England recently on hearing of the death of J. C. Grundy. He was possessed of no property besides his interest in the estate of the deceased, and had no residence or place of business in England, and was unable to get sureties to the administration bond. He was willing that a joint grant of administration *de bonis non* should be made to him and to Lucy Grundy, who was fearful that, if the grant were made to him solely, she should have to institute an administration suit for the protection of her interest in the deceased's estate.

Dr. Spinks moved the Court to decree that letters of administration *de bonis non* of the effects of R. H. Grundy should be granted to J. L. Grundy and Lucy Grundy

jointly. By the 73rd section of 20 & 21 Vict. c. 77, the Court is empowered, if it should appear to it necessary or convenient, by reason of special circumstances, to appoint some person to be the administrator of the personal estate of a deceased other than the person who, if the act had not passed, would by law have been entitled to a grant of administration. In the present case there are special circumstances which would justify the Court in making a joint grant, if the terms of the 73rd section admit of such a grant. If that act had not passed, J. L. Grundy, as the next-of-kin of the deceased, would, under the statute 21 Hen. 8. c. 5. s. 3 (1), have been solely entitled to the grant, and a joint grant to him and to Lucy Grundy would, therefore, be a grant to a person "other than the one who, if the act had not passed, would have been entitled." In the goods of Browning (2), at first sight, seems to be an authority against me. There, Sir C. Cresswell refused to make, under the 73rd section, a joint grant to the widow of the deceased and a person who was not next-of-kin, although all the persons interested in the estate consented. But he gave no reason for his refusal, and the case is distinguishable from the present by the circumstance that the application was for an original grant of administration; and Sir C. Cresswell may, therefore, have thought he was bound to the strict rule laid down by the statute 21 Hen. 8. c. 5.

[SIR J. P. WILDE.—Does not the Court of Probate make a grant of administration *de bonis non* upon the same principles as original grants?]

Yes. But the statute of 21 Hen. 8. c. 5. s. 3. has been discharged by the original grant of administration, and therefore does not preclude the Court from exercising the discretion given by the 73rd section of 20 & 21 Vict. c. 77.

[SIR J. P. WILDE.—Is a joint grant of administration to a person solely entitled

(1) "In case any person shall die intestate, the Ordinary shall grant the administration of the goods of the deceased to the widow of the deceased, or to the next-of-kin, or to both, as by discretion of the same Ordinary shall be thought good."

(2) 2 Sw. & Tr. 664; s.c. 31 Law J. Rep. (N.S.) Pr. M. & A. 161.

and to another, a grant to a person other than the one entitled within the meaning of that section f]

I submit that it is.

SIR J. P. WILDE — I think that the Court, so far as is possible, ought to use the power conferred on it by the 73rd section of the Court of Probate Act, 1857, for the purpose of expediting and rendering as economical as possible the administration of the estates of persons who die intestate. In this case both the persons who are equally and solely interested in the unadministered estate of the deceased are willing that there should be a grant of administration to them jointly, and the only question is, whether the Court is, by the terms of the 73rd section, precluded from giving effect to so desirable and beneficial an arrangement, and is bound to follow the strict rule laid down by the statute 21 Hen. 8. c. 5. s. 3, viz., to grant administration to the next-of-kin only. I am of opinion that the terms of the 73rd section of 20 & 21 Vict. c. 77. are wide enough to admit of its application to the present case. The grant, therefore, may go as prayed under that section upon the consent of J. L. Grundy being brought into the registry.

Motion granted.

Attorneys—Neal & Philpot, for applicant.

PROBATE.	}	<i>In the goods of ELIZABETH JORDAN.</i>
1868.		
Jan. 21.		

Will—Realty—Appointment of Executor—Executor renouncing—Probate.

The Court will grant probate of a will which disposes of realty only if an executor be appointed therein, even although such executor renounces his rights under it.

The deceased, Elizabeth Jordan, duly executed her last will and testament, and therein appointed an executor, who formally renounced probate of the same. The will disposed of realty only.

Pritchard moved for administration with the will annexed to be granted to the next-of-kin.—The deceased having appointed an executor died testate, and probate will be granted of her will. The 79th section of 20 & 21 Vict. c. 77, which enacts that where a person, appointed an executor, renounces, his rights as such shall wholly cease; and the representation of the testator and the administration of his effects shall devolve and be committed in like manner as if such person had not been appointed executor, was not intended to affect the question whether the deceased died testate or intestate, but to get rid of the necessity of citing the renouncing executor, if a second grant was required. — He referred to *Williams on Executors*, part 1, book 3, *O'Dwyer v. Geare* (1) and *In the goods of Noddings* (2).

SIR J. P. WILDE.—I think you are entitled to the grant. The general principle is laid down by Sir Edward Vaughan Williams in the following terms: "The bare nomination of an executor, without giving any legacy or appointing anything to be done by him, is sufficient to make it a will, and as a will it is to be proved." If the nomination of an executor in this case made a will which must be proved, the renunciation by the executor cannot prevail to alter the effect produced by his nominator. This view was affirmed by Sir C. Cresswell, in *O'Dwyer v. Geare*, in the following words: "I apprehend that what Dr. Wambey meant was, that the original appointment of executors would operate to prevent an intestacy as to any part of the property of the deceased; and that when they renounced, it did not so operate as to cause an intestacy. I agree to that." Under these circumstances, the party is entitled to a grant of administration with the will annexed.

Proctors—Pritchard & Englefield.

(1) 1 Sw. & Tr. 465; s. c. 29 Law J. Rep. (N.S.) Pr. M. & A. 47.

(2) 2 Sw. & Tr. 15.

PROBATE }
 1868. } *In the goods of MARTHA WOODS.*
 JAN. 28. }

Will—Appointment of Executors.

The deceased left in her will "one sovereign to the executor and witness of my will for their trouble, to see that everything is divided justly." No person was named as executor in the will; but opposite the names of the attesting witnesses, and beneath the signature of the deceased, were the words "witnesses and executors," which words were written by one of such witnesses by direction of the deceased previous to the execution of the will:—Held, that the deceased had failed to make a lawful appointment of executors.

Martha Woods, late of Guy's Cottage, Nelson Street, Southwark, died on the 13th of November, 1867, having executed a will on the 28th of October, 1867, by which she gave her property to her two sons, Henry Woods and John Woods. The will concluded as follows:

"I also leave the sum of one sovereign each to the executor and witness of my will for their trouble, to see that everything is divided justly between them (the sons).

"Signed by me this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and sixty-seven.

"I declare this to be my own signature,
 "Martha Woods.

"One thousand eight hundred and sixty-seven.

"Witnesses and executors.	{	Albert Jackson Prestage,
		Guy's Cottage, Nelson Street, Bermondsey.
	{	Daniel Joseph Doherty,
		24, Little George Street, Bermondsey."

By the affidavit of Daniel Joseph Doherty, it appeared that, in the week previous to the execution of the will, the testatrix sent for him and informed him that she was having a will prepared, and wished him and Albert Jackson Prestage to be the executors thereof, to which the deponent assented; that on the day of and previous to the execution, the testatrix again informed the deponent that she wished him to be appointed one of the executors of her will with Albert Jackson Prestage; and that Mr. Prestage, before the execution of the will and at the request

of the deceased, wrote the words "witnesses and executors" as they now appear in the margin of the will, and opposite to the signature of the witnesses; and that the testatrix intended such words to form part of her will.

Dr. Spinks applied that probate might be granted to Messrs. Prestage and Doherty as the executors according to the tenor of the will. Although the words beneath the signature of the deceased cannot be taken as part of the will, they may be read to explain an ambiguity arising in the will and the intention of the deceased.

SIR J. P. WILDE—I quite agree that if the testatrix had in the body of the will left money to the executors, and had then gone on to say that they would be the witnesses to her will, that would have afforded some certain indication that she intended that the office of executorship should be performed by those who afterwards turned out to be the witnesses of her will. She would have defined whom she meant in a way that the Court could have carried out her wishes. But I am afraid she has not gone so far as that. If she had said, "I leave one sovereign each to the executors and witnesses of my will," it might have been that the same person was executor and witness; but such is not her language. It is consistent with that, that the executor and witness were two different persons, and such a construction is confirmed by what follows; it is for *their* trouble, in the plural, not for *his*, which it would be if the two words "executor" and "witness" referred to the same person. The subsequent words would then apply to the executor only, and not to the witness. Under these circumstances, I cannot hold that the testatrix has appointed any executor. Underneath the signature of the testatrix is a passage which does not form part of the will itself, but in which the testatrix states whom she desired to appoint her executors. The Court can have no doubt that was her desire, but it cannot grant the application that probate shall issue to those persons.

—
 Attorney—Walter Butler.

MATRIMONIAL. }

1868. }

Jan. 14. }

PITT v. PITT.

Dissolution of Marriage—Adultery with Person unknown—20 & 21 Vict. c. 85.—Rules 4, 5 and 6.

A husband petitioning for a divorce must obtain leave to proceed without making a co-respondent, although the petition only charges adultery with a person unknown.

This was a petition by a husband for dissolution of marriage.

The respondent did not appear.

The petition alleged that the petitioner left England on the 17th of September, 1855, and did not return until the month of June, 1858; and that during his absence from England the respondent, at some place or places in England, committed adultery with some person or persons unknown to the petitioner; and that, on the 3rd of July, 1856, she gave birth to a child of which the petitioner was not the father.

Searle, for the petitioner, moved for direction as to the mode of trial.

[The JUDGE ORDINARY.—The petitioner has not made any person a co-respondent, and has not obtained from this Court leave to proceed without doing so.]

When, as in this case, the adulterer is unknown, it is not necessary to apply to the Court to dispense with a co-respondent.

[The JUDGE ORDINARY.—Hitherto it has been the practice to make such an application.]

No doubt; but I submit that such an application is unnecessary. The 28th section of 20 & 21 Vict. c. 85. enacts that, "Upon any such petition presented by a husband, the petitioner shall make the *alleged* adulterer a co-respondent to the said petition, unless on special grounds, to be allowed by the Court, he shall be excused from so doing."

The word "alleged" implies that the adulterer is known. The section is therefore inapplicable to a case like the present where the adulterer is unknown, and the adultery is an inference from the birth of a child under such circumstances that the petitioner could not have begotten it. The decisions and practice of the Court are consistent

with such a construction of the section. It has been held that *every* alleged adulterer must be made a co-respondent, and consequently if adultery be charged with A. and B, both A. and B. must be made co-respondents, unless upon application to the Court the petitioner is excused from making either or both a co-respondent. But it has never been considered necessary where a petition, as is often the case, charges adultery with A. and also with some person unknown; that an application must be made to the Court for leave to proceed without making the unknown person a co-respondent. If such an application is unnecessary when adultery is charged with an unknown person and also with one named, it cannot be necessary when adultery is charged only with an unknown person.—He referred to *Codrington v. Codrington and Anderson* (1) and *Rules 4, 5. and 6.*

The JUDGE ORDINARY.—I think that where a petition alleges adultery, there is an "alleged adulterer" within the meaning of section 28. of 20 & 21 Vict. c. 85, although the adulterer may be unknown, and therefore that an application must be made to the Court for leave to proceed without making a co-respondent.

Searle.—The petitioner is poor. Will you, to save the expense of a fresh application, grant him leave now to proceed without making a co-respondent? The affidavit in support of the petition states that the adulterer is unknown to the petitioner, and that is a fact to which he only can depose.

The JUDGE ORDINARY.—The usual practice is not to dispense with a co-respondent upon the affidavit of the petitioner only. I do not intend to abandon that practice; but under the special circumstances of the case, I will now give the petitioner leave to proceed without making a co-respondent.

Attorneys—Neal & Philpot, for petitioner; Treherne & Wolferstan, for respondent.

(1) 33 Law J. Rep. (N.S.) P. M. & A. 62.

MATRIMONIAL. }
 1868. } WOOD v. WOOD AND STANGER.
 March 3, 10. }

Dissolution of Marriage—Adultery with the Co-Respondent—Damages and Costs against the Co-Respondent—Co-Respondent Bankrupt—Attachment—Practice.

A decree having been made in a suit of dissolution of marriage, whereby the co-respondent was condemned in damages and costs, and an order issued that the damages should be paid into the registry within three weeks from the time such order was served upon him, before the expiration of that period, and before the costs had been taxed, the co-respondent, on his own petition, was adjudicated a bankrupt, and subsequently he obtained an order of discharge:—Held, that as both the damages and costs were debts which might have been proved under the bankruptcy, and are covered by the order of discharge, this Court could not allow an attachment to issue against the co-respondent for their non-payment.

In this case a petition had been filed by Henry Walter Wood, of Nottingham, architect, praying for a dissolution of his marriage with Frances Mary Wood, by reason of her adultery with the co-respondent George Eaton Stanger. The facts in issue were determined before the Judge Ordinary and a special jury on the 6th, 7th and 8th of March, 1867, when the jury found that the respondent and co-respondent had committed adultery together, and assessed the damages at 3,000*l.*, and the Judge Ordinary made a decree *nisi* dissolving the marriage, and condemned the co-respondent in the costs of the suit. The decree *nisi* was made absolute on the 5th of November, 1867. On the 12th of November, 1867, an order was made by the Judge Ordinary that the co-respondent should within three weeks from the service on him of such order pay into the registry of the court the sum of 3,000*l.*, the amount awarded as damages on the 8th day of March, 1867. This order was served upon the co-respondent on the 15th of November, 1867. On the 3rd of December, 1867, the co-respondent was adjudicated a bankrupt in the Court of Bankruptcy for the Birmingham district. On the 28th of January,

1868, the Judge Ordinary made an order that the co-respondent should within one week from the service thereof pay to the petitioner, or to Mr. Needham, his solicitor, the sum of 719*l.* 1*s.* 7*d.*, being the amount of the petitioner's costs as taxed, and the sum of 1*l.* 18*s.* 2*d.*, the costs incidental to such order. The order was served on the co-respondent on the 31st of January, 1868. On the 4th of February, 1868, the co-respondent obtained his final order of discharge in the Court of Bankruptcy. The order for the payment of the damages into the registry and for the costs not having been obeyed, on the 18th of February a motion was made for a rule *nisi* on Mr. Stanger to shew cause why a writ of attachment should not issue under the seal of the Court against him for disobedience to such orders, which had been duly served upon him.

Sargood and Searle, on behalf of the co-respondent, shewed cause. — Both the damages and costs were liabilities incurred previous to the adjudication of bankruptcy and were provable under such bankruptcy, and consequently the co-respondent, by his order of discharge, has obtained an acquittance from such liabilities. By the 24 & 25 Vict. c. 134. s. 149. a person entitled to enforce against a bankrupt payment of any money, costs or expenses by *process of contempt* issuing out of any court, shall be entitled to come in as a creditor under the bankruptcy and prove for the amount payable under the process, subject as to costs to proper taxation. By sections 161, 162. and 165, the order of discharge upon taking effect shall discharge the bankrupt from all debts, claims or demands *provable under the bankruptcy*, and from the effects of any process issuing out of any court for contempt of Court in the non-payment of money, or of costs or expenses; and if the bankrupt after the order of discharge be arrested or detained in custody for any such debt, claim, or demand, where judgment has been obtained before the order of discharge takes effect, he shall be released. If, therefore, the Court should order the attachment to issue, the co-respondent will be entitled to be discharged at once. The Court will refuse to make an order which must be inoperative, and to hold the co-respondent personally liable for the payment

of costs and damages under circumstances in which the legislature intended he should be free from liability. Although the order for costs is dated subsequently to the adjudication in bankruptcy, the liability accrued at the time of trial, and was enforceable by process of contempt—12 & 13 Vict. c. 106. s. 181. They referred to *Dickens v. Dickens* (1), *Ex parte Skinner* (2), *Ex parte Crabtree in re Taylor* (3), *Ex parte Griffiths in re Griffiths* (4).

Dr. Spinks and C. Russell, for the petitioner.—The position of the petitioner as regards the damages is very peculiar. By the 20 & 21 Vict. c. 85. s. 33, after the verdict, the Court shall have power to direct in what manner such damages shall be paid or applied; and to direct that the whole or any part thereof shall be settled for the benefit of the children, if any, of the marriage, or as a provision for the maintenance of the wife. Damages, therefore, are not a debt due to the petitioner—*Narracott v. Narracott* (5), *Billingay v. Billingay* (6); and he, not being a creditor, could not prove for such damages under the bankruptcy, and the setting out the amount of damages in the schedule as a debt, was a misdescription. As to the costs, they were payable a week after the service of the order, which was on the 31st day of January last. They were not, therefore, payable until the 7th of February, but the order of discharge was made on the 4th of February. The costs, therefore, are not covered by the order of discharge. As regards the 12 & 13 Vict. c. 106, it cannot apply to any judgment, decree or order from this Court, which was not in existence in 1849. They referred to *Phillips v. Poland* (7), and *Lees v. Newton* (8).

Sargood.—If the petitioner is not a person entitled to the damages, or one for whose benefit they will be paid, why does he make the present application?

(1) 2 Swa. & Tr. 645; s. c. 31 Law J. Rep. (N.S.) Pr. M. & A. 183.

(2) 7 Law Times, N.S. 136.

(3) 33 Law J. Rep. (N.S.) Bankr. 33.

(4) 33 Law J. Rep. (N.S.) Bankr. 44.

(5) 3 Swa. & Tr. 408; s. c. 33 Law J. Rep. (N.S.) Pr. M. & A. 182.

(6) 35 Law J. Rep. (N.S.) Pr. M. & A. 84.

(7) 35 Law J. Rep. (N.S.) C.P. 128; s. c. 1 Law Rep. C.P. 204.

(8) 35 Law J. Rep. (N.S.) C.P. 285; s. c. 1 Law Rep. C.P. 658.

[The JUDGE ORDINARY.—If the petitioner had proved for the damages as a debt, could he have received a dividend out of the estate?]

No. The official assignee would have taken care that the dividend was paid into the registry. The Court will never allow a dividend to be paid to one who is clearly only acting in a representative capacity. It is not inconsistent to say that a person is entitled to enforce payment of a debt by process of contempt, although if the debt be paid he may not receive it to his own use.

The JUDGE ORDINARY (March 10).—The question here raised is, whether the bankruptcy of the co-respondent has or has not had the effect of discharging him from the liability to pay the damages and costs awarded against him in this suit. The verdict passed on the 8th of March, 1867. But a verdict creates no debt. On the 5th of November, 1867, the decree nisi, which had been made on the 8th of March, 1867, was made absolute. By the terms of that decree, the co-respondent was condemned in the costs of the suit. On the 12th of November an order was made by this Court, on the application of the petitioner, that the co-respondent should within three weeks from the service of the order pay into the registry 3,000*l.*, the amount of the damages. This order was served on the 15th of November. On the 3rd of December the co-respondent was, on his own petition, adjudicated a bankrupt. It thus appears that at the time of the adjudication the co-respondent had been ordered to pay both damages and costs, though, as respects the damages, the furthest time allowed for their payment had not expired; and in respect of costs, no taxation had been had upon which any order to pay a definite sum could be made. It is beyond argument that those creditors only can prove under the bankruptcy who are creditors at the date of the adjudication. This has been already decided—*Phillips v. Poland* (7), and in other cases. Two points are made: first, that the petitioner was not a creditor on the 3rd of December; and next, he has never at any time been a creditor in respect of the damages. The 149th section of the Bankruptcy Act, 1861, defines a creditor for this purpose as “a

person entitled to enforce against the bankrupt payment of any money, costs or expenses by process of contempt." I am of opinion that the petitioner was on the 3rd of December a person so entitled, both as regards the damages and the costs, within the meaning of this section. And, first, as to the damages, this Court had, at his instance and application, ordered the co-respondent to pay them; and, although the Court had further indicated that they should be paid into court instead of into his own hand, the petitioner was still *entitled to enforce the payment thereof by process of contempt*. Indeed, this is the very right he is by the present motion attempting to exercise, and, but for the bankruptcy proceedings, would undoubtedly be *entitled to enforce*. The case of *Lees v. Newton* (8) has a direct bearing on this part of the case. It was there held that an order of the Court of Chancery to pay a sum of money into court created a *debt*, and that the bankrupt was, after his discharge, entitled to be set free from an attachment issued to enforce it. But it was argued, that the three weeks after the service of the order had not expired at the date of the adjudication, and consequently no process of contempt for disobedience of the order could have been issued at that date. This is true. But the language of the section points, I think, to the character of the obligation and the means by which it may be enforced, not to the time at which it must be discharged. *Debitum in presenti, solvendum in futuro*. The order of this Court to pay created, I conceive, a provable debt, and this debt stood in the same position with other ordinary debts existing at the date of the adjudication, and payable at a date subsequent, which, by the provisions of the Bankruptcy Acts, are provable with a rebate of interest if necessary. Next, as to the costs. The words at the close of the section 149. (24 & 25 Vict. c. 134), "subject to such ascertaining of the amount as may be properly had by taxation or otherwise," imply that the application of the section was not intended to be confined to the cases in which the costs had been taxed and a definite sum ordered to be paid before the adjudication. For these reasons, I think the damages and costs were provable debts. If so, no doubt the bankrupt's

discharge covers them; and if so, it would be monstrous for this Court to issue an attachment to enforce their payment. It only remains to say one word on the practical effect of thus deciding. It is said that the bankruptcy has been resorted to on purpose to escape from the penalties of the bankrupt's misdeeds. This is very probable. But it must be borne in mind that the legislature has visited the offence of adultery with no penalty, not even a pecuniary one, that the damages recovered in a divorce suit are assessed as a money compensation to the petitioner, although by a singular anomaly the Court is afterwards empowered to divert the money, when recovered, into other channels. To whatever extent the offender is able to make this money payment, his pecuniary means ought not to be allowed to escape. But once grant that his means are insufficient, and it becomes contrary to the spirit both of the Divorce Acts and of the Bankruptcy Acts, that he should be subjected to an imprisonment, which may satisfy the purposes of punishment or retribution, but which is likely to extinguish rather than advance his means of paying the debt. The rule for an attachment must therefore be discharged, but without costs.

Attorneys—Joseph Needham, agent for A. Cann, Nottingham, for petitioner; Taylor, Hoare & Taylor, agents for Hunt & Son, Nottingham, for co-respondent.

PROBATE. }
1868. } HUNT AND GOTBED v.
Feb. 4, 11, 18. } ANDERSON.

Testamentary Suit, 20 & 21 Vict. c. 77. s. 36.—*Purposes auxiliary to the Trial of a Question of Fact—Discovery—Practice.*

The Court has power, under 20 & 21 Vict. c. 77. s. 36, to order a party to the suit to file an affidavit setting out what letters written to or by the deceased, or by his direction, are in the custody or under the control of such party, even although the letters are not distinctly affirmed to have reference to the testamentary intentions of the deceased.

Discovery is a purpose auxiliary to the trial of a question of fact.

William Anderson, of Torquay, Devonshire, a general merchant, died on the 12th

of November, 1867. The plaintiffs, William Hunt and William Gotbed, propounded a will of the deceased; and the defendant, John Anderson, the natural and lawful son of the deceased, pleaded that the will was not executed in accordance with the provisions of the statute 1 Vict. c. 26; that the deceased, at the time of the date of the will, was not of sound mind; and that it was obtained from the deceased by the undue influence and fraud of Hepzibah Clark and William Hunt and others acting with them. Notice having been given to the plaintiffs that the Court would be moved to order them to file a further affidavit as to scripts, and also an affidavit setting forth whether they have in their possession or under their control any letters written in the years 1865, 1866 and 1867, relating to the management of the affairs of the deceased in this cause, and to the exclusion of his son, the defendant, from any control over his affairs, and in the preparation and execution of the alleged will propounded by the plaintiffs, by Hepzibah Clark, in the name of the deceased, and signed by the deceased, to William Hunt, and any such letters written by the said Hepzibah Clark, in her own name, but purporting to act as agent of the deceased to William Hunt, and any such letters written by the said William Hunt, or by any person in his behalf, to the deceased and the said Hepzibah Clark, and any such letters which passed during the years 1865, 1866 and 1867, between the said William Hunt and William Gotbed, and the said Hepzibah Clark and William Gotbed; and also to shew cause why they should not further state whether any letters, such as are above described, and other scripts were found in the repositories of the deceased after his death, and whether any such letters and scripts as are above described have been destroyed since the death of the deceased, and if they have been destroyed why and by whose directions they were destroyed, and why they should not set out the substance and effect of such letters and scripts, if any, so destroyed; and, further, why the said plaintiffs should not produce to the said defendant, or file in the Registry for the inspection of the defendant, any such letters and scripts as are now in their possession or under their control. On the

4th of February the Court granted a rule *nisi*.

The application was supported by an affidavit to the effect that in the years 1865, 1866 and up to the death of the deceased on the 12th of November, 1867, a constant correspondence was carried on between the said Hepzibah Clark, acting as agent and amanuensis of the said deceased, and the said William Hunt, and that a great number of letters were written by William Hunt, addressed to the said deceased, and were opened and read by Hepzibah Clark; and, further, that many, if not all, of such letters related to the preparation and execution of the will propounded. Also, that during the same period, a number of letters were written by Hepzibah Clark in her own name, but purporting to be written by her as agent of the said deceased, to the said William Hunt, and by the said William Hunt to Hepzibah Clark, as the agent of the deceased; that after the death of the deceased, certain envelopes of letters, the addresses on which were in the handwriting of William Hunt, were found, without the inclosures, in a bookcase in the dining-room of the deceased's house; that on Hepzibah Clark being asked where the inclosures were, she answered, "The letters are all safe." And on being further questioned why they had been removed, she declined to answer. On the other hand, the plaintiffs deposed that no letters from or to the deceased having reference to his testamentary affairs were in their possession.

Lopes (Feb. 18) shewed cause against the rule.—First, he contended, that even if the Court possessed the powers of a superior Court given by the Common Law Procedure Acts, it could not put in force the 17 & 18 Vict. c. 125. s. 50. in this case, because the affidavits did not indicate with reasonable certainty what documents were referred to, or in whose custody they were supposed to be—*Day's Common Law Procedure Acts*, 17 & 18 Vict. c. 125. s. 50, note; *Bray v. Finch* (1). Secondly, this Court was not in existence when the Common Law Procedure Acts passed, and cannot, therefore, be included in the term "superior courts" therein contained.

(1) 1 Hurl. & N. 468; s.c. 26 Law J. Rep. (N.S.) Exch. 91.

[SIR J. P. WILDE.—The question is not whether this is a superior Court under the Common Law Procedure Acts, but whether the powers given by 20 & 21 Vict. c. 77. s. 36, namely, that generally for all purposes of or auxiliary to the trial of questions of fact by a jury, before the Court itself, and also for all purposes in relation or consequential upon the direction of issues, the Court of Probate shall have the same jurisdiction, powers and authority in all respects as belong to any superior Court of common law, or to any Judge thereof, or to the High Court of Chancery, or any Judge thereof, for the like purposes, whether such powers enable the Court to grant this application. The question is, what construction should be put upon those words?]

Lopes contended that reading the 36th section with the 33rd and others, it was clearly intended to limit the exercise of those powers to the actual trial itself.—He referred to *Fuller v. Ingram* (2).

Dr. Spinks and *Searle* appeared for the defendants.

SIR J. P. WILDE.—I am satisfied this order ought to be made. I consider that if the Court of Chancery would hold that this is a matter in which an order for discovery ought to issue, it should be made by this Court. It is said that in the Common Law Courts, under the Common Law Procedure Acts, the matters stated in the affidavits would not justify such an order; but I intend to proceed under the 36th section of the original Probate Act. It is peculiar that until last summer no application should have been made to this Court to enforce discovery. At the death of the deceased all his papers necessarily fall into the hands of his executors or his next-of-kin, and, although on the trial of an issue in a testamentary suit it is of the highest importance that the party holding such papers should not keep them for his own exclusive use, no practice up to the present time has been introduced into this court to remedy the inconvenience. In the course of last summer an application for the discovery of documents and letters was made to me in the case of *Peacock v. Lowe* (3), but at that time the 36th section of

the Probate Act was not brought to my attention, and I rejected the application. The parties were thereby sent to the Court of Chancery, and filed their bill, and they have remained in a court of equity ever since. Now another application is made to me, and the section of the Probate Act is before the Court. No doubt the words of the 36th section are very general, and therefore ambiguous: "Generally for all purposes of, or auxiliary to, the trial of questions of fact by a jury before the Court itself, the Court of Probate shall have the same jurisdiction, powers and authority in all respects as belong to any superior Court of Common Law or to any Judge thereof, or to the High Court of Chancery, or to any Judge thereof, for the like purposes." It is essential that all the necessary papers should be open to the inspection and for the use of both sides, and it is a denial of justice to compel one of the parties to go to another Court to obtain a discovery as to such papers. The Court will be indisposed to put a narrow construction on the words of the 36th section. They are wide enough, I think, to enable me to grant discovery, not only as to testamentary documents and other papers throwing light upon the testamentary intentions of the deceased, but also as to correspondence, letters written by and to the testator, which, as applicable to an issue of sanity, are of the highest importance to the suitors. I think they fall within the words of the section, and such discovery is auxiliary to the trial of the questions of fact in dispute; indeed, such questions often cannot be fairly tried without such discovery. The Court has a large latitude; it has not only the powers of a superior Court of Common Law, but also of the Court of Chancery. The correspondence asked for ought to be produced, or, if the plaintiffs have not got it, they must file an affidavit to that effect. I cannot, however, make any order on *Miss Clark*, but the plaintiffs in their affidavit must state whether or no such letters are in their custody or under their control.

Attorneys—*Surr & Gribble*, for plaintiff; *Reed, Phelps & Sidgwick*, agents for *Sale, Shipman & Co*, Manchester, for defendant.

(2) 28 LAW J. REP. (N.S.) CHANC. 432.

(3) 36 LAW J. REP. (N.S.) CHANC. 91.

PROBATE.

1868.

Feb. 18, 25. }

ARCHER v. BURKE.

Testamentary Suit—Amendment of Declaration — Withdrawal of Defendant — Costs—Practice.

The plaintiff propounded the will of the deceased in a declaration in the ordinary form, and the defendant pleaded thereto. Subsequently the plaintiff brought in a special declaration in lieu of the first, and in such special declaration he alleged that the will had been executed under the circumstances, and with the formalities required by the law of the State of New York, America; that the deceased at the time was domiciled in that State; and that after his death the will received probate in the competent court of the State. The defendant pleaded to this declaration, and evidence was taken on both sides, under a requisition directed to the authorities of the State of New York. Afterwards the plaintiff applied to amend his special declaration by adding a clause that the deceased was a British subject, and had his domicil of origin in Ireland. The amendment having been made, the defendant withdrew from the suit:—Held, that as the plaintiff, in amending his special declaration, had relinquished the legal position intended to be maintained by it, the defendant was not liable for any costs incurred subsequently to the filing of such declaration.

Joseph Burke, late of the city of Brooklyn, in the county of Kings, in the State of New York, United States of America, died on the 10th of April, 1865. The plaintiff, Henry Anderson Archer, propounded a will of the deceased, dated the 24th of March, 1865, (of which he was named sole executor) in the ordinary form, but with a second paragraph to the effect that such will was duly executed, and is a good and valid will according to the law of the United States of North America, and that it was on the 20th of June, 1865, admitted to probate in the county of Kings aforesaid. The defendant, Henry Burke, the natural and lawful brother of the deceased, to this pleaded, first, that the will was not executed in accordance with the provisions of the 1 Vict. c. 26, and that the deceased on the day the will bears date was not of sound mind. To the

first plea the plaintiff demurred, on the ground that the deceased at the time he executed his will, and from thenceforward to his death, was domiciled in the United States; and therefore the form of execution of his will would be governed by the law of the United States, and not by the 1 Vict. c. 26. On the second plea he took issue. On the 19th of December, 1865, the plaintiff applied for, and by consent of the defendant obtained leave to file a special declaration in lieu of the one above referred to. The special declaration, brought in on the 5th of January, 1866, was to the following effect:—Joseph Burke, of &c., made and executed his last will and testament according to the laws of the said State of New York, on the 24th of March, 1865, and therein appointed the said Henry Anderson Archer sole executor; that the said will, after having been reduced into writing, and read over to the said Joseph Burke, was signed at the foot or end thereof in the presence of two witnesses, to wit, who were both there present at the same time; and was also in their presence declared by the said Joseph Burke to be his last will and testament; that the said witnesses then severally, at the request of the said Joseph Burke, signed their names as witnesses at the end of the said will, in the presence of the said Joseph Burke, and that at the time of the execution of the said will the said Joseph Burke was over the age of twenty-one years, and was of sound mind and memory, and was not under any restraint. Secondly, that at the time of the execution of the said will, and also at the time of his death, the said Joseph Burke was legally domiciled in the said State of New York. Thirdly, that the said will was and is valid according to the law of the said State of New York. That after the death of the said Joseph Burke, the said Henry Anderson Archer proceeded to prove the said last will and testament in the Surrogate's Court held in and for the county of Kings, in the city of Brooklyn, in the said State of New York, being the competent Court having jurisdiction in that behalf. That the defendant, Henry Burke, was therein duly cited to appear and attend the probate of the said last will and testament; that the defendant did by his counsel so appear; and that on the 20th

of June, 1865, the Judge or Surrogate of the said Court, having duly received the depositions, on oath, of witnesses produced to prove the said will, and being satisfied that the said will was and is genuine, did adjudge and decree that the said will was duly executed by the said Joseph Burke; that the said Joseph Burke deceased, at the time he executed the same, was in all respects competent to devise real estate, and not under restraint; that the said will is a valid will of real and personal estate, and that the proofs are sufficient; and the said Court did order that the said will pass on examination being recorded; and that letters testamentary issue to the executor in the said will mentioned on his taking the oath required by the statute. That the said Henry Anderson Archer, the said executor, having taken the said oath, letters testamentary were issued to him. That by the law of the said State of New York, the said decree or judgment of the said Judge or Surrogate was and is a final decree, unless the same shall have been appealed against within thirty days from the date thereof. That more than thirty days have elapsed since the said judgment or decree was pronounced, and that no appeal therefrom has been prosecuted by the said Henry Burke, or any other person. That by reason of the premises, the said judgment or decree touching the validity of the said last will and testament in writing, is binding and conclusive. The defendant to this declaration pleaded that the will propounded was not executed in accordance with the law of the State of New York; that the deceased was not of sound mind at the time it bears date; that he was not at that time or at the time of his death domiciled in the State of New York, and that the will was and is not valid according to the law of the State of New York; and he further traversed all the other facts set out in the declaration. On the 20th of March, 1866, the plaintiff obtained an order for a requisition to issue to the authorities at New York to take the evidence of the attesting witnesses to the will, and on the 13th of June, 1866, the time for the return of the requisition was enlarged, and a commission for the examination of witnesses in the State of Georgia, as also a supplemental commission for the examination of witnesses on behalf of the

defendant at New York, were issued. On the 15th of January, 1867, by consent, an order was made that the evidence taken in the Court at New York should be read in this Court at the hearing of the cause, saving all just exceptions; and in Easter Term, 1867, the evidence under the requisition and commissions was returned into the probate registry from New York. On the 4th of February, 1868, application was made to the Court for permission to add at the end of the first paragraph of the declaration the following words: "That the said Joseph Burke was a British subject, and had his domicile of origin in Ireland"; the object being to bring the case within the operation of the 24 & 25 Vict. c. 114. The application was granted, on the payment of the costs of the amendment.

Dr. Swabey, for the defendant, said that, under the altered state of circumstances produced by the amendment of the declaration, his party wished that an order should be made for the discontinuance of the contentious proceedings. As the plaintiff would have saved all the costs incurred in taking evidence on the issues raised under his special declaration, if he had brought into action the 24 & 25 Vict. c. 114. in the first instance, he ought to pay all the costs of the defendant incurred after January, 1866, when such declaration was filed.

Dr. Spinks appeared for the plaintiff.

SIR J. P. WILDE (Feb. 24).—In this case I took time to consider the question of costs. The plaintiff propounded the will of Joseph Burke, who died domiciled in New York. In August, 1865, he filed a declaration, in which he set out that the will was executed in the presence of two witnesses, according to the requirements of the English law. Thereupon the defendant pleaded, and the plea was followed by a demurrer and replication. An order was subsequently made by consent, that the plaintiff should file another declaration. This declaration was special in form, propounding the will as an American will, and setting up a probate which had been granted in America. To this declaration also the defendant pleaded, and issue was joined, and the parties went into a mass of evidence in America. Afterwards the plaintiff again reverted to his original case, and obtained

leave to amend his declaration by adding words to the effect that the deceased was a British subject, and had his domicile of origin in Ireland, and consequently the will is a valid will if executed in accordance with the provisions of the English law. Thereupon the defendant expressed a desire that the contentious proceedings shall be stopped. On the whole the result is, that a great deal of money has been most unnecessarily thrown away. The probate will be granted to the plaintiff; and as the defendant ought not to have contested the matter,—he, as it now appears, having no reasonable ground for doing so,—I shall condemn him in the costs of proving the will, save what I may call the American digression; in such costs, in fact, as, if the suit had gone on as first instituted, and the defendant had opposed, he ought to have paid. From the point of divergence, that is, from the time of filing the special declaration, the defendant will pay no costs. It may be that the will was a perfectly good will as propounded in the special declaration; and if the plaintiff had stood upon the evidence as taken on that declaration, and had not amended, he might have been entitled to his whole costs against the defendant; but as that issue was not tried out, neither party can have an order as to costs on that part of the case. So far as the evidence taken in America went to prove the due execution of the will, the plaintiff will have his costs in reference thereto. The costs given against the defendant are such as would have been incurred if the suit had gone on as originally instituted, the costs of proving the due execution of the will and of the capacity of the deceased.

Proctor—A. Ayrton, agent for Norris & Sons, attorneys, Liverpool, for plaintiff.
Attorneys—Bridges, Sawtell, Heywood & Ram, for defendant.

PROBATE.

1868.

Feb. 4.

In the goods of CHAPPELL

Will—Executor—Appointment.

The testator in his will left his property, after the payment of his debts and funeral

expenses, to certain persons, and constituted and appointed A. and B. to be his trustees, with full power to dispose of all his property, and convert the same into money, to be deposited in government funds for the purposes above stated:—Held, that A. and B. were executors according to the tenor of the will.

Charles Chappell, late of Cowley Road, Surrey, died on the 12th of November, 1867. He executed a will, dated the 23rd of August, 1864, which contained the following clauses bearing upon the appointment of executors: "I give, devise and bequeath all my property as under, if it shall please God that the under-named persons outlive me; and then I do give them, after my funeral expenses are paid, together with all my just debts, the sums stated against each name. To Alfred Charles Sedgwick, &c. . . . The residue of my property that may belong to me, or that I may be entitled to, of whatever nature or kind, after the payment of the above-mentioned bequests, funeral expenses and just debts, I do give unto the two children of my brother Samuel Chappell; and I do hereby constitute and appoint Abiezer Harper, Esq., controller of the Custom Fund, and Charles Ellis, of 91, Lower Thames Street, London, wine-merchant, to be my trustees; and I do give unto my said trustees 50*l.* each, with full power to dispose of all property, houses, railway shares, money in the funds, private property of all descriptions, and convert the same into money, to be deposited in government funds for the purposes above stated."

Dr. Tristram applied to the Court to decree probate of this will to Messrs. Harper and Ellis, as the executors according to the tenor of it.—He referred to *Pickering v. Towers* (1).

SIR J. P. WILDE had no doubt that these persons were appointed executors, and decreed probate to them.

Attorneys—Raw & Gurney.

(1) 2 Phil. temp. Lee, 401.

MATRIMONIAL.

1868.

March 3.

THOMPSON v. THOMPSON
AND JOHNSON.

Alimony—Husband a Master Mariner out of Employ.

On an application for alimony pendente lite on the husband's answers, from which it appeared that he was a master mariner and a part-owner in a sailing vessel, but that he had not had any employment for three months, the Court nevertheless allotted alimony on the average of his admitted earnings during the previous three years.

In this case the husband, Michael Thompson, of Liverpool, Lancashire, petitioned the Court for a dissolution of his marriage with the respondent, Annie Thompson, by reason of her adultery with James Johnson. The respondent, in her answer, denied the adultery, and pleaded condonation, connivance and cruelty against her husband. On the 1st of October, 1867, the respondent filed a petition for alimony, to which the husband answered, and by order of the Court subsequently filed, on the 11th of December, 1867, an additional answer. The petition stated that Michael Thompson has for the last seventeen years been, and now is, a master mariner, and from such business derives the net annual income of 144*l.*, or some other considerable amount, and he is half-owner of the barque *Yumuri*, of St. John's, New Brunswick. It also set out other property, of which, however, there was no proof before the Court. Mr. Thompson's answer, as amended, stated, "I say that when in employment I earn as a master mariner 144*l.* per annum, and no more; but I have been out of employment ever since the 25th of September last, and have no present prospect of obtaining any employment in consequence of the shipping trade being at the present time in a very depressed state. I am not half-owner of the said ship or barque *Yumuri*, but I own one-fourth part of the said vessel; and the market value of such fourth part at the present time is at most 500*l.*"

Bridgman, for the respondent, applied to the Court to allot alimony to her on the husband's answers.

Searle, for the husband.—On the answers the only property admitted is a share in a barque valued at 500*l.* The husband dis-

tinctly swears that he is out of employ, and making no money as a master mariner.

The JUDGE ORDINARY.—I think in this case an order ought to be made allowing to the wife some alimony. The ground or principle on which the Court acts is to order such an income to be paid to the wife as it considers reasonable under the circumstances, taking into consideration the average earnings of the husband for the three previous years. It may occur that the actual source of income of a person in the past years may not be the source for the future, although he may derive a livelihood from similar sources,—as a medical man who may make a large professional income in the future, although perhaps not from the same patients from whom he derived his income previously. To apply this general principle to the present case: a master mariner may, perhaps, at the date of his answer, not have been in command of a vessel; but the Court will presume that, according to the ordinary course of events, he is now or will be shortly in a similar position. Looking at the amount of the emoluments for the three years last past admitted by the husband, and assuming that some such will be the amount for the future, I shall take his income at 160*l.* per annum, and allot to the wife one-fifth thereof, 32*l.* per annum.

Attorneys—R. W. Roberts, agent for John Cobb, Liverpool, for petitioner; W. W. Wynne, agent for Charles Pemberton, Liverpool, for respondent.

PROBATE.

1868.

April 21.

HAWKE v. WEDDERBURN.

Administration—Creditor—Widow and Residuary Legatee—Insolvent Estate—20 & 21 Vict. c. 77. s. 73.—Practice.

The Court will not grant administration with the will annexed to a creditor under 20 & 21 Vict. c. 77. s. 73. by reason of the insolvency of the estate of the deceased, if the widow and residuary legatee be willing to take it; much less will it do so if the insolvency is disputed.

John Hawke, of St. Alban's Road, Kensington, gentleman, died on the 21st

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of April, 1867, having executed a will bearing date the 20th of April, 1867, in which he named his wife, Ann Nichol Hawke, residuary legatee for life, but did not appoint an executor. On the 15th of June, 1867, a caveat was entered in the goods of the deceased by Charles Horsley, a creditor, and in September caveats were entered by four other creditors. One of these, Charles Adrian Wedderburn, applied for an administrator to be appointed *pendente lite*, and nominated for that purpose Henry Croysdill, of the Old Jewry, London, accountant. He filed affidavits to support this application, in which it was stated that the deceased had left debts due to him as an attorney, and also a policy upon his own life in the Imperial Life Assurance Company; that he had died insolvent, and that his property was lying unproductive. On the other hand, William Humphries, one of the trustees named in the deceased's will, swore that he was intimately acquainted with the deceased John Hawke and his affairs, that the deceased had left property sufficient to pay his creditors their debts in full, and that he as a creditor desired that the administration should be granted to the widow.

Interdict, for Mr. Wedderburn, moved that administration should be granted to Mr. Croysdill accordingly.

Patchett, for Mrs. Hawke.—As the deceased made a will and appointed his wife residuary legatee, who is quite willing to take administration, there is no pretence for the interference of the creditors. If properly administered, the estate is sufficient to pay all the debts.

Sir J. R. WILDE.—The question in this case is, whether the next-of-kin, or rather the widow, who is also the residuary legatee under the will of the deceased, is entitled to a grant of administration, notwithstanding certain persons come forward who say that they are creditors of the deceased, and that his estate is insolvent. It is said that the only question to be considered is, who has the interest? Wherever the interest is, to that person the Court will grant administration, and will even exclude the widow or legatee if they be shown clearly no longer to have an interest in the property. Before the Probate

Act passed, and before the 73rd section (20 & 21 Vict. c. 77.) was enacted, the Probate Court could not have listened to such an application. It was imperative that the grant should be made to the widow. No doubt the 73rd section includes in its wide application a power to pass over such a person, or even the executor, if for any reason he does not choose to act or is out of the way; but here the person who comes forward alleges no special circumstances, but merely that the estate is insolvent. It is very easy to show that the estate is apparently insolvent, and yet afterwards property may turn up which constitutes part of the estate, and the creditor would be entitled to receive it although his debt had been discharged. It is under any circumstances difficult to determine that an estate is insolvent; but here the fact is disputed; there are affidavits on both sides. Where the fact is disputed, I think it is clear that the Court should not pass over either a party entitled under the statute, or where there is a will the persons entitled under the will, even although the 73rd section may give it the power to do so. Although the creditor has an interest in the estate, his right to administration has never been dealt with in this Court on that ground. In *Dabbs v. Chismas* (1) Sir John Nicholl said, "A creditor cannot deny an interest or oppose a will, but a creditor in possession of an administration may do both," and Sir W. Wynne, in *Elme v. De Costa* said (2), "The right of a creditor is only this: he cannot be paid his debt till a representation to the deceased is made; he can then call on all who have a right to administer; before an administration is granted, if a will be produced, the creditor has no right to contradict or deny it; for if there is a will or the next-of-kin claims the administration then a person offers to make himself a representative, and the creditor gets all he has a right to. But when a creditor has obtained the administration the case is different;" and Sir Herbert Jenner, in *Henzies v. Pulbrook* (3), reviewed these cases, and agreed with them, and further said, "I apprehend that a creditor, except by the practice of the Court, has no right

(1) 1 Phill. 159.

(2) 1 Phill. 177.

(3) 2 Curt. 845.

to the administration of the estate of a party deceased; he has no right by the statute; he is the appointee of the Court; and I do not know, if the circumstances showed that the creditor was not a proper person, that the Court might not appoint another person." Looking then at the principles long established in the Courts of Probate, and the fact that in this case it is doubtful whether the estate is insolvent or not, I shall grant administration to the widow; and as the application by the creditor is contrary to the practice of the Court, I shall condemn him in the costs.

Attorneys—J. O. Cotton, for plaintiff; W. J. Holt, for defendant.

MATRIMONIAL SUIT—*DERING, vs. DERING AND BLAKELEY* (The Queen's Proctor and others intervening). April 21, 1868.

Matrimonial Suit—Intervention of the Queen's Proctor—No Affidavits filed by Him—Pleas of Connivance, Collusion and Misconduct conducing to Adultery—Practice.

In a suit for dissolution of marriage by reason of the adultery of the respondent and co-respondent, a decree nisi was made. Subsequently certain parties intervened and filed affidavits, and two questions were directed to be tried by a special jury, namely, whether the petitioner had connived at the adultery of the respondent, and whether the decree nisi had been obtained by collusion. Afterwards the Queen's Proctor obtained leave to intervene, and, without filing affidavits, pleaded collusion, that material facts had not been brought to the knowledge of the Court, connivance, and misconduct which conduced to the adultery. Held, that when the Queen's Proctor has obtained leave to intervene, he may plead any material facts in addition to the plea of collusion; and that it is not necessary he should elect to proceed under the first or second part of the 23 & 24 Vict. c. 144. s. 7, and vary his proceedings accordingly.

In this case Edward Cholmeley Dering petitioned for a dissolution of his marriage

with Harriet Mary Dering, by reason of her adultery with Theophilus Alexander Blakeley. The petition was heard by the Judge Ordinary on the 21st of June, 1867, who pronounced a decree nisi. On the 1st and 2nd of November, 1867, appearances were entered for Mr. and Mrs. Capel, the father and mother of the respondent, and affidavits were filed on the part of the interveners, and also of the petitioner in reply. On the 14th of January, 1868, the Judge Ordinary directed that the questions of fact raised by such affidavits should be tried before the Court by a special jury. The questions as settled for the jury were: first, whether the petitioner was in any manner accessory to or connived at the adultery of the respondent with the co-respondent; secondly, whether the decree nisi obtained by the petitioner upon the 21st of June, 1867, was obtained by him by or in collusion with the respondent and co-respondent, or either of them. On the 17th of March, the Judge Ordinary gave permission to the Queen's Proctor to intervene in the cause, and directed him to file his plea within a week. The plea filed was to the following effect: first, that the parties to the said suit are and have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case; secondly, that before the commission of the acts of adultery alleged in the said petition, and after the said marriage of the said petitioner and respondent, the said respondent, Harriet Mary Dering, did, in the months of November and December, 1865, and in the months of January, February and March, 1866, at No. 1, Bolton Street, in the county of Middlesex, on divers occasions, habitually commit adultery with the said Theophilus Alexander Blakeley; thirdly, that before the commission of the acts of adultery alleged in the said petition, and after the said marriage of the said petitioner and respondent, the said respondent did, in the months of April and May, 1866, on board a certain yacht and at divers places in parts beyond the seas, on divers occasions, habitually commit adultery with the said Theophilus Alexander Blakeley; fourthly, that at the respective times of the filing of the said petition and the hearing of the said suit the said adultery above mentioned was known to

the said petitioner; and was not brought before the Court; fifthly, that the said petitioner connived at the adultery alleged in the said petition and in this plea; sixthly, that the said petitioner was guilty of misconduct which conduced to the adultery alleged in the said petition and in this plea.

Horace Lloyd moved the Court to strike out of the plea filed by Her Majesty's Proctor the second, third, fourth, fifth and sixth paragraphs thereof, by reason that Her Majesty's Proctor, having elected to plead in his official capacity, and not to file affidavits as one of the general public, can only allege collusion against the parties to the suit to obtain a divorce contrary to the justice of the case.—He referred to *Lautour v. Lautour* (Her Majesty's Proctor intervening) (1), *Masters v. Masters* (Her Majesty's Proctor intervening) (2), *Drummond v. Drummond* (3).

W. G. Harrison, for the Queen's Proctor, opposed the motion.—If the argument on the other side be correct, the Queen's Proctor must carry on two distinct proceedings at the same time, by plea in reference to collusion and by affidavits in regard to the other matters material to be brought to the notice of the Court. At any rate, the question is not raised in the proper way. The plea should have been demurred to.

THE JUDGE ORDINARY.—The portion of the pleas objected to is that which alleges that certain matters were not brought to the notice of the Court at the hearing of the petition, and that the petitioner was guilty of misconduct which conduced to the adultery alleged in the petition. Under the first part of the 7th section of the 23 & 24 Vict. c. 144, it is provided "that any person shall be at liberty, in such manner as the Court shall, by general or special order in that behalf, from time to time direct, to shew cause why the said decree should not be made absolute by reason of the same having been obtained by collusion, or by reason of material facts not brought before the Court." It is contended that in this case the Queen's Proctor is acting under this part of the

section. I do not think it is quite certain that he is not acting under the other; but, assuming it to be so, that he is proceeding under this part, in what form ought he to bring before the Court the material facts therein referred to. The Court has made certain orders relating to this matter. The 68th and 69th are headed "Intervention of the Queen's Proctor"; the 70th and following, "Shewing Cause against a Decree." Under the latter, the party intervening is to enter an appearance and then file affidavits setting forth the facts on which he relies. But these cannot apply to the Queen's Proctor. If the Queen's Proctor is before the Court, having obtained leave to intervene, it cannot be necessary that he shall enter a second appearance. Having become a party to the suit on the score of collusion, and being desirous, in addition, to shew cause, by reason of material facts not having been brought to the notice of the Court, he has always done so in one and the same plea. As to what fell from Sir C. Cresswell in *Drummond v. Drummond* (3), even if it be taken that he had some doubt on his mind whether the Queen's Proctor had properly pleaded the adultery of the petitioner in that case, he unquestionably determined that, as the adultery had been pleaded and traversed, he must hear and dispose of the matter. The practice for the Queen's Proctor to plead not only collusion, but other matters has been followed ever since; and in the very case referred to, *Lautour v. Lautour* (1), that identical course was pursued. Indeed, if such matters were not pleaded, and at the hearing the facts came out, I should be bound to take notice of them. The 7th section continues as follows: "At any time during the progress of the cause, any person may give information to Her Majesty's Proctor of any matter material to the due decision of the case, who may thereupon take such steps as the Attorney General may deem necessary or expedient." It is evident, therefore, that the Queen's Proctor may, in that character and under the directions of the Attorney General, take cognizance of other matters than collusion; and it would be surely extremely inconvenient if the Court, having authority by special order to direct how the questions should be tried, should say

(1) 33 Law J. Rep. (N.S.) Pr. M. & A. 89.

(2) 34 Law J. Rep. (N.S.) Pr. M. & A. 7.

(3) 2 Swa. & Tr. 269; s. c. 30 Law J. Rep. (N.S.) Pr. M. & A. 177.

that the Queen's Proctor, in order to prove collusion and adultery, must take two different proceedings; that if he would allege adultery, he must file affidavits, but, on the question of collusion, he must ask leave to intervene and plead under the directions of the Attorney General. I think the Court has power to allow the Queen's Proctor to bring all these matters before it in one plea; and in so deciding, I consider I act in conformity with the practice of the Court, and in accordance with the convenience of the suitors.

Proctors—Toller & Sons, for petitioner, the Queen's Proctor intervening. Attorneys—Dawson & Co., for other interveners; Rickards & Walker, for respondent; Cunliffe & Co., for co-respondent.

MATHEMATICAL.

1868:

May 5.

YEATMAN v. YEATMAN.

Desertion—Husband supporting Abandoned Wife—Cause of Desertion—20 & 21 Vict. c. 85. s. 26.

A husband who permanently puts an end to cohabitation with his wife against her consent is guilty of desertion, although he may continue to support her. The words "desertion without cause," in section 25 of 20 & 21 Vict. c. 85, means "desertion without reasonable cause," and are equivalent to "desertion without reasonable excuse."

Simble—That conduct short of a matrimonial offence sufficient to found a decree of judicial separation, may be a sufficient cause to bar a deserted wife of all remedy for the desertion. Infirmary of temper on the part of a wife, unless shewn in some marked and intolerable excess, is not a reasonable cause for desertion.

This was a suit by a wife for a judicial separation, on the ground of desertion.

The respondent denied the desertion.

The cause was heard by the Judge Ordinary, without a jury.

Price and Staveley Hall, for the petitioner.

The respondent conducted his own case.

Cur. adv. vult.

The facts sufficiently appear in the judgment.

~~THE JUDGE ORDINARY.~~ ~~THIS IS A SUIT~~
promoted by the wife against the husband for a judicial separation, on the ground of his "desertion without cause for two years and upwards." Mr. Yeatman made the acquaintance of his wife shortly before December, 1852, when he induced her to elope with him from her relations to Gretna Green, where they were married. She was about eighteen years of age, a German by birth, but brought up in England by some German relations, with whom she was residing at the time the marriage was celebrated. This union afforded little happiness from the first. Mr. Yeatman complains of his wife's temper and conduct; she of his neglect and harshness; and in the result, after a cohabitation of something less than four years, Mr. Yeatman took her to Germany, avowedly for a stay of some weeks together; but after a few days he left her there with a relation, stating that he had to return to England on business. This was in the month of August, 1856. From that time to the present he has never cohabited with her, and this is the desertion of which his wife complains. It is plain on the testimony of both parties that Mrs. Yeatman did not acquiesce in this separation, and on many occasions entreated her husband to live with her. It is also plain that at the time when he thus left her Mr. Yeatman had made up his mind that he would not live with her any more. It was therefore a permanent abandonment of cohabitation on the husband's part, without and against the consent of his wife. But he continued to support her; and the first contention of Mr. Yeatman is that this circumstance is of paramount importance, and precludes his conduct from amounting to "desertion" within the meaning of section 26. of the Divorce Act. The word "desertion" is found several times in that act, sometimes coupled with the words "without cause," and sometimes with the words "without reasonable excuse." But in all parts of the act I think the word itself must be held to mean and define the same thing. It is true that in section 21, providing for the granting of orders protecting the wife's property, it is necessary to shew, in addition to "desertion," that "the wife is maintaining herself by her own industry or property." But this rather

proves that the word "desertion" alone was intended to carry no such qualification with it than the reverse, and certainly does not aid the argument that in other parts of the act, where no such qualification is added, the word "desertion" must be construed to mean abandonment without pecuniary means. Nor could the Court, without express words for the purpose, so interpret the meaning of the legislature. A wife is entitled to her husband's society and the protection of his name and home in cohabitation. The permanent denial of these rights may be aggravated by leaving her destitute, or mitigated by a liberal provision for her support; but if the cohabitation is put an end to against the consent of the wife, and without the intention of renewing it, the matrimonial offence of desertion is in my judgment complete. The remaining question is whether Mr. Yeatman had "cause," which, I think, must mean "reasonable cause," for thus deserting his wife. Now, it must be borne in mind that, according to the matrimonial law of this country, which the Divorce Acts have not affected to touch on this head, nothing will justify a man in refusing to receive his wife except the commission of some distinct matrimonial offence, such as adultery or cruelty, upon which the Court could found a decree of judicial separation; and that in all other cases, no matter what her conduct, she can always obtain a decree enforcing cohabitation. Save then, in cases where some such a matrimonial offence has been committed, the law does not justify and support the husband in deserting, and living apart from his wife. And it may be considered hardly consistent with this to hold that any desertion can be "reasonable" which cannot be justified by proof of such offence, or, in other words, that the law should at the same time hold the desertion of the husband to have been reasonable, and yet, if asked by the wife, decree that her husband must take her back again. The inconsistency, however, is, perhaps, more apparent than real, for the legislature may have thought it right, in creating the new matrimonial offence of "desertion," to subject the remedy for it to the condition that the conduct of the party complaining should not have led to the result complained of; and if it should have done so, to deny

all remedy for the desertion without affirming that the parties were legally justified in living apart. However this may be, the inconsistency, if it exists, is the work of the legislature as interpreted by the Full Court of Divorce. For in the case of *Haswell v. Haswell* (1) it was decided, that conduct falling short of a matrimonial offence sufficient to found a decree for judicial separation, was still sufficient cause to bar all remedy to a wife whom her husband had deserted. By this decision I am bound to shape my course. Assuming, then, this decision to be correct, it remains to be seen whether the "cause" alleged in this case was sufficient. The charges Mr. Yeatman brings against his wife as his reasons for deserting, her resolve themselves into an impeachment of her general conduct throughout the time that he lived with her. One charge, indeed, of a distinct and very different character from the rest he makes against her; but this she distinctly denies, and, upon consideration, I cannot hold that it is proved. I allude to the supposed admission by her that she had been unchaste before marriage. Passing then, to her general conduct, I find Mr. Yeatman complaining in the main of her violence to himself (this he afterwards explained to mean violence of temper), her insulting conduct to other people, her dirty habits, and her cruelty to her child. With regard to her violence of temper there seems to have been considerable ground for his complaint. She speaks in a letter of being "self-willed, wild and thoughtless"; and then, again, of her unhappy temper, which she excuses by adding, "but I was but a child and without experience." When asked to explain this she says in her evidence that her husband was neglectful and cruel, that he stayed away from home a great deal, and was out till twelve or one at night. "By this" she says, "my temper became irritated." As to insulting other people Mr. Yeatman does not detail any occasion so as to enable the Court to judge, and Dr. Arthur Farre, whom he names in connexion with this charge, was not called to corroborate him. As to her dirty habits, there is evidence from a woman with whom she lodged and

(1) 16 W. 477, 502, 100 (22 Law & Rep. (n.s.) Prob. & M. 21.

the woman's servant in support of this charge; but the witnesses seemed to speak with a strong bias against her, and led the Court to believe that they were indulging in exaggeration. It is also to be remarked that Mrs. Yeatman has never been examined about this herself, no allusion being made to it in the long cross-examination which Mr. Yeatman himself administered. Lastly, as regards the cruelty to her child, it is admitted by Mr. Yeatman that she was extravagantly fond of it at times, and, although both he and the witnesses before alluded to speak of her beating it, Mr. Yeatman himself admits that the child exhibited no marks or bruises, and she most indignantly repudiates ever having struck it in her life. It is a most significant fact in considering the evidence on all these charges that no member of Mr. Yeatman's family, to many of whom she was known, was called to condemn Mrs. Yeatman's conduct. If her outbursts of temper had been habitually such that Mr. Yeatman could not have been expected to bear with them, his sister, with whom she stayed for some time in the year 1855, at Holbeach, would surely have experienced it. The same remark applies to her alleged want of cleanliness in her linen and dress. In like manner, though she lived at Dr. Dempsey's for above six months, and although many witnesses were produced as to her conduct while there (in the cross-suit which Mr. Yeatman instituted for divorce), no witness was called in this suit to prove either passionate temper or uncleanly habits while residing in Dr. Dempsey's establishment. Upon a review of the evidence, and the mutual conduct of both parties, the Court cannot find reasonable ground for the separation which Mr. Yeatman has presently forced upon his young wife. The difficulty of her temper and such of her habits as were distasteful to him might reasonably have been expected to disappear with judicious conduct on his part in the course of continued cohabitation. It would be of evil example if this Court should hold that mere frailty of temper, unless shown in some marked and intolerable excesses, was reasonable ground to justify a man in throwing a young wife upon the world without the protection of his

home and society. A woman so placed is open to many temptations. If she fail to resist them, the husband, who has already quitted her, will not be slow to take advantage of her fall, making his own desertion a first step towards a claim for divorce. True, she may at once insist on returning to him and may obtain a decree obliging him, if within the jurisdiction of this Court, to receive her again and thus terminate the desertion. But angry feelings, the promptings of pride, or the advice of others may intervene. The wife may not be inclined to protect herself by forcing her society upon a husband bent upon casting her off, and if the result is criminality the original fault still lies at the husband's door. If submission is the part of the wife, protection is no less that of the husband; and he is bound to extend that protection to his wife, even against herself and her own impulses, so far as the fences, the restraints, and the inducements of conjugal cohabitation may serve to that end. It was with no other view than this, I conceive, that the legislature in section 30. of the act gave the Court power to withhold a divorce from the husband after the wife's adultery, if he should be shown to have wilfully separated from or deserted his wife without reasonable excuse. And whatever is held to constitute "desertion without reasonable excuse" for this purpose must, I think, be also held "desertion without cause" in the section upon which the present suit is founded. For this reason, then, if for no other, the "cause" should be grave and weighty which, in the judgment of the Court, should deprive a deserted wife of her remedy for that desertion, and her right to set it up as a bar to a divorce for adultery at her husband's suit. I am, therefore, of opinion that the offence of "desertion without cause for two years and upwards" is established. The remedy prescribed by the legislature is but a very imperfect one. Judicial separation will but give a legal sanction to the actual separation between these parties which has long existed. But it will effect two objects which I presume Mrs. Yeatman desires—an allowance from her husband regulated by this Court, and a decree affirming her husband's "desertion," which may protect her

from being harassed by further proceedings at his hands. For he has already sued her no less than three times; first in the year 1858, for nullity of marriage on the ground that she was insane, and had been so during all the four years he had lived with her; next in 1862, for adultery with some person in Germany; and, lastly, in a cross suit commenced about the same time as the present, for adultery while at Dr. Dempsey's. To both these charges of adultery Mrs. Yeatman pleaded his desertion in addition to denying the adultery, but, the proof of adultery failing in both suits, no decree on the desertion has hitherto been made. She has now instituted a suit for the purpose of obtaining such a decree, and in my judgment she is entitled to it.

Attorneys—S. Edwards, for petitioner; W. & H. P. Sharp, agents for B. H. Cockayne, Nottingham, for respondent.

PROBATE. }
 1868. }
 March 6, 7. } HALL v. HALL.

Testamentary Suit—Undue Influence.

A pressure of whatever character, whether it acts on the fears or the hopes of an individual, if so exerted as to overpower the volition, without convincing the judgment, is a species of restraint under which no valid will can be made.

John Hall, of Whitmoor House, near Nottingham, a farmer and tenant-right valuer, died on the 6th of April, 1867. The plaintiff, the widow of the deceased, propounded a will, bearing date the 21st of July, 1865, by which the whole property was left to her absolutely, and in which she was named sole executrix. The defendant, the brother of the deceased, filed one plea only,—that the execution of the alleged will was obtained by the undue influence of the plaintiff and others acting with her. On the 14th of June, 1865, the deceased, during his wife's absence from home, had executed a will by which he gave his house and household effects absolutely to his wife, two legacies of 200*l.* (one to his brother,

the defendant), and the residue of his estate to trustees, to pay the income thereof to his wife for life, and one-third of the capital absolutely, and the remaining two-thirds on the wife's death to divide between the defendant and other relatives. The property was stated to be under 20,000*l.* The issue was tried before Sir J. P. Wilde and a special jury.

Sir R. P. Collier, Staveley Hill and Weightman appeared for the plaintiff.

Dr. Spinks and Dr. Tristram, for the defendant.

SIR J. P. WILDE in summing up made amongst others the following observations: "To make a good will, a man must be a free agent. But all influences are not unlawful. Persuasion, appeals to the affections, or ties of kindred, to a sentiment of gratitude for past services, or pity for future destitution, or the like, these are all legitimate, and may be pressed on a testator. On the other hand, pressure of whatever character, whether acting on the fears or the hopes of an individual, if so exerted as to overpower the volition without convincing the judgment, is a species of restraint under which no valid will can be made. Importunity or threats such as the testator has not the courage to resist, moral command asserted and yielded for the sake of peace and quiet, or of escaping from distress of mind or social discomfort, these if carried to a degree on which the free play of the testator's judgment, discretion or wishes is overborne, will constitute undue influence, although no force is either used or threatened. In a word, a testator may be led, but not driven, and his will must be the offspring of his own volition, and not that of another."

The jury returned a verdict in favour of the defendant, and Sir J. P. Wilde pronounced against the will, and condemned the plaintiff in the defendant's costs.

Attorneys—Vandercom, Law & Payne, agents for Parsons & Son, Nottingham, for plaintiff; A. D. Bird, agent for W. Brown, Nottingham, for defendant.

MATRIMONIAL. }
1868. } CHURCHILL v. CHURCHILL
Jan. 25. } AND ABBOTT.

*Practice—Misnomer of Respondent—
Setting aside Proceedings for Irregularity.*

In a suit for dissolution of marriage, after a decree nisi with costs against the co-respondent, an attachment for non-payment of those costs was granted. The citation and subsequent proceedings, in which the co-respondent was erroneously styled William Abbott, were served upon William Braine Abbot, who took no objection to the irregularity until the attachment was granted. He then applied to have it set aside:—Held, that as he had stood by during the progress of the suit and allowed judgment to go against him in a wrong name, the attachment must stand.

This was in substance an application to set aside a writ of attachment against the co-respondent, on the ground that in the writ and previous proceedings in the suit he had been styled William Abbott, whereas his real name was William Braine Abbot.

The petitioner had obtained a decree nisi for dissolution of his marriage on the ground of his wife's adultery, with costs against the co-respondent, and an order had been obtained for a writ of attachment against the co-respondent for non-payment of those costs.

In all the proceedings in the suit the co-respondent's name was stated to be William Abbott, and in that name they had been served upon William Braine Abbot.

On the 23rd of January Bayford, on behalf of William Braine Abbot, obtained an order that the writ of attachment should not issue until this day.

Day, on behalf of the petitioner, now asked for an order, that the attachment should issue. An affidavit of the solicitor's clerk, who had served the proceedings and notices on William Braine Abbot, stated that when served with the citation he said that he had been expecting it for some time, and should be glad when the case was over; that when applied to for the petitioner's costs, he said he should place the matter in the hands of his solicitor

and that he had never denied that he was the right person.

Bayford, contra.—As the co-respondent has been served with process in a wrong name, he is entitled to have the proceedings, so far as they affect him, set aside.—He cited *Foxwell v. Burrow* (1), *Johnson v. Richardson* (2), *Johnson v. Smallwood* (3), *Hinton v. Stevens* (4), *Griffin v. Gray* (5), *Cotton v. Cotton* (6) and *Kisch v. Kisch* (7).

The JUDGE ORDINARY.—This is in substance an application to set aside an order that a writ of attachment should issue, on the ground that there is a mistake in the name of the person upon whom it is intended to be executed, the name in the writ being the same as the name which has appeared throughout the suit as that of the co-respondent. The Court would amend the proceedings by substituting the right name of the co-respondent, if the petitioner desired; but for obvious reasons he prefers to take the attachment with the name as it now stands. The question is, whether the Court ought to set aside the order for an attachment. I am clearly of opinion that it ought not. The days have gone by, I hope never to return, in which trumpery mistakes in the names of parties were held to invalidate the proceedings. But even then I believe it was never held that a man was entitled to stand by and allow proceedings to go on against him to judgment, and then to ask the Court to interfere on his behalf, on the ground that his name had been mis-spelt. Two classes of cases have been cited: one in which this Court has been asked to set right a blunder which has been made in the spelling of a name during the proceedings; the other in which Courts of common law have been asked to set aside proceedings in consequence of the mis-spelling of a name. But none of these cases are applicable to the present, for the reason that Mr. Abbot stood by throughout the proceedings as if

(1) 2 Lee, 517.

(2) Ibid. 518.

(3) 2 Dowl. 288.

(4) 4 Ibid. 331.

(5) 5 Ibid. 331.

(6) 32 Law J. Rep. (N.S.) Pr. M. & A. 31.

(7) 33 Law J. Rep. (N.S.) Pr. M. & A. 115.

he were the right person, and took no step until the last moment. I am clearly of opinion that the order for an attachment must now stand; that the stop which the Court put upon it must be withdrawn, and the co-respondent must pay the petitioner the costs of this application.

Attorneys—Jacob Michael, for petitioner; J. H. Bayford, for respondent.

MATRIMONIAL.

1868.

Jan. 23;

March 17.

CRABB v. CRABB.

*Dissolution of Marriage—Adultery—
Desertion—Deed of Separation.*

Where the parties have separated voluntarily under a deed of separation, such separation will not be converted into desertion merely because one of the parties does not fulfil all the terms of the bargain he entered into with the other on parting.

This was a suit for dissolution of marriage brought by the wife by reason of the adultery and desertion of her husband, the respondent. It was heard before the Judge Ordinary without a jury. The adultery was fully proved, but the Court took time to consider what effect a deed of separation entered into between the parties had upon the question of desertion.

Dr. Spinks and Dr. Tristram appeared for the petitioner.

Searle, for the respondent.

The JUDGE ORDINARY (March 17).—The broad question raised here is, whether a woman who has quitted her husband's house under a bargain to do so made by a deed of separation can be said to have been deserted without cause. The proposition hardly bears stating, unless indeed all separation, voluntary or involuntary, be desertion, the consent of the complaining party unimportant, and the person deserted not he who was left in the common home, but she who quitted it. It was, however, argued that the deed in this case would have been held invalid in a Court of equity because its

provisions stripped the father of all control and supervision over his child. It is needless to inquire whether this is true or not, because, in this Court at least, it has always been held that such deeds are utterly inoperative to abrogate the duty of cohabitation involved in a contract of marriage; and if the mere fact that this deed was impotent to maintain and enforce the permanent separation of the parties be material to this question, that fact may be found in the first principles of the matrimonial law. For no doubt it would have been quite competent to either party the day after they had parted, in obedience to their mutual agreement, to come to this Court and obtain a decree for restitution of conjugal rights. This separation therefore was not only voluntary at first, but has practically continued to be so. Lastly, it was said that the husband did not fulfil his part of the bargain, and only paid the 100*l.* a year for six months. This, if a condition precedent to the covenant of the wife's trustees, that she should not attempt to enforce cohabitation in this Court, might in another Court be held to relieve them from that covenant. In a word, if the husband's side of the bargain was not adhered to, the wife might have been remitted to her original status, and set free from the prohibition of the deed against enforcing those rights which in this Court have never ceased to exist, and lie open to her assertion. But the husband's breach of his contract could not by relation back make the actual parting involuntary, which was in fact voluntary, though the wife was induced to acquiesce in reliance on the husband's promises. The separation, it must always be remembered, was an act done under the deed, and though the deed be void or its covenants afterwards broken, it would be most unjust to treat that act as if the deed had never existed. Nor can the failure of the deed be held so to re-act upon the separation, for which it provided, as to impress upon the separation a character entirely opposite to that which it bore at the time. If it could, it might as well be said that the wife had deserted her husband as that he had deserted her. But in all this I presume the absence of fraud. For if a man, determining to abandon his wife, were to set about it fraudulently by the shew of an agreement, which

he never intended to fulfil, to induce or extort her consent to their mutual separation, covering his true purpose under delusive covenants, and seeking a shield for his design in a consent bought by treachery, the Court might well be asked to reject the false face of the transactions, and regard the real object that lay underneath. If I had been asked to decree a judicial separation, I would have done so, as the adultery was fully proved; but as I have not been so asked, I shall simply dismiss the petition.

Attorney—James Wright, for petitioner.
Proctors—Brooks & Du Bois, for respondent.

MATRIMONIAL. }
1868. } DE NICEVILLE v. DE NICEVILLE.
April 21. }

Practice — Service of Citation—Undertaking to appear.

An undertaking by the respondent's solicitor to appear is not sufficient; the citation must be served upon the respondent.

Tapping moved the Court to order the issue in a suit for judicial separation to be tried by the Court.

Tristram, for the respondent, consented.

Tapping.—The Registrars have refused to receive the citation on the ground that it has not been served upon the respondent. It was thought unnecessary to serve it as the respondent's solicitor undertook to enter an appearance. An appearance has been entered and an answer has been filed.

The JUDGE ORDINARY.—The rules require that the citation should be served. That must, therefore, be done, but under the circumstances it may be served *nunc pro tunc*.

Attorneys—Marwood, Kelly & Braund, for petitioner; W. H. B. Paine, for respondent.

MATRIMONIAL. }
1868. } FINNEY v. FINNEY.
April 28. }

Estoppel—Unsuccessful Suit for Judicial Separation on Ground of Cruelty—Subsequent Suit for Dissolution of Marriage on ground of Adultery coupled with same Cruelty.

A petitioner, whose petition for judicial separation, on the ground of cruelty, has been dismissed for defect of proof, is estopped from setting up the same charges of cruelty in a suit for dissolution of marriage on the ground of adultery and cruelty.

This was a suit, by a wife, for a dissolution of marriage, on the ground of adultery coupled with cruelty. The respondent filed an answer traversing the charges of adultery, and, as to the charges of cruelty, alleging that the petitioner, on the 12th of January, 1867, filed a petition against the respondent for a judicial separation on the ground of cruelty; that the allegations of cruelty in that petition were the same as those set out in the present petition; that the respondent filed an answer traversing those allegations, and that the issue so raised was tried by the Judge Ordinary without a jury; and that, after hearing the evidence of the petitioner, the respondent and other witnesses, the Judge Ordinary, by a decree of the 26th of November, 1867, found that the respondent had not been guilty of cruelty as alleged in the said petition, and dismissed the petition; that the respondent, therefore, was not bound to make any further answer to the allegations of cruelty contained in the present petition.

Demurrer.

Dr. Spinks and *Dr. Swabey*, in support of the demurrer.—The object of the present suit being different from that of the former suit, the doctrine of estoppel does not apply. The *lis* is not *de eadem re*. In *Evans v. Evans* (1), it was held, that the judgment of an Ecclesiastical Court refusing a divorce *a mensa et thoro*, for defect of proof of the adultery charged, was no bar to a suit in the Divorce Court for dissolution of marriage on the ground of the same adultery.—

(1) 1 Sw. & Tr. 173; s. c. 27 Law J. Rep. (N.S.) Prob. & M. 57.

They also cited *Barrs v. Jackson* (2) and *The Duchess of Kingston's case* (3).

Searle, contra, was not called upon to argue.

THE JUDGE ORDINARY.—I am clearly of opinion that the demurrer must not be allowed. This is simply an attempt to try over again the question of cruelty, with a fresh charge added. In the cases cited, the question was either to what extent one Court is to be bound by the judgment of another, or how far one Court is to give effect to a decision on certain facts pronounced in some other suit of a wholly different nature. In this case the questions of fact are precisely the same as those which were inquired into and determined in a previous suit in this Court. In both suits the husband is charged with the same matrimonial offence, cruelty. The issue raised on that question having been tried and found in favour of the husband, the wife now seeks to have it tried again, and it is argued that she is entitled to have the same charges tried again because she has tacked on to them a charge of adultery. I think that that cannot be allowed. According to the practice of every Court, after a matter has once been put in issue and there has been a finding or a verdict upon that issue, and a judgment upon such finding or verdict has been pronounced, such judgment is conclusive between the same parties on that issue. In all Courts it would be treated as an estoppel. There is abundant reason why, in this Court especially, the same question should not be tried over again. The expense of the trial falls upon the husband, and the Court ought not to allow a wife to persecute her husband, as she could if she were allowed to repeat charges which have once been found against her. The allegations of cruelty must be struck out of the petition. The petitioner may amend her prayer by praying for a judicial separation on the ground of adultery.

Attorneys—Bischoff, Coxe & Bompas, for petitioner; Sutcliff & Sumner, for respondent.

(2) 1 You. & C. 585; and on appeal, 1 Phill. 582.

(3) 2 Smith's Lead. Cas. 429, 4th edition, and notes.

MATRIMONIAL. { CORBRANCE v. CORBRANCE AND
1868. LOWE (*Moore and others*
June 2. { intervening).

Practice — Power to Deal with Settlement, where no Issue Living—Locus Standi of Trustees on Petition for Alteration of Settlement.

Held, by the Judge Ordinary and Montague Smith, J., (*Pigott, B. dissentiente*) that the Court has no power to deal with marriage settlements under section 5. of the 22 & 23 Vict. c. 61, where there has been issue of the marriage, unless a child be still living.

The trustees of a marriage settlement may be heard against, but not in favour of, an alteration of the settlement.

This was an appeal from an order of the Judge Ordinary, dismissing a petition presented under the 5th section of the 22 & 23 Vict. c. 61 (1), praying for an order with reference to the application of the whole or a portion of the property settled on the marriage of the petitioner.

The question was, whether the Court has power to alter a marriage settlement in a case in which, though there has been issue of the marriage, such issue is dead.

The petition alleged a marriage in 1860; that there had been issue of the marriage one child, who died in 1864; that on the 13th of November, 1866, the marriage was dissolved on the ground of the wife's adultery, and that the respondent had since married the co-respondent; that before the marriage a settlement had been executed, the settled property consisting of several sums of money, the property of the wife, and a sum of 7,000*l.* covenanted by the petitioner's father to be paid to the trustees of the settlement after his death.

The appeal was heard on the 24th of April, 1868.

Dr. Swabey (E. Browning with him), for

(1) "The Court, after a final decree of nullity of marriage or dissolution of marriage, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or a portion of the property settled, either for the benefit of the children of the marriage or of their respective parents, as to the Court shall seem fit."

the petitioner.—The Judge Ordinary, on the authority of *Thomas v. Thomas* (2), held that, as there was no issue of the marriage living, he had no power to deal with the settlement. That case, however, is not a binding authority, for although the Full Court in it expressed their opinion that the Court has no power under section 5. of the 22 & 23 Vict. c. 61. to deal with marriage settlements where there has been no issue, it was not a direct decision upon an application under that section, and is therefore not a conclusive authority. The counsel for the applicant there suggested that it was doubtful whether the Court could deal with the settlement, and the Court, seeing the difficulty, simply suspended its decree, in order that an application for a permanent provision might be made. There was no solemn decision after argument. Assuming that the Court is not bound by that decision, I submit—1. That the Court has jurisdiction to deal with settlements, although there may have been no issue of the marriage. 2. Even if that is not so, it has such jurisdiction when there has been issue, although there may be none living when the application is made. 1. The 5th section of the 22 & 23 Vict. c. 61. was probably passed in consequence of the decision in *Norris v. Norris* (3), that the Court, under section 45. of the Divorce Act, had no power to deal with marriage settlements. The section is a remedial provision, and should therefore be construed liberally. *A priori*, it is difficult to see upon what principle the power of the Court to alter settlements, and so deprive the guilty party of an interest conferred by the settlement, should be dependent upon the birth of issue. When there are children, the Court is not bound to consider the interest of the children only. It may make an order for the benefit of the parents only. Upon the true construction of the section, the words “their respective parents” seem to have been inadvertently inserted for “the parties to the marriage.” The section is clearly very loosely drawn, the word “respective” being insensible. In the former part of the clause, the Court is

empowered to inquire into the existence of settlements “made on the parties whose marriage is the subject of the decree.” There is no condition annexed, *provided there be issue of the marriage*, and it is with reference to the settlement so described that the Court is to make orders. 2. Assuming that the Court has no power to deal with settlements when there has been no issue, it does not follow that it has not such power when there has been issue and such issue is dead. In *Bird v. Bird* (4) the Judge Ordinary held that he had no power in such a case. Where, however, the status of parentage has once existed, the parties to the marriage may be considered to be “parents” within the intention of the statute.

Dr. Tristram, for some of the trustees, was about to argue on the same side.

The JUDGE ORDINARY.—We are all of opinion that the trustees cannot be heard. They might have a *locus standi* for the purpose of inducing the Court not to alter the settlement, but they cannot be allowed to argue that the settlement ought to be altered.

Dr. Deane and *Inderwick*, for the respondent, and *Dr. Spinks* and *Searle*, for Mr. Moore, one of the trustees of the settlement.—The intention of the legislature must be gathered from the words of the statute. The use of the word “parents” in the latter part of the section instead of the words used in the previous clause, “parties whose marriage is the subject of the decree,” shews that the intention was to limit the power of the Court to cases in which there were children of the marriage in existence. If there were no children living, there could be no *parents*. It is not unreasonable that the powers given to the Court should only be exercised when there are children living. The benefit of the children is the object of the section.—They also cited *Bell v. Bell* (5).

Dr. Swabey, in reply.—The benefit of the children is clearly not the sole object of the section. The Court may alter settlements for the benefit of the parents only.

Cur. adv. vult.

(2) 2 Swa. & Tr. 89; s. c. 29 Law J. Rep. (N.S.) Pr. M. & A. 160, note.

(3) 1 Ibid. 174; s. c. 27 Law J. Rep. (N.S.) Pr. M. & A. 72.

(4) 35 Law J. Rep. (N.S.) Prob. & M. 102; s. c. 1 Law Rep. P. & M. 231.

(5) 1 Swa. & Tr. 565; s. c. 29 Law J. Rep. (N.S.) Pr. M. & A. 159.

MONTAGUE SMITH, J., after stating the facts, said: I am of opinion that the decision of the Judge Ordinary is right, and ought to be affirmed. The question turns on the proper construction of the 5th clause of the 22 & 23 Vict. c. 61.—viz., whether the appellant was a “parent” entitled to the benefit of the provision contained in that clause. The clause has already received judicial construction. The Full Court has decided that the clause gives no power to deal with settlements in cases where no child of the marriage has been born—*Thomas v. Thomas* (2); and the Judge Ordinary was of opinion in *Bird v. Bird* (4) that the reason of the judgment in *Thomas v. Thomas* (2) applied to a case in which there had been a child who had died before the dissolution of the marriage, and that he had no jurisdiction to make an order in such a case. These decisions, if they do not conclusively bind the Court, at least afford strong authority against the appellant’s construction, and I should not feel at liberty to dissent from them unless I had a clear opinion that they were wrong; but I own that my opinion is entirely in accordance with these decisions. The jurisdiction given by the legislature to this Court to interfere with the settlements made by the parties themselves in a case like the present is a strong power to confer. Such a jurisdiction did not previously belong to any Court,—see *Hodgens v. Hodgens* (6), and the same case before Sugden, L.C., in Ireland (7),—and the Court must be careful not to overstep the power created and conferred upon it by the legislature. It appears to me from the language used that the governing object of the legislature was to enable the Court to make a provision for the children of the marriage, and only as subsidiary to that object to make provision for their parents. The clause, after enabling the Court to inquire into the settlements, empowers it to make orders with reference to the application of the property settled “for the benefit of the children of the marriage or of their respective parents.” It is plain that if there are no children of the marriage, there can be no parents, so that I cannot entertain a doubt

that *Thomas v. Thomas* (2) was rightly decided. I think also there can be no parent within the meaning of these words unless there are living children of the marriage to be provided for. The language is, “children of the marriage or *their* parents.” Not only the words themselves, but the collocation of them, convey to my mind a clear indication that the legislature advisedly used the word “parents” in its ordinary sense, and did not intend this power to arise unless there were living children for whom provision might and ought to be made. If there are such children, then and then only the Court has power to make orders for them or their parents. It might in some case be prudent and convenient, where a home is broken up, that provision should be made for the children, not only directly, by giving a benefit to them, but also indirectly, by giving a benefit to their parents. If it had been intended to confer a power to make a provision for husbands and wives independently of the existence of children, I should have expected to find other and more apt words to express that intention. In the 45th clause of the 20 & 21 Vict. c. 85, which enables the Court to deal with the property of a wife guilty of adultery, the words are “for the benefit of the innocent party and of the children of the marriage.” These words are well adapted to express the intention of the legislature, when it was meant to make provision for the husband independent of the children; and one would have expected to have found in the statute now in question language descriptive of the parties to the marriage, as such, if there had been an intention to alter settlements in their favour, apart from the existence of children. It is not within the province of the Court to consider whether it is fitting or not that the Court should have the power contended for by the appellant. The question is, whether the legislature has conferred it. I come to the conclusion that it has not, and that this appeal ought to be dismissed.

PIGOTT, B., after stating the facts of the case, said: The question before the Court is whether, on the true construction of the 5th section of the 22 & 23 Vict. c. 61, the Judge Ordinary, after the final decree dissolving the marriage, has any jurisdiction over this settled property. I am of opinion

(6) 4 Cl. & F. 323.

(7) Lloyd & Gould’s Rep. temp. Sugden, 328.

that he has. The question depends on the meaning of the legislature as it can be collected from the language employed. The enactment in question was passed by way of supplement to the provision in the first Divorce Act, section 45. That provision did not apply to settled property. But as to other than settled property it gave the Judge power in cases of divorce for the wife's adultery to deal with such property for the benefit of the innocent party (*i. e.* the husband) and of the children of the marriage, or either of them. So that if this property were not settled, there would be jurisdiction to act for the petitioner's benefit within that section. But it is necessary to resort to the 5th section of the 22 & 23 Vict. c. 61, under which alone settled property can be dealt with. The section includes all cases where decrees for nullity of marriage or dissolution of marriage have been pronounced; it gives the Court power to inquire into the existence of all settlements, whether ante-nuptial or post-nuptial, made on the parties whose marriage is the subject of the decree, and it then authorizes the Court "to make such orders with reference to the application of the whole or a portion of the property settled either for the benefit of the children of the marriage or of their respective parents as to the Court shall seem fit." The whole difficulty turns on the meaning of the word "parents" as here used. Does it necessarily mean parents of a child or of children still living, or may it be read as descriptive of persons who have once acquired the status of parents by having had a child or children born of a marriage the subject of the decree? I think the language is quite capable of the latter meaning, and that the sentence may be read as if the words were "for the benefit of the children of the marriage or of the parents of such children—*i. e.* children of the marriage." This reading would not necessitate the continued existence of the children at the date of the decree, it does no violence to the language of the legislature, and in my judgment is in furtherance of the manifest intention to benefit the parties to the marriage as well as the children, and quite independently the one of the other. It may be difficult to account for the distinction in the section between cases where there are settlements but no children born

of the marriage, and those where children are born. I do not consider myself at liberty to speculate on the cause of this distinction. It may be that it was unintentional, but it cannot be because the benefit of the children alone was considered of importance, as argued by Dr. Deane. Judging *a priori*, it might have been expected that the legislature would have given power to the Judge who dissolves a contract of marriage to deal also with those other contracts which were made as incidental to the marriage contract; and much more after the legislation of the 45th section might it be expected that in all cases, if in any, the settlements of the married parties should be dealt with. But be that as it may, I feel bound by the use of the word "parents" to hold that jurisdiction is not given where no child of the marriage has been born, and where, therefore, neither of the parties could in any sense or at any time be designated as "parents." But, on the other hand, I think the fullest meaning should be given to the actual language employed, and that I am not exceeding it in holding that it is here used relatively to the preceding words, "children of the marriage," and consequently that where the status of a parent has been once acquired with reference to that marriage the benefit of that status continues, so as to bring the person within the intention expressed in this section. The Judge Ordinary, in *Bird v. Bird* (4), thought and decided that this case must follow the decision in *Thomas v. Thomas* (2); but, for the reasons I have given, I feel bound to come to a different conclusion. The petitioner's position is somewhat analogous to that of a tenant by the courtesy which is not lost by the death of the issue. The reason and justice of the case seem to me to be in accordance with this view, and I think it highly desirable that the adulterous party to a marriage should be amenable to the jurisdiction of the Court to the fullest extent to which the legislature can be fairly taken to have expressed its intention to make him or her so liable.

THE JUDGE ORDINARY.—I should have been glad if this Court could, consistently with the language of the statute, have come to the conclusion that the intention of the legislature in this matter was to confer

power to deal with marriage settlements in all cases of divorce, whether there had been children or not. It is probable that such was the intention, but the statute under consideration, by describing the parties to the suit as "parents" in the operative part of the section, appears to me to preclude this Court from giving effect to that intention, if it existed. All orders of this Court to be made under the authority of this section must (so says the act) be "either for the benefit of the children of the marriage or of their respective parents." The word "parents" cannot be applied to parties who have had no children without a violence to the language used so great as to exceed the limits of judicial exposition, and so decided the Full Court in the case of *Thomas v. Thomas* (2). All the members of the Court on this occasion concur in the propriety of that decision. But it is now argued that, although the legislature thus restricted the powers of this Court to cases in which children had been born of the marriage, yet that restriction is satisfied if a child has once existed: in other words, that the expression "children of the marriage and their parents" is applicable to children long since dead, of whom the parties to the suit may be properly called the "parents." There are some insuperable objections, I think, to this conclusion. First, the language is not appropriate to carry it. The word "parent" is a word of relation. It expresses the relation between father or mother and child, and it is therefore properly applicable so long, and so long only, as that relation exists. If there is no "child" there is no "parent." If there has been a child there have been "parents." With the death of the child the relation ceased, and the appellation of "parent," though it may, in the looseness of common talk, continue to be attributed to those who once stood in that relation, ceases to be properly applicable. The question is not widely different from that which might be raised on the use of the expressions "husband" and "wife," as to which I conceive that after the death of a wife a man can no longer properly be called husband, or *vice versa*; though in common parlance such terms might be, and are not unfrequently, used. But, secondly, the language runs "for the benefit of the children or *their* parents." The "parents"

here spoken of are "parents" of the children in whose favour orders of the Court may be made, consequently of living children. The word "their" inseparably connects the word "parents" with such children. So far by way of verbal criticism. But there is a consideration which affects my mind much more strongly. I conceive that the Court should at least forbear to do violence, however slight, to the language of the legislature, if by so doing they induce an unreasonable conclusion. It seems to me that it would be to the last degree unreasonable to imagine that the legislature intended the marriage settlements in cases of divorce to be subject to the orders of this Court if the parties had ever had a child, but not so subject if the marriage had been childless. I can trace no connexion between the incident of a child having once existed and the propriety of interfering with the marriage settlements of a divorced couple after that child's death. If there are children living at the time of the divorce, it may be that the legislature, for their sake, has created a power of re-opening the settlements which it has thought right to deny to parties who are childless; and, once re-opened, it may have thought it right not to restrict the new destination of the settlement funds wholly to the children; but to give the Court a discretion in favour of their "parents." But when the children are dead, and no order can be made in their favour, they cease to afford a reason for dealing with settlements at all, and the case of the married parties becomes no different from what it would have been if a child had never existed. I have tried in vain to imagine or discover a possible hypothesis upon which such a distinction could have been intended, and the failure to find it is the main reason which influences my judgment to reject the distinction.

The Court declined to make any order as to costs, on the ground that the question was one fit to be argued, and the respondent was possessed of separate property.

Attorneys—T. W. Flavell, for petitioner, A. D. Smith, for respondent; Taylor, Hoare and Taylor, for Mr. Moore.

PROBATE. 1868. May 27.	}	<i>In the goods of R. GOOD- WORTH.</i>
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Will—Executor according to the Tenor.

The testatrix by her will appointed A. trustee, with power to convert the residue of her estate into money, and after payment of her debts and personal expenses, to dispose of the property in accordance with the directions given in such will, and she also appointed him executor. By a codicil she revoked that part of her will which gave the property in trust to A, and in lieu of him appointed her nephews B. and C; and providing C. should not be in England his brother D. to act in his capacity. She also revoked the appointment of A. as executor, and in his place appointed B. and C. B. renounced probate of the will of the deceased; C. at the time of her death was not in England.—Held, that D. was an executor according to the tenor of the will, but that power must be reserved to make a grant to C. in case he should return to this country.

Elizabeth Goodworth, of Hatfield, Yorkshire, widow, died on the 10th of January, 1867, having executed a will bearing date the 28th of November, 1848, a codicil, dated the 27th of November, 1866, and a second codicil, dated the 31st of December, 1866. By the will she left all money, goods, chattels, rights, credits and other personal estate whatsoever and wheresoever to her brother William Henry Goodworth, his executors, administrators and assigns, upon trust, to allow her sister Ann Maria to have and use her household furniture during her sister's life, and upon trust to convert the remainder of the personal estate into money, and after payment of her debts and personal expenses, to invest the proceeds in real or parliamentary securities, with power to vary the same, and to pay the interest, dividends and annual proceeds thereof to or permit the same to be received by her said sister Ann Maria during her natural life; and after her death to pay and divide the said trust-moneys, stocks, funds and securities, together with the proceeds of the furniture, unto and equally between the testatrix's nephews and nieces, the sons and daughters of her brothers John,

Samuel and William Henry, and of her sister Susannah Brownlow, who should be living at the time of the death of her sister Ann Maria, and she appointed her brother William Henry Goodworth executor. The first codicil was to the following effect: "I revoke that part of my will which gives and bequeaths all my money, securities for money, goods, chattels, rights, credits and other personal estate whatsoever and wheresoever unto my brother William Henry Goodworth, upon trust, and in lieu of whom I now hereby appoint my nephews Broughton Goodworth and Edward Portington Goodworth, eldest sons of my brothers Samuel and William Henry. Providing Edward Portington Goodworth should not be in England, Roger Portington Goodworth, his only brother, to act in his capacity. . . . I also revoke my appointment of my brother William Henry Goodworth as executor of my will, and in his place I hereby appoint my nephews Broughton Goodworth and Edward Portington Goodworth aforesaid my sole and only executors and administrators of this my will and codicil."

Broughton Goodworth, one of the executors substituted, renounced probate and administration with the will annexed. Edward Portington Goodworth was not in England at the time of the death of the testatrix, and has not been in England since, and is not expected to return for a considerable time.

C. A. Middleton moved the Court to grant probate to Roger Portington Goodworth as the executor substituted for Edward Portington Goodworth, in case Edward P. Goodworth were not in England at the time of the death of the testatrix.

SIR J. P. WILDE granted the motion, on the ground that Roger Portington Goodworth was executor according to the tenor of the will. Power to be reserved to make a similar grant to Edward Portington Goodworth if he should return to this country and apply for it.

Proctors—Brooks & Du Bois.

MATRIMONIAL } BIRT v. BOUTINEZ (falsely
May 27. } calling herself BIRT).

Nullity of Marriage—Scotch Marriage—Belgian Marriage between same Parties—Dissolution of Belgian Marriage by Belgian Court—Subsequent Marriage in England by one of the Parties.

A, an Englishwoman, married in Scotland B, a domiciled Belgian. They took up their abode in Belgium, and there went through the ceremony of marriage according to the law of Belgium. The Belgian marriage was dissolved in Belgium on the ground of mutual consent. A, in the lifetime of B, afterwards married C in England:—Held, that as the Scotch marriage was valid by the law of England, and the Belgian marriage conferred no new status on the parties, A's marriage with C. was void.

This was a petition for a decree of nullity on the ground that when the marriage was solemnized the respondent was a married woman. The respondent did not appear. The petition was heard by the Judge Ordinary on the 29th of April, 1868.

Dr. Spinks and Houston, for the petitioner.—The facts were in substance as follows: The respondent, then Emily Burdett, a spinster, on the 31st of December, 1845, was married at Gretna Green to Eugène Adolphe Boutinez, a captain in the Belgian army. On the 24th of August, 1846, they were married in Belgium, in accordance with the Belgian law, and they lived together there for several years. In January, 1857, the Belgian marriage was dissolved by a Belgian Court, on the ground of mutual consent. The respondent, on the 26th of September, 1857, married the petitioner in London, and lived with him in England until 1862, when the petitioner first ascertained that the validity of his marriage was doubtful. Captain Boutinez was alive on the 26th of September, 1857. It was also proved that by the law of Belgium a marriage contracted with a woman who had obtained a sentence of divorce on the ground of mutual consent, within three years from the date of the sentence, is null and void.

Barrett, for the respondent. Cur. adv. vult.

The JUDGE ORDINARY.—The petitioner in this suit was married to the respondent in London on the 26th of September, 1857. He has instituted these proceedings to annul that marriage, upon the ground, that the respondent was at the time of its celebration the wife of another man. A previous valid marriage between the respondent and Eugène Adolphe Boutinez was no doubt contracted at Gretna Green in Scotland on the 31st of December, 1845. And there is equally no doubt that Eugène Adolphe Boutinez was alive on the 26th of September, and still is so. The case of the petitioner would therefore seem to be established. But some farther matters have been very fittingly brought to the notice of the Court for discussion and consideration, though they do, not in my judgment, affect the petitioner's claim to a decree. It appears that the respondent and Monsieur Boutinez, after the Scotch marriage, went to reside in Belgium, where he had his domicile. And while there domiciled, for some reason not explained to the Court, the parties went through a second ceremony of marriage, conducted according to the law of that country, at Kain, in the kingdom of Belgium, on the 24th of August, 1846. The previous marriage in Scotland being in the eyes of the law of this country a valid and subsisting contract of matrimony, this second ceremony cannot be in this Court held to have created any new status in the parties. On the 9th of January, 1857, the Belgian Court having jurisdiction in such matters, declared that, "in the name of law there is dissolution of the marriage which took place on the 24th of August, 1846, at Kain," and this "on the mutual consent of the two parties." It does not appear from the evidence submitted to this Court that the Scotch marriage was in any way brought in question before the Belgian Court, or even known to that tribunal. Whether, if it had been brought forward and application made to dissolve it by mutual consent, the Belgian tribunal would have held itself competent to that act, this Court has no means of knowing. Had such a divorce been pronounced, it would have been necessary to consider how far the law of this country would adopt and act upon the dissolution of a valid Scotch marriage by a foreign Court, and that upon

a ground unknown to the law of this country—the mutual consent of the parties. Other questions spoken to in the argument would also have required consideration. It would have been proper to consider the effect of those restrictions upon re-marriage which form part of the same law of divorce, by which the mutual consent of the parties sufficed to release them from their existing obligations. But it is quite needless to pursue these matters. The Scotch marriage has never been impugned; no decree of any Court has affected to vacate it, and the marriage which the respondent sought to contract with the petitioner in 1857 must therefore be pronounced null and void.

Attorneys—J. P. Jackson, for petitioner; G. F. Cooke, for respondent.

MATRIMONIAL.

1868.

STACE v. STACE.

June 2.

Suit for Restitution—Answer—Facts not amounting to Legal Cruelty.

In a suit for restitution of conjugal rights the Court will not reject, on demurrer, an answer which contains only facts which apparently do not constitute a case of legal cruelty.

Matilda Stace, of 130, Leighton Road, Kentish Town, Middlesex, petitioned the Court to order her husband, Joseph Frank Stace, to take her home and render to her conjugal rights. The parties were married, on the 23rd of June, 1849, at St. John's Cathedral, Calcutta. The defendant filed an answer, in which he admitted he had refused to live with the petitioner, but that he had good and sufficient grounds for such refusal; namely, the circumstances thereinafter set forth. That the petitioner is a woman possessed of a most violent temper and a scandalous tongue; that on the 30th of October, 1861, the respondent, by reason of the constant virulence of the language and of the violence in the conduct of the said petitioner, and of the false charges she brought against him, was com-

pelled to leave the house where they were living and to separate from her; and that, on the 6th of June, 1862, the respondent executed a deed of separation to which the petitioner was a party, whereby he consented to allow her 400*l.* per annum; and that the respondent faithfully performed all the agreement mentioned on his part in the said deed so long as it continued in operation; that the petitioner and the respondent lived separate from the said 3rd of October, 1861, until July, 1866. That on the 14th of July, 1866, the respondent, in compliance with the urgent and repeated entreaties of the petitioner, consented to and did permit her to return to cohabit with him, on her signing the following declaration, in the handwriting of Mr. Thomas Sharpe, but signed by her at the house and in the presence of Mr. Thomas Sharpe, the trustee of the separation deed:

"I, Matilda Stace, being under no compulsion, freely and willingly declare that I most sincerely regret and repent of my bad temper, conduct and accusations that caused my husband, Joseph Frank Stace, to leave me and his home in October, 1861, and since to live separated from me; and I do hereby promise and declare that no such temper or conduct shall ever be shown by me, nor any of the former or such like accusations be made by me against him; but that, if we can live together again, I will do all in my power to make him happy and in all respects conduct myself according to his wishes; and to this end I bind myself by a solemn promise made on oath, before the undersigned witness, on the 14th of July, 1866.

"Matilda Stace."

That within ten days of the said 14th of July, 1866, the said petitioner violated her said solemn declaration and undertaking, and commenced to conduct herself towards the respondent in a most outrageous manner, both in language used towards him and in her demeanour, and so at times continued to conduct herself from that date up to December, 1867. That, amongst other things, she has during such period been continually charging the respondent in the presence of their children, servants and others, with having had illicit connexion with the widow of his deceased

brother, which is false, and also with taking liberties with respondent's and petitioner's daughter, Gertrude Stace; she has also insulted the respondent and his daughter at the dinner-table by other false charges. That his daughter, by reason of such language and false and scandalous charges which the petitioner was in the habit of making against her, was in July, 1867, driven from her home and elected to take a situation as governess in a ladies' school. That in March, 1867, the petitioner, without the respondent's knowledge or consent, removed their son Arthur Frank Stace from his home and placed him at a boarding-school. From the 17th of October, 1867, to the 4th of December, 1867, the petitioner refused to allow Sarah Dunkley, their only servant, and induced her to decline to wait upon the respondent, and encouraged her to behave insolently to the respondent and to address him in terms of insolence. That the petitioner on several occasions during part of the latter period removed, or caused to be removed, all the provisions from the pantry, so as to prevent the respondent from helping himself to his meals, and compelled him to go out and purchase bread for himself. In December, 1867, the petitioner had all the lights and fires in the house put out for the sole purpose of annoying the respondent; and on the 3rd of December, 1867, the respondent having re-lighted the kitchen gas the said servant put it out again; lastly, that on one occasion the petitioner had sent for a policeman for the sole object of bringing the respondent into discredit. That, by reason of the premises, the petitioner had forfeited any right to the relief she seeks from this Honourable Court; and, further, that she has been guilty of legal cruelty to the respondent by rendering further cohabitation with her intolerable, and, having regard to his health, unsafe. The answer prayed for a judicial separation. This answer was demurred to as not setting out a case of legal cruelty, misconduct less than cruelty, being no bar to a suit for restitution of conjugal rights.

Dr. Spinks and Seale, for the petitioner.

—It is not sufficient to allege cruelty; the facts stated must, if proved, amount to legal cruelty, which they do not in this case.

Dr. Tristram, for the respondent, contended that the answer ought to be considered a good and sufficient answer to the petition.—He referred to *Barlee v. Barlee* (1) and *Molony v. Molony* (2).

The JUDGE ORDINARY:—Even putting on one side the allegation contained in the last two lines of the answer, that there is an intolerable antipathy between these parties, I should not feel inclined to refuse to admit to proof a case, because the facts may not be strongly stated, unless, indeed, taken altogether, it could not amount to a legal defence. The acts charged have happened often enough to render cohabitation unsafe for health, and I am not prepared to tell the husband it is all his fault, that he ought not to have delicate nerves, and to send him back, in order that his wife may further operate upon him. The answer alleges violence of conduct, which is surely cruelty, violence of demeanour, constant charges of immoral conduct. It is impossible to say to what extent this has gone without first hearing the proof; and as the suit is carried on at the husband's cost, I see no reason for rejecting the answer. In a case decided in the Privy Council—*Moore v. Moore* (3)—it was held that, by way of defence, facts and circumstances may be admitted which would not be sufficient in an original suit for divorce.

Attorneys—*Lewis & Lewis*, for petitioner; *Rothery & Co.*, for respondent.

MATRIMONIAL:—*DERING, R. DERING AND BLAKELEY (The Queen's Proctor and others intervening)*, June 5, 6.

Matrimonial Suit—Decree Null—Intervention of Queen's Proctor and other Parties—Identical Pleas—Practice—Writ of Habeas Corpus—Conduct conducing to Adultery.

The petitioner, in a matrimonial suit, having obtained a decree nisi for divorce.

(1) 13 Add. Rep. 322.
(2) 2 Add. Rep. 240.
(3) 5 Add. Rep. 322.

marriage, the Queen's Proctor and other parties intervened. The questions for the jury, raised by the latter, were collusion and connivance; by the former, collusion, connivance and misconduct which conduced to the adultery of the respondent:—Held, that although the counsel for the Queen's Proctor and the other interveners might respectively produce and examine witnesses, and cross-examine the witnesses produced by the petitioner, only one counsel could be heard in reply.

If an intimacy springs up between a married woman and a man of such a character as to be dangerous to her honour, and the husband knows so much of it as to perceive the danger, and yet purposely or recklessly disregards it, he is guilty of wilful misconduct which may conduce to adultery.

In this case Edward Cholmeley Dering petitioned for a dissolution of his marriage with Harriet Mary Dering, by reason of her adultery with Theophilus Alexander Blakeley. The petition was heard and a decree nisi made on the 21st of June, 1867. In November, 1867, appearances were entered for the father and mother of the respondent, and affidavits were filed on their behalf and on behalf of the petitioner. The questions of fact raised by the affidavits which were ordered to be tried before the Court and a special jury were, whether the petitioner was in any manner accessory or connived at the adultery of the respondent with the co-respondent, and whether the decree nisi obtained by the petitioner upon the 21st of June, 1867, was obtained by him by or in collusion with the respondent and co-respondent, or either of them. On the 17th of March, 1868, the Queen's Proctor obtained leave to intervene, and filed pleas, on which the following questions were raised for the jury: First, whether Harriet Mary Dering, the respondent, committed adultery with Theophilus Alexander Blakeley, the co-respondent, in the months of November and December, 1865, and in the months of January, February, March, April and May, 1866, at No. 1, Bolton Street, in the county of Middlesex, and on board a certain yacht in divers places in parts beyond the seas. Secondly, whether Edward Cholmeley Der-

ing, the petitioner, was in any manner accessory to or connived at the adultery of the said Harriet Mary Dering with the said Theophilus Alexander Blakeley. Thirdly, whether the decree nisi obtained by the said Edward Cholmeley Dering, upon the 21st of June, 1867, was obtained by him by or in collusion with the said Harriet Mary Dering and the said Theophilus Alexander Blakeley. Fourthly, whether the said Edward Cholmeley Dering was guilty of misconduct which conduced to the adultery of the said Harriet Mary Dering.

Parry, Serj., Dr. Spinks and Dr. Middleton appeared for the petitioner.

The Attorney General (Sir J. B. Karlake), the Solicitor General (Sir B. Brett) and W. G. Harrison, for the Queen's Proctor.

Montagu Chambers and Hance, for the Honourable Mr. and Mrs. Capel, intervening.

Parry, Serj., at the commencement of the trial, objected to counsel being heard for both the parties intervening.

The Court declined to interfere at that stage, as both interveners ought, at any rate, to be allowed to examine and cross-examine the witnesses.

Witnesses were then produced and examined on behalf of the Queen's Proctor, and they were also examined by Montagu Chambers, but no witnesses were produced by the interveners, Mr. and Mrs. Capel. At the conclusion of the case of the Queen's Proctor, and on the announcement by Montagu Chambers that he did not intend to call any witnesses,

The JUDGE ORDINARY said—I have been considering the question which has been raised, as to the number of counsel I ought to hear in reply, and I have determined I can only hear one. The interests of the Queen's Proctor and the other interveners are identical; the same questions are submitted to the jury by both parties, and are supported by the evidence of the same witnesses. Mr. Chambers may cross-examine the witnesses produced by the petitioner, but I can only hear one reply on the whole case.

The JUDGE ORDINARY, in summing up, after referring to the first three questions

to be determined by the jury, said—"The fourth question is, whether the petitioner has been guilty of misconduct which conduced to the adultery of the respondent." By the 31st section of 20 & 21 Vict. c. 85, the Court is not bound to dissolve a marriage, even although the adultery of the wife be proved, if the husband shall have been guilty of such wilful neglect or misconduct as has conduced to the adultery. The responsibility, therefore, is thrown upon the Court to say, first, whether the petitioner has been guilty of wilful misconduct; and, secondly, whether it is such that the Court ought to refuse a decree. Although the Court has itself power to determine the first of these points, it prefers to have a decision at the hands of a jury. This is, I believe, the first case in which the facts and circumstances make it necessary to consider the meaning of the words of the 31st section. Whilst, on the one hand, a large and general latitude should be left to the jury in their application, on the other hand I am bound to put a construction on the section and to say, what, in my judgment, ought to be proved in order to make out a case of misconduct. If you will reflect, it will occur to you what a great variety there must be in such cases, and under what different conditions of things such a question may arise. Indeed, there is probably no case brought before this Court in which it might not be possible, after the whole matter is known, to point the finger at some particular parts of the case and say, What a pity it is the husband did not do so and so. If he had not been careless, if he had taken better care of his wife it would not have happened. No doubt when an intimacy springs up between a married woman and another man of a character not justified by the ordinary usages of society, the vigilance of the husband ought to be alarmed, and he should endeavour to repress such intimacy. Indeed, it is a duty which forms part of the obligation of married life. But is this obligation of vigilance, of being alive to the first steps of an intimacy which may lead to dishonour, to be subject to the penalty, if neglected, that the husband shall be tied to an adulterous woman for the rest of his life? That is a proposition of perilous latitude. He ought, no doubt, to fulfil that obligation; but is his neglect to

fulfil it misconduct within the meaning of the legislature? I think not. I do not consider the mere fact of an omission here or there to do something which he might have done, or the mere doing something he ought not to have done, sufficient. Allowance must be made for different dispositions. Some men are vigilant and suspicious; others less observant, although not indifferent, and less likely to take notice of what is passing about them. One man may be so constituted that small matters draw his attention to them; another may be of an open, high-spirited and cheerful disposition, on whom all things sit lightly; such a man dismisses suspicion from his mind more readily. Carelessness, therefore, is not sufficient to constitute misconduct. If it were, very few men would pass through the ordeal safely. Before you arrive at the conclusion that the petitioner has been guilty of the misconduct intended by the statute, you must be thoroughly satisfied that the intimacy between these parties was of such a character as to be distinctly dangerous, and that the husband knew so much of it as to perceive the danger; yet either purposely or recklessly, disregarded it and forbore to interfere. I have only to add, that in speaking of what the husband knew, I mean what he actually knew or what he ought to have known, not what a more suspicious nature or a more active vigilance might have prompted him to discover, unless indeed he should have purposely closed his eyes, which would be wilful misconduct and something more. It is not necessary that a man should have intended wrong; but if he saw the danger, knew of an intimacy and allowed his wife to be exposed to the consequences, he is guilty of misconduct. But again, I must call your attention to the difference of dispositions; one man may see certain circumstances and say, "This will not do; shake it, from the same circumstances, may draw a different conclusion. There are, however, two difficulties in the way of your forming a correct judgment in this case. The first is, that on looking back to these transactions you do so knowing the event, whereas the person whose conduct you are inquiring into did not know and could not foresee the event. Further, you must bear in mind that, although many matters have

been brought before you, tending to show that suspicion ought to have existed in the mind of Mr. Bering, there were probably many little things you do not know of, which tended to blind the husband and quiet his suspicions, such as the conversations between the husband and wife, the excuses she may have made, and other trifles which would give a colour to such matters, different from what they seem to have when viewed after the event. The other difficulty is raised by the law, which prevents the parties giving evidence in a suit of this kind. The two questions you must ask yourselves are, What did the husband know? and with that knowledge ought he to have perceived the danger his wife was in? Those who assert that the petitioner had knowledge of all that was going on between his wife and Captain Blakeley are bound to prove it. If, on the whole, the result does not satisfy your minds that the petitioner has been guilty of wilful misconduct, you will return a verdict in his favour.

The jury returned a verdict for the petitioner on all the points put to them, but added an observation that he had shewn a great want of caution.

Proctors—Walker & Son, for petitioner; F. H. Dyke, the Queen's Proctor, for the respondent. **Assessors**—Dawson, Bryson & Dawson, for the interveners, Mr. and Mrs. Capels, Richards & Walker, for respondent. **Verdict**—The jury returned a verdict for the petitioner on all the points put to them, but added an observation that he had shewn a great want of caution. **1868**—**CONRADI v. CONRADI, AND OTHERS** (The Queen's Proctor intervening). **May 19**; **June 9** (for intervening).

Dissolution of Marriage—Petition dismissed by Reason of Petitioner's Adultery.

Second Petition presented—Petitioner's Adultery again alleged—Verdict of Jury in his Favour—Decree Nisi—Practice.

The petitioner applied to the Court for Decree to dissolve his marriage by reason of his wife's adultery with A. A. pleaded that the petitioner had himself been guilty of adultery with his wife's sister. The Court held that this charge was proved, and dismissed the petition. The petitioner again

applied to the Court to dissolve the marriage by reason of his wife's adultery with B. and C. Neither the respondent nor either co-respondent filed answers to the petition. The Queen's Proctor intervened, and pleaded the former judgment, and also the adultery with the respondent's sister; the jury before whom the issue was tried found that the petitioner had not committed adultery with his wife's sister.—Held, that the former judgment must be received as conclusive evidence of the adultery of the petitioner; but that, under the special circumstances of the case, the Court was justified in the exercise of its discretion in making a decree nisi to dissolve the marriage.

George Norris Conradi, petitioned the Court to dissolve his marriage with the respondent Rebecca Conradi by reason of her adultery with Edward Worrall and James Way, and from the former he claimed 5*l.* damages. No answer was filed either by the respondent or co-respondents. The Queen's Proctor, on the 20th of February, 1867, intervened, and pleaded, amongst other things, that, in the month of October, 1865, the petitioner presented a petition to this honourable Court for a dissolution of his marriage with the said Rebecca Conradi, on the ground of her having committed adultery with one William Churchill Flashman; and the said petitioner made the said Flashman a co-respondent in the said suit; that the said Flashman pleaded, amongst other things, that the said petitioner had committed adultery with one Elizabeth Frost; that upon the trial of the said suit by the Judge Ordinary it was found and adjudged by him that the said petitioner had committed adultery with Elizabeth Frost, and the Judge Ordinary thereupon dismissed the petition. He then pleaded that, in the months of March and April, 1865, at Dover, being after his marriage with the respondent, the petitioner on divers occasions committed adultery with a sister of the said respondent. To this plea of the Queen's Proctor a demurrer and a joinder in demurrer were filed; but the demurrer was overruled by the Judge Ordinary (1). The petition was heard before the Judge Ordinary and a special

jury, on the 27th of March, 1868, and the jury returned a verdict for the petitioner on the issues as to his wife's adultery and his own.

Dr. Spinks (*Inderwick* with him) moved the Court to make a decree *nisi* on the finding of the jury.

Sir J. B. Karlake (*Attorney General*) (*W. G. Harrison* with him), for the Queen's Proctor, opposed the motion. He contended that the former petition and the finding thereon estopped the petitioner from obtaining a decree *nisi* in the present suit; and secondly, that if he were not right on that point, the Court, in the exercise of its discretion under the 31st section of the 20 & 21 Vict. c. 85, would not grant this motion. Although the statute requires that, in case the husband brings a suit against his wife for adultery, he shall, under ordinary circumstances, make a co-respondent, that is not essential; the Court may, by the 28th section, excuse his doing so. Practically, therefore, the suit is between the husband and wife as the real parties; the addition of a co-respondent is a mere matter of procedure which may be dispensed with. As, therefore, in a suit between the husband and wife judgment has been given by a competent Court on a material point,—namely, the question of the adultery of the petitioner with a particular individual—the same question cannot be raised a second time between the same parties. The petitioner was estopped from proceeding in the second suit. At any rate, inasmuch as a judgment is still standing against the petitioner, which found that he had been guilty of adultery, the Court in its discretion will not allow the marriage to be dissolved. He referred to *The Duchess of Kingston's case* (2).

Dr. Spinks.—I thought the question of estoppel had been disposed of when the demurrer was argued.

[*THE JUDGE ORDINARY*.—The Court was prevented from coming to any conclusion as to the estoppel on that occasion because the Queen's Proctor, having pleaded the judgment in the former suit, went on to allege that the petitioner had, in fact, committed adultery with the sister of the

respondent. If he could have proved that, there would have been no necessity to have determined the question of estoppel.]

As regards the discretion which may be exercised by the Court, the 27th section of the Divorce Act enacts that it shall be lawful for any husband to present a petition to the said Court, praying that his marriage may be dissolved; and the 31st section, that, in case the Court is satisfied *on the evidence, &c.*, it shall exercise a discretion. The husband cannot be barred of his remedy unless evidence is given on the petition itself that he has been guilty of adultery.

[*THE JUDGE ORDINARY*.—In this suit evidence was given that there had been a former petition, and the petitioner had been found guilty of adultery.]

But it was not conclusive, otherwise it would have been so ruled. If the former decree had dissolved the marriage, it would have affected the status of the parties, and would have been final; the judgment then given did not affect the status. It seems hard that where a judgment is given in favour of the husband, it may by the intervention of the Queen's Proctor before the decree absolute be questioned again and again, but not so when given against him.—He referred to *Needham v. Bremner* (3), *Harding v. Harding and Lance* (*the Queen's Proctor intervening*) (4), and *Anichini v. Anichini* (5).

[*THE JUDGE ORDINARY*.—I will take time to consider my decision. I have a strong impression that when once the petitioner has been found guilty of adultery, I must take that as an ultimate finding, and not allow the same question to be raised over and over again on fresh petitions, even after the witnesses are dead. If the Queen's Proctor had stopped on his first plea, that of the previous judgment, no difficulty could have arisen; but he tried the question of the petitioner's adultery a second time, and both the witnesses being dead who proved it in the first instance, and no evidence remaining but the Judge's notes of the former trial, which I believe were not admissible at all, the jury found

(3) 85 Law J. Rep. (N.S.) C.P. 312.

(4) 84 Law J. Rep. (N.S.) Pr. M. & A. 9.

(5) 2 Curt. 218.

(2) 20 How. St. Tr. 355.

against him, and hence the present discussion has arisen.]

The JUDGE ORDINARY (June 9).—The petitioner first applied to the Court for relief in the year 1865. He proved his wife's adultery without difficulty; for she had left him and taken to a life of prostitution. But the co-respondent in that suit charged the petitioner himself with adultery. This charge was sustained by the evidence of two witnesses, and the Court found the charge to have been proved. Thereupon the Court, by its final decree, adjudged the petitioner to have been guilty of adultery, and dismissed his petition. In July, 1866, the petitioner commenced his present suit against his wife, charging her with adultery with two other men. And again, owing to the life she was leading, he had no difficulty in establishing her guilt. The Queen's Proctor, however, intervened, and by his plea brought to the notice of the Court the fact that it had on the former occasion adjudged the petitioner himself guilty of adultery, and prayed that his present petition might therefore be dismissed. In addition to this, the Queen's Proctor offered to prove over again the very act of adultery which had been alleged and proved in the former suit. Upon this re-allegation of the adultery issue was taken and a trial had by a jury. Both the witnesses to the adultery were dead. The Judge's notes of their evidences were read to the jury *de bene esse*, subject to the determination of the Court as to their admissibility, and the jury held the adultery not proved. In the view I take of the case it will not be necessary to decide this point of evidence. I will only say that I know no authority or practice by which the Judge's notes on a former trial are admissible in evidence in another suit, if objected to. The question which arises in this state of things is, no doubt, a very important one. It is this: whether a husband who has obtained a decree against an adulterous wife upon himself found guilty of adultery, and on that ground by sentence of this Court been refused all remedy for his wife's incontinence, can upon proof of a fresh act of adultery by her insist upon a divorce, unless his own adultery is proved over again by evidence against

him. In my judgment he has no such right. Everything turns upon the words of the 81st section (20 & 21 Vict. c. 85): "Provided always, the Court shall not be bound to pronounce such decree, if it shall find that the petitioner has during the marriage been guilty of adultery." *If it shall find*. Do these words necessarily mean *find* on fresh evidence, or is the Court at liberty to *find* the petitioner's adultery upon proof of a former decree pronounced by the same Court between the same husband and wife? I am of opinion that the Court is at liberty to regard the decree in the former suit, and upon reference to it, without further evidence, to *find* that the petitioner has been guilty of adultery. It is to be observed that the duties of this Court are not confined to the solution of such questions of fact or law as the parties to the suit may please from time to time in the course of the suit to submit to its decision. The general language of the act, notably that of section 29, as well as that of the section under consideration, appears to me to impose upon the Court a wider function. It is, in my judgment, immaterial upon whose allegation the adultery of the petitioner is brought to the notice of the Court, for if the fact of that adultery is established to the satisfaction of the Court upon legitimate evidence, the Court is bound to take notice of it. I am not, therefore, pressed by the argument that the adultery in the former suit was alleged by a co-respondent who is no party to this suit, whereas in this suit it is alleged by the Queen's Proctor. The only real question is, whether the Court can legitimately receive and act upon the decree in the former suit as evidence in this, and my judgment is that it can, for by whomsoever the petitioner's adultery was alleged in the former suit, that adultery was declared and adjudged to have been proved in a decree pronounced between the very parties who (so far as the question of divorce is concerned) are the sole parties to this suit. Nay, more; it was the very fact upon which that decree dismissing the petitioner's suit was founded. I know of no principle of evidence which should exclude such a decree. Thus far upon the strict and technical view of the matter. But it is impossible not to per-

ceive that if the Court were not to decide in conformity with that view, one of the main objects of the legislature might be frustrated. If a man desirous of obtaining a divorce could insist upon having the question of his own adultery tried over and over again, as often as he pleased, he would be pretty sure to succeed at last. What with the oversight or indifference of opponents, the death of witnesses, failure of memory, loss of documents, and the inevitable obscurity which the lapse of time throws about past events, he would at last succeed in proving his wife's adultery without any proof made of his own. But again, who is to undertake the proof against him? A wife in such a case would be little likely (as in this case) to oppose him. The Queen's Proctor is authorized to intervene at the public expense for the express purpose of preventing such a man from obtaining a decree. Is he to incur that expense over and over again, as often as the petitioner pleases? Such considerations as these throw a further light on the intention of the statute and fortify the construction of the 31st section, which I have already declared. It only remains to advert to one other matter pressed in the argument. It was pointed out that the statute 23 & 24 Vict. c. 144. s. 7. imposes no limit upon the number of occasions on which the Queen's Proctor might intervene before the decree absolute, and bring fresh facts before the Court to prove the petitioner's adultery; and it was urged that if the petitioner could thus, as it were, be put upon his trial several times for the same act of adultery, he ought in fairness to enjoy a similar latitude. But the position of the petitioner and that of the Queen's Proctor are in no respect alike. The Queen's Proctor is under the control first of the Attorney General, and then of the Court, and although the statute does not in terms prohibit him from interposing more than once between the petitioner and his decree, no instance or decision has yet shewn that he would be allowed vexatiously to re-open a question which had been once fairly tried. Assuming, then, that it is competent to the Court to act upon the decree in the former suit, the remaining question is, whether, in the very peculiar circumstances of this case, the Court should do so, and should under the

authority of section 31. refuse to dissolve this marriage. That I am by no means satisfied it should. That which has happened in this case will not (if my decision on the main matter should be held correct) in any probability happen again. The question of the petitioner's adultery has, in fact, been twice tried, and with different results. The act of adultery, if committed, was an isolated one. It had no connexion whatever with the desertion by the respondent of her home, or with her abandoned life. In the doubt which the second inquiry has thrown upon the act of adultery itself, and in the circumstances which attended it, if committed, the Court may properly, I think, find grounds for according to the petitioner the relief he prays, and in that conviction I grant him a decree *nisi*.

Attorneys—Prichard & Cullette, for petitioner;
F. H. Dyke, the Queen's Proctor.

MATRIMONIAL.
1868.
May 2;
June 16.

HOLMES, by his Guardian,
v. SIMMONS, falsely called
HOLMES.

Nullity of Marriage—Due Notice—Registration Acts, 6 & 7 Will. 4. c. 85. and 19 & 20 Vict. c. 119.—No Person to consent.

Since the passing of the statute 19 & 20 Vict. c. 119, all analogy between a marriage by banns and one by notice to the registrar, under the Registration Acts, has been effaced. The attempt at securing the consent of parents or friends to a marriage of the latter class by publicity has been relinquished, and the procurement of actual consent substituted in the same manner as has always been used in marriages by licence. The due notice therefore required by the statute is a notice conforming to the formalities by the statute provided, and will be sufficient, even although the contents thereof in respect of the christian names or residence and other details are not strictly true or accurate.

It is doubtful whether the marriage of a minor can be declared null and void by reason of undue publication of banns if

there be no parent or guardian whose consent or dissent can be given to such marriage.

This was a suit instituted by the direction of Vice Chancellor Malins, to decide as to the validity of a marriage of Frederick Cyril Robins Holmes, a ward in Chancery, resident at the time at Kidlington, Oxfordshire, with Laura Emma Harris Simmons, spinster, which was celebrated in the registrar's office at Oxford on the 19th of November, 1866. The material parts of the petition were as follows: That previously to, and with a view to such cele-

bration of marriage, on the 27th day of October, 1866, the said Frederick Cyril Robins Holmes, with the knowledge and at the instigation of the said Laura Emma Harris Simmons, falsely called Holmes, gave and subscribed the following notice at the registrar's office aforesaid: "To the Superintendent Registrar of the district of Oxford, in the counties of Oxford and Berks. I, the undersigned Frederick Holmes, hereby give you notice that a marriage is intended to be had without licence within three calendar months from the date hereof between me and the other party herein named and described, that is to say,

Name and Surname.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church or Building.	District or County where Parties respectively dwell.
Frederick Holmes.	Bachelor.	Gentleman.	19	Jericho, St. Thomas.	Seven days.	Registrar's Office.	Oxford, Oxfordshire.
Laura Simmons.	Spinster.	21	Holywell Street, Holywell.	More than a month.	Oxford, Oxfordshire."

That such notice was not a due notice for an intended marriage between the said Frederick Cyril Robins Holmes and the said Louisa Emma Harris Simmons according to the statute in such cases made and provided, and the certificate of such notice, bearing date the 19th of November, 1866, issued by the superintendent registrar of the district of Oxford aforesaid, was not duly issued. That on the 19th of November, 1866, at the time of the said marriage, the said Frederick Cyril Robins Holmes and the said Laura Emma Harris Simmons, or one of them, knew that the notice of the marriage they were about to and did celebrate was not a due notice according to the said statute in such case made and provided, and that it had been given in a form to conceal such marriage from the family of the said Frederick Cyril Robins Holmes, and to deceive them in relation thereto, and further, that the certificate of such notice which had been issued by the superintendent registrar of the district of Oxford was not duly issued. That no licence had been obtained for the celebration of such marriage from the superintendent registrar of any district. It concluded with a prayer that the Court would pronounce the mar-

riage so had between the parties to be null and void.

An answer was filed by the respondent to the following effect: That the notice set out in the petition was not given or subscribed with the knowledge or at the instigation of the respondent as alleged. That the said notice was a due notice of the said intended marriage between the petitioner and the respondent, and that the said certificate was duly issued. That the respondent did not at the time of the said marriage know that the said notice was not (if indeed it were not) a due notice of the said intended marriage, or that it had been given in a form to conceal such marriage from the family of the petitioner, or that the said certificate was not duly issued.

The facts of the case are contained in the following evidence.

William Scroggs.—I am an auctioneer, living at Kidlington, Oxfordshire. I am the guardian appointed by the Court of Chancery for the petitioner. The petition for the purpose of making him and his brothers and sister wards of the Court of Chancery, was presented, on the 3rd of November, 1866. I was acquainted with Mrs. Mantell, the mother of the petitioner. Mr. Holmes,

the father, died in September 1857 ; Mr. Mantell in August, 1863 ; Mrs. Mantell in August, 1866. The respondent was a nursery governess to the younger brothers and the sister of the petitioner. She was engaged in February, 1866, and continued after Mrs. Mantell's death. I then took the management at Hill House, where the children were. Their father was a medical man. Simmons continued to attend upon the children. Before the 19th of November, 1866, I spoke to them all, and told them that their affairs were in Chancery; nothing could be done but by order of the Court of Chancery. I did not say who was appointed guardian. Mr. Holmes's two brothers, the petitioner's uncles, declined to have anything to do with the matter. On the 19th of November, I went to Oxford to see the uncles, and asked them if they would not be guardians. I met the petitioner Simmons and her sister Emily at the station. We all got into the same carriage. The two ladies sat in front, I and the petitioner opposite to them. I asked where they were going. I am almost sure that it was the petitioner said that they were going shopping. Kidlington is five miles from Oxford. It is not in the Oxford district. The map produced marked Frederick Cyril Holmes belongs to the petitioner. It used to be hung up in one of the rooms. When I heard of the marriage, I saw the petitioner and the respondent together. I gave them a good set down. I said it was a scandalous act, as she had the children in her custody. On cross-examination, he said that the petitioner was generally called Fred, or out of the family, Mr. Frederick. He never heard the respondent called by any other name than Miss Simmons. He had signed cheques for Laura Simmons. The petitioner at the time of the marriage had no father, mother or guardian.

Mr. Holmes, the petitioner.—I shall be seventeen on the 27th of June next. I am now living in Herefordshire. I was at a school at Abingdon, but left in 1865. I remained at home from that time. I had two brothers and a sister. Laura Simmons came into my mother's service at the end of 1865. She had the sole charge of the younger children and of our linen. She used to put the lights out in the room in which I slept with my brothers. She used

to kiss me in bed. An intimacy arose between us. My mother spoke to me about it. She was sure there was something wrong. I said, no. She said she hoped not. After my mother's death I and the respondent were thrown much together. The temptation was too strong. I asked her to become my wife in October. She consented. I wanted to know how it was to be done. She said an aunt of hers had been married in the registrar's office ; it could be done there. She told me she would go to Oxford, and try and get a licence. On her return she said that before I could get a licence I must swear that I had the consent of my guardian, which I could not do ; but that if I told the registrar, he would put up a notice in his office, and there was no chance that any one would see it. We had more than one conversation as to what was to be done. It was proposed that I should see the registrar ; that I should put my age at nineteen. She said her age was twenty-one. It was arranged between us that I should be said to reside at Jericho ; she at Holywell. She knew I had only just come from school. We thought that if Mr. Scroggs saw the names Frederick Holmes and Laura Simmons and the addresses we gave, he would not think of us. Some of my linen is marked F. C. R. H., some not. The whole thing was managed between us. I went to Oxford. I saw the registrar, and gave him the particulars as to age, &c. in order to get married. I wrote first only the initials of my Christian name, but afterwards, by the direction of the registrar, my full name. I gave the particulars I did in consequence of the agreement between me and the respondent. Mr. Scroggs told me I was a ward in Chancery in the respondent's presence. She was in the room at the time. On the 19th of November Mr. Scroggs was in the same carriage with us. He asked what we were going to Oxford for. I replied, Shopping. Laura Simmons probably heard me, because naturally she would be listening. On cross-examination he said, my mother did not say, "When I am dead and gone, you must look to Miss Simmons." We arranged that I should say that the respondent lived with her aunt at Holywell. I was almost certain that Mr. Scroggs and another would

be my guardians. I have gone by all my three christian names. My ordinary name at Kidlington was Frederick. On a piece of music I gave to Miss Simmons in 1866, I signed my initials F. H.

The respondent on examination said : on the 17th of February, 1866, I went as a companion to Mrs. Mantell to Kidlington. I was usually called Laura only. The children called me Miss Simmons. Some time in October my husband spoke to me of marriage. He said we should be married in the registrar's office. He asked me to go and see the registrar. I had no idea what steps had to be taken. I came back and told him the registrar was not at home. He said I did not know anything; he should go himself. I did not ask for any reason why we were misdescribed as to our residences. He asked me my age. I said twenty-one. On the 19th of November Mr. Scroggs was in the carriage with us. The only conversation I overheard between Mr. Scroggs and the petitioner was about some wild fowl. On cross-examination, she said: I knew the petitioner had only just left school. I never asked him his age. After Mrs. Mantell's death the petitioner and myself became very affectionate to one another. I went to the registrar's office to see what was to be done. I never had had an aunt married in a registrar's office. I never said so to the petitioner. I had no conversation with him about Jericho and Holywell. I swear I never had. I sometimes wore a wedding-ring, sometimes I did not.

Coleridge, Dr. Middleton and McIntyre appeared for the petitioner.—The object of giving notice is publication. The question is, then, has such a publication taken place in this case as if the marriage had been by banns would have been a due publication? The omission of a part of the name of the petitioner, and the falsification of the residences of both parties, could only have been done with a fraudulent intention.

Denman and Lord, for the respondent.—Even if it be correct to say that the same principles apply as in the publication of banns, the evidence is not sufficient to invalidate the marriage. According to the principles laid down in cases of undue

publication, there should be a fraudulent alteration of the name by which the party is usually known, which there has not been in this case. They further contended that the penalty in 6 & 7 Will. 4. c. 85. s. 42. was not intended to apply to a mere misstatement in the notice. By 19 & 20 Vict. c. 119. s. 19. it was recognized that there might be a valid marriage, although the particulars of the notice were false. The giving false information was to be punished in another way, by the penalties of perjury and the forfeiture of property.

[The JUDGE ORDINARY.—Before the Registration Acts were passed, all marriages could be celebrated only after due publication of banns or by licence. The Registration Acts substituted a new system in lieu of banns. By 6 & 7 Will. 4. c. 85. s. 42. if persons knowingly and wilfully intermarry without due notice to the registrar, or without certificate of notice duly issued, the marriage is null and void. By the 38th section, every person wilfully making a false declaration or signing a false notice shall suffer the penalty of perjury; and by the 43rd section, in such a case the offending party shall forfeit all interest in any property which would otherwise accrue to him by reason of the marriage. By the 19 & 20 Vict. c. 119, although by the 4th section a notice is still required, and by the 18th and 19th sections the penalties of perjury and forfeiture are repeated, nothing is enacted as to the invalidity of a marriage without due notice. The circumstance that the legislature has, by 1 Vict. c. 22. s. 34, provided that the giving of notice to the registrar and the issue of his certificate shall be used and stand instead of the publication of banns to all intents and purposes, is not sufficient to authorize the Court to apply the principles laid down as to due publication of banns to the notice to the registrar and his certificate thereon.]

Coleridge.—There is nothing in the 19 & 20 Vict. c. 119. to revoke the 42nd section of the 6 & 7 Will. 4. c. 85. The penalties of perjury and forfeiture were not to be in lieu of, but in addition to, that of nullity. The due notice under 6 & 7 Will. 4. c. 85. must be a true notice. As regards the circumstances that there was no father, mother or guardian of the petitioner to forbid the issue of the certificate, if Mr.

Scroggs had entered a *caveat* under section 13, the registrar would have suspended his certificate in order to examine into the matter, and in the mean time the Court of Chancery would have appointed a guardian. —The cases cited were *Pouget v. Tomkins* (1), *Sullivan v. Sullivan* (2), *The King v. Billingham* (3), *The King v. the Inhabitants of Tibshelf* (4), *Tongue v. Tongue* (5), *Midgley v. Wood* (6), *Bevan v. M'Mahon* (7), *Hill v. Johnson* (8).

The JUDGE ORDINARY (June 16).—This is a suit to annul a marriage between two parties, one of whom was a minor. The marriage took place at the registrar's office in Oxford, on the 19th of November, 1866, and the ground of nullity alleged is, that the parties wilfully intermarried without *due notice* having been given to the proper officer. A notice, regular in point of time, form and other legal requirements, was, in fact, given; but this notice is argued not to have been a due notice, because the names of the parties were not truly stated in full, and the statements as to age and residence were not true. No case has hitherto been decided on this subject; but it was contended that the cases of marriage by banns were analogous, and that the decisions in those cases as to what constituted a due publication of banns ought to guide the Court in determining what was a

(1) 2 Cons. 142.

(2) *Ibid.* 288.

(3) 3 M. & S. 256; s.c. 1 B. & Ad. 194.

(4) 1 B. & Ad. 190.

(5) 1 Moore, P.C. 93.

(6) 30 Law J. Rep. (N.S.) Pr. M. & A. 57.

(7) 30 Law J. Rep. (N.S.) Pr. M. & A. 61.

(8) February, 1868. This case was decided in Hilary Term, when the Judge Ordinary gave judgment as follows: "This was a suit for nullity. The petitioner's case was, that the marriage was clandestine, and that with the view of keeping it secret, both parties agreed to a false publication of banns. The question is solely one of fact, whether both parties were cognizant of the suppression of the names, and agreed to it for the purpose of concealment. The husband said that they were, the wife that they were not. There are opposite evils to be avoided in dealing with suits of this character. On the one hand, there is the evil of a young man inducing a woman to surrender her virtue to him by means of a secret marriage, and then turning round when his purpose has been effected, and seeking to invalidate such marriage by reason of some technical defect. The Court ought to be careful that a case of that kind does not succeed, and should not without very

due notice to the registrar. For the reasons I am about to give, I have come to a contrary conclusion. For the right understanding of the subject it is necessary to review the successive statutory provisions upon marriage by banns, and those also by which marriages at the registrar's office have been created and regulated. By the statute 26 Geo. 2. c. 33. all marriages by banns, if had without due publication of banns, were absolutely void. The Courts construed the provisions with great severity, holding that, without any fraudulent intention, the names published must be the true and full christian and surnames, or, at any rate, so nearly so as to render recognition easy. Upon this statute it was that the numerous decisions of Lord Stowell referred to in the argument took place. The statute 4 Geo. 4. c. 76. mitigated the rigour of previous provisions. It enacted that these marriages should only be void if parties knowingly and wilfully should intermarry without due publication of banns. It thus became necessary that both parties should be guilty of a wilful neglect to have the true names put forward. The statute further provided that, after the marriage had been once celebrated, no question should be raised as to whether the residence of the parties had been truly stated. The next statute, 6 & 7 Will. 4. c. 85, first introduced the system of marriages before a registrar. It did not alter

clear evidence enable the young man's parents to annul the marriage on the mere ground of the omission of a name in the publication of the banns. On the other hand, there is another evil, which is also a considerable one, and that is, that a young man should fall into the hands of a woman in a different degree of life, and be induced to contract a clandestine marriage with her, taking means with her consent to prevent the knowledge of what is going on reaching his friends by a fraudulent change of names in the banns. In this case it is a matter of congratulation that the young woman had not surrendered herself by means of this marriage to the young man. It is admitted that they carried on an illicit intercourse before the marriage, and it is also clear from the correspondence that the respondent was desirous of keeping it secret. As to the actual question whether the wife knew that the husband's name was Johannes de Vere (it was published as John), the Court on the whole must give evidence to the oath of the husband, because two other witnesses were called, and their evidence flatly contradicted the evidence of the wife in several important particulars. The result is, the Court must pronounce the marriage null and void."

the above provisions as to marriages by banns. It provided that a previous notice should be given by persons about to marry to the registrar, and that such notice should be full, giving the names, condition and residence of the parties. The notice, when given, was to be entered in a book accessible to the public. Further, the notice was to be read three successive weeks at the board of guardians; and then the statute went on to say that, if any person should knowingly and wilfully intermarry without due notice to the superintendent registrar, or without a certificate of notice duly issued, the marriage of such persons should be null and void. In these proceedings it is easy to recognize an intended analogy to the method of proceeding by banns; and if these provisions had remained unchanged, there would be a strong ground to contend that the Courts ought to construe the word *due* in relation to the required notice in conformity with the decisions upon the meaning of that word when applied to the publication of banns. But a subsequent statute has made a great and, as it appears to me, an important change in the method of proceeding as to marriages before the registrar. The 19 & 20 Vict. c. 119. has done away with the system (probably found useless) of reading the notice to the board of guardians, and, in place of all such and similar contrivances for giving to parents a warning of the projected marriage of their minor children, it has provided that, under the pain and penalty of perjury, the party giving the notice should swear that he or she actually had the required consent. In this provision the legislature was only assimilating marriages by notice to marriages by licence. For, throughout the period embraced by all the foregoing statutes, marriages by the licence of the ecclesiastical authorities had been permitted; and to obtain such licences it was always necessary in the case of minors to swear that the consent of the parents had been obtained. In conformity with this system the act of 6 & 7 Will. 4. c. 85. empowered the registrar to grant similar licences upon a like oath of actual consent. Having thus provided for the consent of the parents under the penalties of perjury, both the statutes, that of 6 & 7 Will. 4. c. 85. and 19 & 20 Vict. c. 119, have dis-

tinctly enacted that, after the celebration of a marriage, no proof should be allowed of the absence of such consent. In respect, therefore, of consent of parents, I conceive that any analogy which existed between marriages by banns and marriages by notice to the registrar has been effaced, the attempt at securing that consent in the marriages of the latter class by publicity relinquished, and the procurement of actual consent substituted, in the same manner as has always been used in marriages by licence. There is no reason, therefore, why those decisions which have hitherto been applied to marriages by banns, and which have their foundation in the necessity for securing that publicity through which it is the object of banns to reach the parents' consent, should be applied to marriages in which that consent is otherwise attained—*cessante ratione cessat et lex*. I think, therefore, that the due notice required by the statute for the validity of a marriage such as that now in question is a notice conforming to the formalities by the statute provided, and that the words *due notice* will be satisfied though the contents of the notice in respect of the christian names or residence and other details are not strictly true or accurate. Whether a notice in a wholly false name (which *must be* done fraudulently) would be properly held a notice at all may possibly still be a question. It might suffice to stop here; but I think the parties are entitled to my judgment on the evidence which was laid before me. I arrive at the following conclusions of fact: first, that the christian names inserted in the notice were the names and the only names by which both parties were commonly and familiarly known by those amongst whom they lived. This was plain on the evidence on both sides. Next, that it is very doubtful whether there was any intention to deceive anybody by the use of these names; but if there was such an intention, it existed only on the part of the husband. Lastly, the wilful suppression of the remaining christian names of both parties, and the insertion of the false residences, was the act of the husband only, without the wife's concurrence. For there is no evidence which satisfies me that the wife's statement on this subject is not worthy of reliance. Everything which was done in the matter of the

notice, including all inquiries made, was done by the husband alone. The attempt to shew that the wife had obtained knowledge of what was requisite and had tutored the husband as to the notice he should give with a view to concealment wholly failed. The wife swore that on her only visit to the registry the proper officer was absent, and she got no information from any one. If this was untrue, the officer who gave her any information might have contradicted her. If it was true, the husband, when he went to the registry and gave the notice, must in all probability, have acted without the wife's concurrence, for they were both ignorant before he went of the details that would be required, and would have hardly concurred in a common design to falsify them. If these conclusions are warranted by the evidence, the marriage would be valid though tested by the decisions applicable to marriages by banns. For the suppression of a dormant christian name was held, by Lord Stowell, in *Pouget v. Tomkins* (1), not to constitute an undue publication of banns; and even if it did, the concurrence of both parties in that suppression would be necessary to annul the marriage under the provisions of the statute. I must notice one further feature in this case before I conclude. At the time of the marriage, although the husband was a minor, there was no person in existence who had the legal right to assent to or dissent from its celebration. Suppose, then, it had been celebrated by banns, could the Court have held it invalid for want of the true names being published? I very much doubt it. It does not very distinctly appear whether, in all the cases in which the marriage of a minor has been held void, there has been a dissenting parent or guardian; but the reason of the thing would seem to demand that there should have been the absence of such consent. If this be not so, the further question might be asked, What if the parents had actually consented? Would the absence of such a publication of names as would be likely to give them notice of the intended marriage be sufficient to annul that marriage if they had all along been parties to it and given their consent? It is not necessary to decide this matter in the present case; it is enough to have glanced at it. If my previous conclusions

are correct, this marriage was a valid one; and the Court so pronounces it.

Attorneys—Thomas White & Sons, agents for R. B. B. Hawkins, Woodstock, for petitioner; Purkis & Perry, agents for Dayman & Walsh, Oxford, for respondent.

MATRIMONIAL. }
 1868. } ANDERSON v. ANDERSON.
 May 5. }

Alimony—Wife Subpoenaing Husband in Support of Petition—Rule 86.

A wife may subpoena and examine her husband in support of her petition for alimony.

An answer having been filed to a petition for alimony *pendente lite*, an application was made under Rule 86. for an order that the husband should attend for the purpose of being examined. This application was refused. Notice was subsequently given that witnesses would be examined in support of the wife's petition, and the husband was subpoenaed as a witness on her behalf. On the motion for alimony,

Searle, for the wife, called the husband as a witness.

G. Browne.—It is not competent for a wife to call her husband as a witness in support of her petition for alimony. If she can do so, Rule 86, which empowers the Court to order his attendance for the purpose of being examined, is unnecessary.

THE JUDGE ORDINARY.—If the husband is ordered to attend under Rule 86, his attendance is for the purpose of being cross-examined on his answer; but if he is subpoenaed by the wife, it is for the purpose of being examined, and she adopts him as her witness. As he is a competent witness on the question of alimony, the wife has clearly a right to subpoena him if she thinks fit to do so.

The husband was then sworn and examined.

Attorneys—Taylor, Hoare & Taylor, for petitioner; J. Kelly, for respondent.

PROBATE. }
 1868. } JOHNSON v. LYFORD AND
 April 17; } OTHERS.
 June 23. }

Will—Evidence—Declarations by Testator—Revocation by later Will not forthcoming—Intestacy.

Verbal declarations or written statements made by a testator in and respecting the making of his will, preceding or accompanying acts done by him in relation thereto, are admissible in evidence in order to shew the quality and nature of such acts.

Deceased made a will in 1840, and in 1867, while on a visit to a friend, he employed himself much in writing, and stated he was writing out his will, and he gave his friend a paper-writing which, he said, was a copy of his will which he was going to execute. Shortly after he duly executed a will, which, however, could not be found. The paper-writing revoked all former wills:—Held, that the will of 1840 was revoked by a will made in 1867, which, not being forthcoming, must be presumed to be revoked by destruction, and an intestacy was decreed.

The plaintiff, Cuthbert William Johnson, propounded the will of the Rev. Charles Lyford, late of Albion Road, Queen's Road, Dalston, Middlesex, clerk, who died on or about the 29th of July, 1867. The will propounded bore date the 22nd of June, 1840, and in it the plaintiff was named executor.

The defendant, Henry Giles Lyford, pleaded that on the 3rd of January, 1863, the deceased duly executed another will, by which the will, dated the 22nd of June, 1840, was revoked. No trace of this last-executed will could be found, nor was there any evidence of its destruction. The earlier will was found sealed up amongst papers belonging to the deceased's mother, who died in 1866.

On the 3rd of January, 1863, Charles Lyford, who was at that time curate of St. Barnabas, Pimlico, was at the house of a Mr. Morey, a surgeon, and employed himself much in writing; he stated he was writing out his will, and that he intended to sign it in the presence of witnesses. Before leaving Mr. Morey's house he handed to him a paper, which he called a copy of his will, and said it had been written by

himself at the same time and place as the will itself. According to this copy, he revoked all other wills by him at any time made, and appointed as executors and residuary legatees, James White Morey and his wife, Clara Morey. Subsequently, Mr. Morey received from the deceased the following letter:

"Saturday evening (the post-mark was the 5th of January, 1863).—My dear Morey. After leaving you I went to Masters, where I duly signed my will in the presence of Wakeling and Brown, who have also signed as witnesses. I have taken the liberty of putting yourself and wife in as my executors. You will, I hope, excuse this making use of you. In case of my death, the said will shall be found in a box in the cupboard, in my bedroom, which is nearest the window. If I move, I will try and recollect to let you know where the said document is to be found. Love to you both. In haste, yours affectionately, Charles Lyford."

There was evidence given that a will was executed by the deceased in January, 1863, but not as to its contents, unless the declaration and letter of the deceased were admissible.

Dr. Spinks and Dr. Swabey appeared for the plaintiff.

A. Staveley Hill and Searle, for the defendant.

The case was heard on the 17th of April, and on the 23rd of June—

SIR J. P. WILDE gave judgment as follows:—Charles Lyford made his will on the 22nd of June, 1840. About the month of January, 1863, he made another will. On the 29th of July, 1867, he died. After his death due search was made for the will of 1863, which, so far as the evidence goes, he had kept in his own possession, but it was not to be found. The question in this suit is, whether there is sufficient legal evidence as to the contents of this second will. It was proved by Mr. Morey that, on the 3rd of January, 1863, the testator was at his house; that he was writing a great deal; that Mr. Morey was in and out of the room; that the testator told him he was making his will; that he read the will aloud to him; that the testator handed Mr. Morey an envelope, which he said contained a copy of it, and which

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he wished Mr. Morey to take care of; and, finally, he left the house saying that he meant to execute the will on his way home that evening, at Mr. Masters's, the publisher. That he did execute a will at Mr. Masters's shop about that time was distinctly proved by the two witnesses to it, who were in Mr. Masters's employ; and if the Court is at liberty to receive in evidence the above verbal statements of the testator as to his will, and intention respecting the execution of it, there can be no difficulty in arriving at the conclusion that the copy given to Mr. Morey contains the substance of the will which he executed at Mr. Masters's. But it was contended that these verbal statements of the testator were not admissible in evidence; and the case of *Quick v. Quick* (1) and some others were cited.

I am of opinion that the evidence was admissible. The verbal declarations or statements made by a testator in and about the making of his will, when accompanying acts done by him in relation to that subject fall within the well-known principles of the general law of evidence, and have always been admitted, although not made on oath. It would often be impracticable to judge of the quality and nature of the acts done, if the statements of the person doing them immediately preceding or accompanying those acts were excluded from view. Suppose the will, instead of being executed at Mr. Masters's house, had been executed in an adjoining room at Mr. Morey's, in the presence of witnesses, but in the absence of Mr. Morey himself. Could it be contended that the previous conversation with Mr. Morey could have been excluded? There would, no doubt, in such a case be no positive proof that the will of which the testator had been talking to Mr. Morey in one room was the same will that he executed before the other witnesses in the next room, but to exclude the evidence of what had taken place would be to preclude the Court from judging whether it was so or not. A further piece of evidence was tendered in the form of a letter written by the testator to Mr. Morey, a day or two after the 3rd of January, saying that he had made his will and appointed Mr. Morey executor, an office which he begged Mr. Morey to accept.

(1) 3 Swa. & Tr. 442; s. c. 33 Law J. Rep. (N. S.) Pr. M. & A. 146.

There is sufficient evidence, as I have already said, to establish the contents of the will without this letter, but if not, the letter was in my judgment also admissible, in so far, at any rate, as it related to the fact of the testator having appointed an executor, and the request that Mr. Morey would consent to fill that office; for this, too, was in the nature of an act done by the testator, and a declaration accompanying it. The Court, therefore, holds that the contents of the will of January, 1863, have been proved, and from these contents it appears that it revoked all former wills. The consequences of this state of things are most unsatisfactory, for as the will of 1863, which had revoked all former wills, was not to be found after the testator's death, the law presumes that it was itself also revoked by the testator. And the Court is constrained to pronounce for an intestacy. So long as the law thus permits wills solemnly executed to be revoked by the presumptions arising from their disappearance, and so long as the law forbears to prescribe any definite place of deposit for a man's will, the real and true intention of testators will be open to frustration by accident or design. It may have been so in this case, although there is no evidence to throw the slightest suspicion of misconduct upon anybody in relation to it. Still, such cases as this bring forcibly to light the jeopardy in which all wills stand which are not deposited where they are sure to be found, and safe from the possibility of foul play. There was no reason in this case to suppose that the deceased designed to alter or suppress the will of 1863, and, in all probability, it has failed to take effect through mere mischance, from which a more careful custody would have protected it. While the law remains in its present state as to revocation by destruction, the custody of a will is as important as its due execution, and no pains should be spared to secure it.

As the case stands, I must pronounce that the deceased died intestate.

On the application of Counsel, the Court ordered that the costs of both sides should be paid out of the deceased's estate.

Attorneys—Cookson, Wainwright & Co., for plaintiff; Smith, Rawdon & Low, for defendant.

PROBATE. } PARTON AND PAGE v. JOHNSON
1868. } (JOHNSON AND BILLS inter-
July 7. } vening).

Testamentary Suit—Three Wills—Last Will propounded—Executor of First Will opposing—Practice.

The deceased left behind him three executed wills, each of which in fact revoked the previous one. The last will was propounded by the executors named in it against the next-of-kin. The executors of the first will obtained leave to intervene to propound their will, and to plead, as regarded the last will, that it was not duly executed, that the deceased was not of testamentary capacity at the time he signed it, and that it was obtained by undue influence and fraud :—Held, that the executors of the last will could not as such propound the second will as well as their own, merely to prove that it revoked the first will, and therefore deprived the executors of the first will of any interest in the estate of the deceased.

The plaintiffs Joseph Kingsworth Parton and William Page, as executors, propounded the will of the deceased, dated the 20th of March, 1867; the defendant Mary Ann Johnson, the niece and one of the next-of-kin of the deceased, pleaded that such will was not duly executed in accordance with the statute, and that on the day it bears date the deceased was not of sound mind, memory and understanding, and she gave notice under the 41st rule (Rules and Orders 1862) that she only intended to cross-examine the witnesses produced by the plaintiffs. A replication having been filed, on the 12th of May, 1868; the Court directed that the cause should be heard before itself without a jury. On the 2nd of June James Benstead Johnson and William Bills, as executors of a previous will of the deceased, dated the 18th of January, 1858, applied for and obtained leave to intervene and to propound the will under which they were appointed executors. On the 6th of June they filed and delivered to the plaintiffs and to the defendant a declaration propounding the will of the 18th of January, 1858, and on the same day pleas to the plaintiff's declaration denying the due execution of the will of the 20th of March, 1867, and the testamentary capacity of the deceased at that time, and alleging that it was obtained

by undue influence and fraud. On the 18th of June, the plaintiffs, by an order on summons, obtained leave to plead to the declaration of the interveners that the will of the 18th of January, 1858, was revoked by the will of the 20th of March, 1867, but the Judge rejected the plaintiff's application for leave to plead in addition that the said will of the 18th of January, 1858, was not duly executed according to the statute, and that it was revoked by an intermediate will, dated the 25th of October, 1865. This will of October, 1865, had no revocatory clause, but was inconsistent in its provisions with the will of January, 1858. The sole executor and residuary legatee under it died in the lifetime of the deceased.

Bayford, on behalf of the plaintiffs, applied for leave to propound the will of the deceased, dated the 25th of October, 1865, or to plead such will to the declaration of the interveners, in addition to the pleas by them already pleaded, so that such will may be in issue in the suit.—Where parties intervene they must do so in reference to a particular testamentary paper, or generally on the question, what is the will of the deceased?—In the first case they must have an interest in the decision as to that particular document; but these interveners have not, for their interest was put an end to by the will of the 25th of October, 1865. If the general question is in issue, all the testamentary papers ought to be before the Court, but there is no one interested in propounding the will of October, 1865.

Searle appeared for the interveners.

SIR J. P. WILDE.—The plaintiffs cannot plead to the declaration of the interveners any other plea than they have done, because they have no interest in destroying or establishing the will of January, 1858, and for the same reason they cannot propound the will of October, 1865. The next-of-kin are the only persons interested to take such a course. I cannot allow another person having no interest to propound the will of October, 1865, because the next-of-kin do not think proper to do so. I must reject the motion.

Proctor.—R. W. Jennings, for plaintiffs; attorneys,
Redpath & Holdsworth, for the interveners.

PROBATE. }
 1868. } MACLEUR v. MACLEUR.
 July 21. }

Testamentary Suit—Reference of Proceeding to County Court—Jurisdiction of County Court—20 & 21 Vict. c. 77. s. 59. —21 & 22 Vict. c. 95. s. 10.

When contentious proceedings in a testamentary suit are referred by the Court of Probate to a county court, the Court of Probate has no further jurisdiction, except by way of appeal, over such proceedings.

Edward Macleur, the plaintiff, propounded the will of Mary Hewitt, of Birmingham, Warwickshire, widow, deceased, which was opposed by the defendant, John Macleur. The proceedings commenced in the Court of Probate, in London, but on its being proved to that Court that the personal estate did not amount to 200*l.*, the pleadings were transmitted to the Judge of the county court for Warwick, who, on the 9th of July, 1868, made a decree that the plaintiff was entitled to probate of the will of the deceased, and condemned the defendant in the costs.

Pritchard moved the Court of Probate to confirm such decree, and to order the defendant to pay the costs.

Searle, for the defendant, opposed the motion as unnecessary.—He cited *Lealley v. Veryard* (1).

SIR J. P. WILDE.—By the 59th section of 20 & 21 Vict. c. 77, in any contentious matter arising out of an application for probate or administration, if it be shewn to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the Judge of a county court, the Court of Probate may send the cause to such county court, and the Judge thereof shall proceed therein as if such application and cause had been made to and arisen in such Court in the *first instance*. Up to the time, therefore, that the Court made the order, which transferred this case to the county court of Warwick, it had complete jurisdiction over it, and if it had been

asked to do so might have made an order in reference to the costs incurred in this Court; but from the time that the proceedings were removed from this Court it had no longer any jurisdiction or power to decree costs; that power was given to the county court, and if the Judge had thought proper he might have condemned the defendant to pay all the costs from the beginning of the contentious proceedings. This application must be rejected, with costs.

Attorneys—Walker, Twyford & Belward, agents for G. F. Butt, Birmingham, for plaintiff; H. C. Barker, agent for G. W. Prescott, Stourbridge, for defendant.

PROBATE. }
 1868. } In the goods of MAY.
 July 14, 28. }

Will — Revocation by second Will — Revival of first Will by Codicil.

By the 1 Vict. c. 26. s. 22, in order that a codicil should revive a will which in any manner has been revoked, it must shew an intention to revive the same:—Held, that such intention will not be shewn by a mere reference to such will by date, but the codicil must contain express words referring to a will as revoked, and importing an intention to revive the same or a disposition of the testator's property inconsistent with any other intention, or some other expression conveying to the mind of the Court with reasonable certainty the existence of the intention in question.

John May, late of Twickenham, in the county of Middlesex, gentleman, deceased, died on the 2nd day of March, 1867. On the 11th of January, 1860, he executed a will, which had been prepared by his solicitors, Messrs. Farnell & Briggs. By this will he left the whole of his property for the benefit of his daughter and her children, and he appointed John Kebbell Gwyn, Francis Sherborn and William Withers trustees and executors. On the 18th of August, 1860, the deceased, being a widower, married again, and on the day of his marriage executed another will, in substance exactly

(1) 35 Law J. Rep. (N.S.) Prob. & M. 127.

similar to the previous one, and appointed the same executors. This will the deceased kept in his own possession. On the 5th of September, 1860, he called at the office of Messrs. Farnell & Brigg, in whose custody the will of the 11th of January, 1860, then was, and cancelled it by tearing off his signature, but in other respects that will remained uninjured during the deceased's lifetime. On the 3rd of July, 1861, the deceased executed a codicil, which commenced — "This is a codicil to the last will and testament of me, John May, of Twickenham, in the county of Middlesex, gentleman, and which will bears date the 11th of January, 1860." It then referred to the bequest of the residue of his freehold, copyhold and personal estate to his daughter for her absolute use and benefit, and charged it with an annuity of 52*l.* per annum to his wife Mary May for her life, and concluded "And I hereby in all other respects ratify and confirm my said will, and desire that this may be taken and deemed as part thereof." On the 6th of September, 1865, the deceased executed a second codicil, which began "Codicil to my last will and testament, made on the day of , 1860. I by this codicil direct my executors and trustees to pay unto my wife Mary May the sum of twenty guineas, amounting in addition to the sum I have named in the *aforesaid* will . . . I intend by this codicil and the *aforesaid* will that my wife shall enjoy the full benefit of the said bequests for the term of her natural life without let or hindrance, provided only that if my said wife Mary shall after my decease marry a second husband, then and in that case I direct that the whole of the benefit I have bequeathed to her shall revert back to my executors and trustees to be administered by them according to the tenor of the *aforesaid* will."

Dr. Tristram moved for probate of the will of the 18th of August, 1860, and of the two codicils, to be granted to the executors named in the will.—The will of January, 1860, was no longer a will in July, 1861, because it had been revoked by deceased's marriage, and had been subsequently cancelled by him by the tearing off of his signature. Hence an ambiguity arises on the wording of the first codicil, and the Court will admit evidence to shew that the

testator intended that it should be a codicil to the will of the 18th of August, 1860, which was in fact the *last will* of the deceased at the time the codicil was executed.—He referred to *Rogers v. Goodenough* (1).

Judgment was given on the 28th of July as follows—

SIR J. P. WILDE.—The broad question in this and the two succeeding cases is, whether a will which has been revoked and another will substituted, has or has not been revived by the operation of a subsequent codicil. This is a question of construction, and one of some difficulty. The occurrence of no less than three difficulties within a short period in which the question has arisen makes it desirable to pass in review some of the decisions by which the judgment of the Court ought to be guided. The following appear to be the propositions established by previous authority.

Unless there be a latent ambiguity in the codicil, evidence of the testator's real meaning must be excluded. This is in obedience to the well-known common law doctrine with respect to written instruments, as was decided in *Walpole v. Cholmondeley* (2), which was acted upon in *In the goods of Chapman* (3). It may be proper on some future occasion to consider the doctrine upheld in courts of equity, where mistakes, if proved to demonstration to be so, have been rectified even in written documents. This subject is well discussed in *Story's Equity Jurisprudence*, ss. 156, 157.

The next proposition is this: that although evidence of the testator's intention is excluded, the Court ought always to receive such evidence of the surrounding circumstances as by placing it in the position of the testator will the better enable it to read the true sense of the words he has used. This is a doctrine constantly acted upon at common law in relation to written documents, and notably in cases of written guarantees. It is affirmed in the fifth proposition of Sir J. Wigram's excellent book on this subject.

Thirdly, it has been decided by no less than three very remarkable cases, that if the codicil refer to a will with the intention of

(1) 2 Swa. & Tr. 342; s. c. 31 Law J. Rep. (N.S.) Pr. M. & A. 49.

(2) 7 Term Rep. 138.

(3) 1 Robert. 1.

reviving it, and it turns out that such will has been entirely burnt or destroyed by the testator *animo revocandi*, the codicil cannot effect the revival.

The circumstances of these three cases, of course, varied; but in all three there were two wills, the later one revoking the former, and a subsequent codicil referring by date to the former will. They all had this further feature, that the first will was not only revoked but destroyed. The earliest was the case of *Hale v. Tokerlove* (4), decided by Dr. Lushington, in 1850. He held that the codicil would not in law revive the first will, because the will was "gone, destroyed *animo revocandi*" (p. 328); but that the second will was revoked by necessary implication, because a prior one was confirmed. The only paper entitled to probate he held to be the codicil. The next case was that of *Newton v. Newton* (5), determined in the Probate Court in Dublin, by Dr. Keatinge, in 1860. He held, like Dr. Lushington, that the codicil could not revive the first will, but that the second will was entitled to probate, as the intention to revoke the second was dependent upon the establishment of the first. His decision on this last head was reversed by the Court of Appeal (6) in 1861, and the testator declared to have died intestate. The last case was that of *Rogers v. Goodenough* (1), decided by Sir C. Cresswell, in 1862. He held, as in the other cases, that the codicil would not revive a will that had no existence; but that there being no words in the codicil expressing the intention to revoke the second will, and no disposition of property inconsistent with that will, there was no ground for affirming that in any of the modes pointed out by the statutes a revocation of the second will had been effected. And he granted probate of the second will and the codicil, as together containing the will of the deceased. This last case, it will be observed, is an authority for this further proposition that a codicil, which refers by date, and which the testator intended as a codicil to one will, may be entitled to probate with another will. Assuming then, upon these authorities, that a codicil may, by referring in adequate terms to a revoked will, revive that will if

it be in existence, and that in ascertaining whether the testator intended such revival the Court is precluded, unless there is a latent ambiguity in the codicil, from receiving any evidence except what may suffice to place it in the position of the testator, the next question will be, what is the effect of the statute?

The words of section 22. (1 Vict. c. 26.) are "No will or codicil; or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and shewing an intention to revive the same." What is the meaning of these last words? To appreciate them it is necessary to bear in mind the law as it stood when they were enacted. The theory of the law is, and always was, that a codicil forms part of a will, and consequently that to make a codicil to your will is first to affirm the existence of that will; and, secondly, republish it or re-affirm its validity. It was, therefore, before the act, an inference which the law drew from the making of the codicil, that the testator intended to re-affirm his will, and if the will had been revoked by re-affirming it to revive it. In brief, it would not be wrong to say that all codicils to wills were held (before the act passed) to revive the wills to which they were respectively codicils, if such wills had been previously revoked. As soon, therefore, as it could be ascertained that the codicil in question was a codicil to a particular revoked will, that will was revived. The difficulty with which the Courts in the contested cases had to grapple was to ascertain to which or what will the disputed paper was intended as a codicil.

Such being the state of the law before the Wills Act, I hesitate to accept the conclusion that the express words of the section meant to leave the matter in the same state in which it would have stood if they had never been introduced. If the merely declaring that a particular paper was to be taken as a codicil to a particular will was all that the legislature required, when it enacted that the codicil should shew an intention to revive a revoked will, the words *shewing an intention to revive the same* were quite useless, for every codicil to a revoked will, by power of being

(4) 2 Robert. 318.

(5) 5 Law Times, N.S. 218.

(6) 12 Ir. Chanc. Rep. 118.

a codicil to such will, so shewed it. I therefore infer that the legislature meant that the intention of which it speaks should appear on the face of the codicil, either by express words referring to a will as revoked, and importing an intention to revive the same, or by a disposition of the testator's property inconsistent with any other intention, or by some other expression conveying to the mind of the Court with reasonable certainty the existence of the intention in question. In other words, I conceive that it was designed by the statute to do away with the revival of wills by mere implication.

It is proper here to take notice of the case of *Payne and Meredith v. Frappes* (7). In that case there would seem to have been little beyond the reference by date to shew the intention to revive a former will. But the Court did not lay down the proposition that the date alone was sufficient; on the contrary, the learned Judge said, "I must gather the intention from the codicil itself, and I must confess that, to my mind, the intention to revive the will of 1837 is clearly shewn; there is a specific reference to the will of 1837 by date, and I must say the testator has taken great pains to describe the instrument to which the paper of 1839 is described as a codicil" (p. 593). The decision proceeded upon the ground that the Judge was convinced of the testator's intention, not that he felt bound by the language of the codicil in the face of an opposite conviction. On the other hand, I am much fortified in the view I take of the statute by the remark made by Sir C. Crosswell in *Marsh v. Marsh* (8): "It may be assumed that a codicil to a will shews an intention that some will should be operative, and *prima facie* the last existing will, especially if that revoked all others, must be taken to be the will intended. . . . It appears to have been the object of the legislature to put an end equally to implied revocations and implied revivals." The due result of the documents in each case, and of such external facts as may be admitted in evidence, must of course be gathered from the language of the documents themselves read in the light of such facts. Some general

views, however, present themselves, some general probabilities of intention attend all such cases as those now under judgment. It may in the outset, I think, be doubted whether any testator, who bore in mind that he had revoked his will, and substituted another for it, ever really sat down with the purpose of revoking his last will and reviving the former one, and set about the execution of that purpose by simply making a codicil referring by date to his first will without more. Would any lawyer advise such a course, or would any unskilled testator imagine he could achieve the end by such a method? The leading idea of revoking the one and reviving the other in its place would surely find expression by some form of words in a paper designed mainly for that object. On the other hand, I conceive that in the vast majority of cases, when a man declares his intention that a particular paper varying his previous dispositions shall be taken as a codicil to his last will and testament, he means that which really is his last will and testament, his then existing will, and the dispositions of his property then in force. In like manner, when he goes on to declare, in the common language of codicils, that in all other respects he ratifies and confirms his last will and testament, he really means to confirm that which exists, and not to bring to life a paper which has ceased to be testamentary, or revive dispositions which have no existence, and are therefore not, properly speaking, capable of being ratified. That these conclusions are just in the main is amply proved by the fact that when full light has been cast on the testator's real purpose by means of parol evidence, the reference to the earlier will has in most cases turned out to be nothing but a blunder. If experience had not shewn the fact, it would be almost incredible that mistakes should occur so constantly as they do in so simple a matter as reciting the true date of a will. And yet in many cases errors of this kind, can, if allowed to be proved, not only be proved, but proved to demonstration. The excluded evidence in *Walpole v. Cholmondeley* (2) proved the error that had been committed and the cause of it on testimony so clear and so free from suspicion as to remove the last trace of reasonable doubt. Sometimes the error arises from the attorney or clerk, who had laid

(7) 1 Robert. 583.

(8) 1 Sw. & Tr. 555; n.c. 30 Law J. Rep. (N.S.) Pr. M. & A. 77.

his hand on the wrong paper; sometimes from the testator, who has kept his first will in his own possession, and forgotten his second, which he has left in the hands of his attorney; oftentimes from the employment of an attorney to draw the codicil, who has made an earlier will, and has been in ignorance that a subsequent will has been made. I am therefore of opinion that the Court ought to be slow to conclude that a testator has manifested in this indirect way a desire to revoke his last will, and that it should scrutinize narrowly the language of a codicil which is said to shew such an intention, lest in the desire to follow the testator's wishes too blindly, it sets them at naught altogether.

I proceed to the facts of this case. The testator made a will on the 11th of January, 1860. On the 18th of August he married, and on the same day, after his marriage, executed a fresh will, which in terms revoked the former one. On the 5th of September in the same year he took the trouble to cancel his first will by tearing off the signature. On the 3rd of July, 1861, he made a codicil, which he described as "a codicil to the last will and testament of me, John May," &c., and which will bears date the 11th of January, 1860. If parol evidence is admissible, it is plain that this reference to the earlier will was nothing but a mistake on the part of the attorney who drew it; but I do not think it is necessary to decide whether it is so or not, for I am unable to perceive any sufficient evidence on the face of the codicil itself that the testator entertained an intention to revive the former will. His marriage itself had revoked it. He had immediately after his marriage substituted another for it in almost the same identical terms, and to prevent all mistake he had taken the trouble to tear off the signature. It is plain that in September, 1860, when he thus acted, he considered the will of August to be the effective record of his testamentary dispositions, and I can conceive no motive which would render it probable, or hardly possible, that he should desire to revive the will of January. In a word, the codicil, read by the surrounding circumstances of the case, fails to shew the necessary intention.

The Court grants probate of the will of August, 1860, together with the codicil

of July, 1861, and a further codicil of the 6th of September, 1865, as to which no question was made (9).

Proctor—A. N. Cherrill, for the applicant.

(9) In deciding this case the Court had also before it two other cases of a similar character; the particular decision in each of those was as follows:

In the goods of STEELE.

Dr. Deane and A. Staveley Hill appeared for the parties.

SIR J. P. WILDE.—The testator made a will of the 17th of January, 1866. On the 25th of October, 1866, he made a fresh will revoking the former. On the 12th of January, 1868, he made a codicil, which was declared to be a codicil "to his last will and testament, which will bears date the 16th of January last past," in other words the 16th of January, 1867. At the conclusion of the codicil he confirms "his said last will." Here is a latent ambiguity, and the Court may resort, if need be, to the affidavits filed. But I am of opinion that on the face of the documents themselves there is no intention shewn with anything like sufficient distinctness to revoke the testator's last will and revive the former one. It is true that the codicil speaks of the last will as containing a legacy to his nephew of 100*l.*, and that the legacy is to be found in the will of January, 1866, whereas in the last will the legacy is reduced to 50*l.* But that the memory of the testator, an old man past eighty, was at fault is clear by his widely incorrect reference to the date of his last will, and I see no reason why it should not have failed him in describing the amount of the legacy which he wished to revoke, though he bore in mind the object of his bounty. On the other hand, the will he speaks of is his last will, and there is no trace of a desire to depart from it to be found on the face of the codicil. I think therefore that the will of October, 1866, was never revoked, and that it is entitled to probate together with the codicil in question.

In the goods of WILSON.

Prichard appeared for the applicant.

SIR J. P. WILDE.—In this case the testator made his will on the 24th of September, 1858. On the 16th of July, 1861, he made a fresh will disposing of the whole of his property. The first will was found after his death with the signature torn off, and had been used by him as a draft for the second will. On the 20th of December, 1864, he made a codicil, which he declares to be a codicil to his last will and testament, dated the 24th of September, 1858. Notwithstanding the perfectly distinct reference to the date of his earlier will, it is plain to demonstration from the contents of the codicil itself that he was really referring to the will of 1861. He speaks of bequests which are to be found only there, and goes on to say that he has altered those bequests in his own hand on the face of his said will, and for greater certainty has mentioned the lines in which these alterations are to be found. These alterations, with numbers to the lines, are found in the will of 1861, and the Court has no hesitation in affirming that it was to that will he intended the codicil to apply. The Court grants probate of the will of July, 1861, with the codicil of December, 1864.

MATRIMONIAL. }
 1868. } BLACKBORNE v. BLACKBORNE.
 May 22. }

Suit for Restitution—Answer charging Adultery and praying for Judicial Separation—Abandonment of Prayer for Restitution at Trial—Evidence of Parties as to Adultery—14 & 15 Vict. c. 99. s. 4.

The answer to a petition for restitution of conjugal rights charged adultery, and prayed for a judicial separation.

At the trial, the petitioner abandoned his prayer for restitution, and offered no evidence:—Held, first, that such abandonment did not take away the respondent's right to go for a judicial separation.

Secondly, that the evidence of the parties was admissible upon the question of adultery, there being no "suit or proceeding instituted in consequence of adultery" within the meaning of 14 & 15 Vict. c. 99. s. 4.

This was a petition by a husband for restitution of conjugal rights. The respondent had filed an answer charging the petitioner with adultery, and praying for a judicial separation. The petitioner traversed the charge of adultery, and the issue now came on for trial by a jury.

*Ballantine, Serj. (Day and H. James with him).—*The petitioner has determined to abandon his suit for restitution; the respondent therefore cannot give evidence upon the issue of adultery.

*Dr. Spinks (Searle and R. J. Shee with him), contra.—*The petition cannot be abandoned without the respondent's consent. She wishes the cause to proceed.

The JUDGE ORDINARY refused to allow the petition to be abandoned without the respondent's consent.

The petitioner not tendering any evidence, the respondent was called as a witness in support of the charge of adultery.

*Day.—*The respondent is not a competent witness. The petition for restitution having been abandoned, the only question before the Court is the respondent's prayer for a judicial separation on the ground of adultery. That is "a proceeding instituted in consequence of adultery" within the mean-

ing of the 14 & 15 Vict. c. 99. s. 4, and the evidence of the parties is therefore inadmissible—*Burroughs v. Burroughs* (1).

*Dr. Spinks, contra.—*The evidence of parties is only excluded where there is a suit or proceeding instituted in consequence of adultery. Here the suit instituted was for restitution of conjugal rights.

Searle (on the same side).—Burroughs v. Burroughs (1) is an authority in favour of the admissibility of the respondent's evidence, as an answer to the suit for restitution and for the purpose of getting the petition dismissed. Whether the Court can upon her evidence decree a judicial separation is another question.

The JUDGE ORDINARY.—I wish that I could decide the question upon any reasonable ground. I should like to have some reasonable ground for holding that a husband or wife may be examined upon the question of adultery in a suit for restitution of conjugal rights, whilst their evidence upon the same question is excluded in a suit which happens to have been instituted on the ground of adultery. I cannot see the slightest distinction between the two cases. The reasons for and against allowing the parties to a suit to be examined in respect of their alleged adultery are well known; but it is impossible to suggest a reason why the admission or rejection of their evidence should depend upon the form of the suit. It is conceded that if the petitioner had proceeded to-day in the ordinary way, had proved the marriage and asked for a decree of restitution, the respondent would have been a competent witness upon the question of adultery. It is said, however, that a different state of things has arisen in consequence of the petitioner abandoning his prayer for restitution. But the suit remains the same. The Court has refused to allow him to withdraw his petition, and the suit is, in my opinion, not affected by the circumstance that he does not mean to ask for a decree. I have nothing to guide me but the act of parliament, and there is nothing in the act which excludes the evidence of parties in such a case as this. The exclusion is confined to cases in which there is a suit

(1) 2 Sw. & Tr. 544; s.c. 31 Law J. Rep. (N.S.) Pr. M. & A. 124.

or proceeding instituted in consequence of adultery, and this suit was not instituted in consequence of adultery. It is true that the wife, in her answer, seeks for relief on the ground of her husband's adultery, but that does not prevent the suit being originally one for restitution of conjugal rights, because, as the record stands, the petitioner is entitled to claim restitution if the adultery should not be proved. With respect to *Burroughs v. Burroughs* (1), what Mr. Searle says is true, but the question is a very important one, and I shall take a note of the objection, so that the matter may be brought before the full Court. For the purposes of to-day, I shall admit the evidence.

The respondent was then examined. The jury found that the petitioner had been guilty of adultery.

The JUDGE ORDINARY suspended the decree.

On the 2nd of June, *Hawkins* (Day and H. James with him) moved for a rule nisi for a new trial, on the ground of the improper reception of the respondent's evidence.

The JUDGE ORDINARY.—The question is an important one, and ought to be submitted to the full Court. I shall therefore refuse to grant a rule, so that you may appeal.

The petitioner appealed, but the appeal was subsequently abandoned.

Attorneys—Naah, Field & Layton, for petitioner;
Risley & Stoker, for respondent.

MATRIMONIAL. } **BLAND v. BLAND AND STOR-**
1868. } **MCNT.**
June 2. }

Dissolution of Marriage on Ground of Adultery—Answer praying for Judicial Separation on Ground of Cruelty—Evidence of Parties on Issue of Cruelty—29 Vict. c. 32. s. 2.

The 2nd section of 29 Vict. c. 32, which empowers the Court to grant a judicial

separation when prayed in an answer to a suit for dissolution of marriage, has not altered the law of evidence. Where, therefore, an answer to a suit for dissolution of marriage on the ground of adultery charges cruelty, and prays for a judicial separation, the evidence of the parties upon the question of cruelty is inadmissible.

This was a petition by a husband, for dissolution of marriage on the ground of adultery, claiming damages. The respondent and co-respondent denied the adultery; and the respondent charged the petitioner with cruelty, and prayed for a judicial separation.

The issues came on now for trial by a jury.

Parry, Serj. (Searle and L. Smith with him), for the respondent, tendered her as a witness to prove the charge of cruelty.—In *Whittal v. Whittal and Hunt* (1) it was held that, in a suit for dissolution of marriage on the ground of adultery, a respondent, who in her answer charges the petitioner with cruelty and desertion, is not a competent witness on the issues of cruelty and desertion. The 2nd section of 29 Vict. c. 32. empowers the Court to grant relief upon a prayer contained in an answer; and the effect of that section is to place a respondent, who prays for relief in her answer, in the same position as if she were a petitioner. She is, therefore, a competent witness.

Digby Seymour, Dr. Spinks and Inderwick, for the petitioner.

Thomas, for the respondent.

The JUDGE ORDINARY.—The 2nd section of 29 Vict. c. 32. has made no alteration in the law of evidence. The evidence of parties is therefore still excluded upon the charges of cruelty and desertion, when those charges are contained in an answer to a suit instituted on the ground of adultery. The respondent's evidence is inadmissible.

Attorneys—Hillyer & Fenwick, for petitioner; E. J. Barrow, for respondent.

(1) 30 Law J. Rep. (N.S.) Pr. M. & A. 43.

[IN THE HOUSE OF LORDS.]

MATRIMONIAL.	{	RYVES v. THE ATTORNEY GENERAL.
1868.		
June 22.		

Legitimacy Declaration Act, 1858—Appeal—Practice.

It is not competent to a Court of appeal to consider whether or not the jury have arrived at a proper conclusion upon a question of fact submitted to them.

Where a decree contains nothing more by way of recital than the findings of the jury, the only duty of the Court of appeal, when this decree is brought before it, is to ascertain whether the verdict has been properly applied.

This was a petition of appeal, complaining of that part of a decree of the Court of Divorce and Matrimonial Causes dated the 13th of June, 1866, which declared that one Olive Serres was not the legitimate daughter of Henry Frederick, Duke of Cumberland, and that there was no valid marriage between the said Duke and one Olive Wilmot, who was alleged to have been the mother of the same Olive Serres.

In 1861, and under the Legitimacy Declaration Act, 1858, the appellant had obtained a decree establishing the marriage of her parents Thomas Serres and Olive his wife on the 1st of September, 1791, and that she, the appellant, was the legitimate issue of such marriage.

In 1866 the appellant endeavoured, under the same act, to obtain a decree establishing a marriage which she said had been celebrated between one Olive Wilmot and Henry Frederick, Duke of Cumberland; and that her, the appellant's, mother, Olive Serres, was the legitimate issue of such marriage.

At the trial, a vast number of documents, in the nature of certificates, had been put in, which, if proved to be genuine, would have abundantly evidenced the marriage sought to be established. But the jury, without discriminating which, if any, of these documents were genuine, and without distinctly declaring that, in their opinion, the whole were false, rejected the evidence as spurious. And on their finding the Court gave judgment against the appellant.

This case is reported fully in 35 *Law J. Rep.* (N.S.) Pr. M. & A. 6.

From this decree the appellant now appealed to this House, alleging, as reasons only to the effect, that the verdict of the jury was wrong.

The appellant appeared in person, and was about to read from a paper her reasons for being dissatisfied with the decree appealed from; when

The Attorney General (Sir J. Karslake) made the preliminary objection that the appeal raised no question as to the validity of the decree; that the decree was, upon the face of it, perfectly correct; and that no fault was found with it in point of form; that the decree was founded upon a verdict to which no objection had ever been made by bill of exceptions, or upon a motion for a new trial, or by having the finding of the jury turned into a special verdict or a special case; and that therefore there was nothing before the House of which their Lordships could take cognizance. And he read the 55th and 56th sections of the act 21 & 22 Vict. c. 93, and the 7th section of the act 22 & 23 Vict. c. 61, as to the right of appeal conferred by those acts (*The Legitimacy Declaration Act, 1858*); and he cited *Fernie v. Young* (1).

Mrs. Ryves, the appellant, had no suitable answer to make to this objection, and the House, without calling on the *Solicitor General* (Sir C. J. Selwyn), *Dr. Travers Twiss*, *Hannen* or *R. Bourke* (who were with the *Attorney General*), dismissed the appeal.

Dr. W. Smith, who appeared for the son of the appellant, who had been joined as a respondent, asked to be heard on the question; but Mrs. Ryves, the appellant, rejected his assistance, and the House refused to hear him unless as counsel for the appellant herself.

THE LORD CHANCELLOR.—This is a case in which I think your Lordships will feel very great regret that the appellant has not put herself in the hands of some legal adviser, because I think, if that had been done, even at the risk of a certain amount of expense, a very much greater amount of

(1) 35 *Law J. Rep.* (N.S.) Chanc. 523.

expense would have been avoided, which she has been obliged to incur in order to bring before your Lordships an appeal as to which, the moment it is opened, an objection arises which, as it appears to me, it is perfectly impossible to surmount.

Now, this appeal, when it comes to be looked at, is simply and merely an appeal on a matter of fact which has already been submitted to and been pronounced upon by the verdict of a jury. The reasons stated in the case of the appellant are eight in number; every one of them are directed to shew that the verdict of the jury upon the questions submitted to them was an erroneous verdict. The proceedings under the Legitimacy Declaration Act were for the purpose of having it declared that the pedigree of the present appellant was of the character which she has, in her petition, described. Those proceedings immediately raised a number of questions of fact, and those questions of fact were properly brought to issue and laid before a jury for their determination. And I apprehend, beyond all doubt, that when the verdict of a jury, obtained in that way, is followed by a decree such as was made in the present instance, a decree containing nothing more by way of recital than the finding of the jury in such a case, the finding of the jury takes the place of the whole evidence which has been tendered in the case; and when the decree is brought before your Lordships, your Lordships have no duty beyond this, to ascertain whether, the jury having found the verdict which they have found, that verdict has been properly applied by the decree which the Court has added to the verdict.

If any objection had existed on the ground of the rejection of evidence or the improper reception of evidence, the act of parliament provides a mode by which that objection might be insisted upon. A bill of exceptions might have been tendered; or even, without tendering a bill of exceptions, an application might have been made in the Court for Divorce and Matrimonial Causes for a new trial. So that, either by a bill of exceptions or by a motion for a new trial, any question upon the admission or rejection of evidence might have been raised. And the case might, at all events by a bill of exceptions, have been brought before your

Lordships for decision. But no course of that kind was adopted. The verdict of the jury having been obtained, it was submitted to without any motion for a new trial; and your Lordships, as I have already said, are now asked to do that which must oblige you either to consider whether the jury arrived at a proper determination, or whether, having arrived at that determination, the Court has properly applied the verdict in the decree which it has made. As to the first of these courses, it is a duty which it is not open to your Lordships to discharge. As to the second, namely, the form of the decree, no suggestion has been made at the bar, or in the case of the appellant, that, the verdict of the jury standing, the decree is an improper decree. Therefore, without detaining you further, but simply reminding you of these general principles, and of the manner in which this House in a very recent case found itself obliged to apply them,—in the case of *Fernie v. Young* (1), which was referred to at the bar,—I fear that no other course is open to your Lordships (I say *I fear* because I regret the great expense which has been unnecessarily incurred) except to dismiss this appeal with costs.

LORD CRANWORTH.—I concur entirely in what has fallen from my noble and learned friend, and the only observation I would make is this: it was suggested at the bar that this was a technicality, as it was called, with which the appellant was not conversant. I cannot admit it to be a technicality at all. It is of the very essence of justice. The question submitted to the Court below was, Aye or no, was this lady in a certain position and status in point of relationship and descent? That question was, according to the course of law, submitted to the proper tribunal. The proper tribunal has found that she had not that status which she insisted upon; and that having been so found, she, without having complained at all of the conclusion at which that tribunal arrived, comes here and complains of what the Court has done in consequence of that finding of the jury. That is not in any legitimate sense a technical objection. It goes to the very root and substance of the case. I therefore concur in the course recommended by my learned and noble friend.

LORD CHELMSFORD and LORD COLONSAY concurred.

The LORD CHANCELLOR.—I would only add to what I took the liberty of saying to your Lordships, and in affirmance of what my noble and learned friend has just observed as to the statement that this is a technical objection, that I can conceive no greater scandal to the administration of justice than it would have been if the law had turned out to be, that, a question of fact having been submitted to a jury, who had before them the witnesses and the power of observing their demeanour and the conduct of the trial generally, it were now competent to your Lordships to re-open that question, and to consider whether the jury have, or have not, arrived at a proper conclusion.

Decree (so far as appealed from) affirmed; and appeal dismissed with costs.

Attorney—E. L. Rowcliffe, for respondent.

[IN THE HOUSE OF LORDS.]

MATRIMONIAL.

1868.

June 23.

MILFORD v. MILFORD.

Divorce on Petition of Wife—Cruelty—Judicial Separation.

The essential feature of cruelty (such as, when coupled with adultery, will entitle a wife to a divorce) is, that there must be actual violence of such a character as to endanger personal health or safety, or there must be a reasonable apprehension of it.

This was an appeal from the decree and order of the Judge Ordinary made in December, 1866. The case is reported in 36 *Law J. Rep.* (N.S.) Prob. & M. 30.

The husband had been guilty of adultery of the most profligate character. The wife in 1866 presented her petition for a dissolution of the marriage, setting forth several distinct acts of adultery and also a general allegation of cruelty on the part of the husband, as by his violent conduct and by

his threats to strike his wife; and there was a pretence that he had attempted to smother her. The Judge Ordinary had held, that though the adultery was of a gross and profligate character there had not been cruelty of such a character as the act of parliament contemplated as ground, when coupled with adultery, for a divorce, and his Lordship only decreed a judicial separation.

Mrs. Milford appealed.

The Attorney General and Dr. Spinks, for the appellant.—There was no question as to the respondent's profligacy. The nature of the acts of adultery, and the frequency of them, were such as to amount to legal cruelty. Besides, there were several acts of actual cruelty, and for these the remonstrances of his wife on account of his adultery afforded no justification. If the conduct of a man is habitually savage and profligate, and breaks out in certain instances, he may at any moment go further, and there is no necessity for the wife actually to wait till she suffers some specific injury. There was undoubted injury to her health. In *Curtis v. Curtis* (1), Lord Stowell, referring to *Evans v. Evans*, defines cruelty to be "the reasonable apprehension of injury to person or health." There is no necessity to wait till the violence has resulted in actual injury. As to the question raised as to condonation by reason of the wife's delay in coming forward, there was no forgiveness or condonation. She simply kept his ill-conduct in the background. Even if there had been condonation, condonation is only a conditional pardon dependent on the future observance of the duties of marriage life, a condition which the respondent had broken.

Coleridge, Kingdon and Searle, for the respondent, were not called on.

The LORD CHANCELLOR said, that matters raising questions of cruelty depended, as to their nature and character, entirely on the surrounding circumstances, and of these there were in this case no full description. Neither was any clear proof of malice furnished. Of the acts themselves, some

(1) 1 Swa. & Tr. 192.

were apparently trivial: one was an attempt at a blow when the husband was starting on a journey; another was the throwing a brush. As to the allegation that he threatened to dash his wife's brains out with a poker, and that he attempted to smother her with a pillow, these alleged acts did not seem to have occasioned the wife any present apprehension for her personal safety, for she continued to cohabit with him after each affair for more than two years. And as to the pillow, the lady did not seem to have had any difficulty in removing it from her mouth. The decree and order of the Judge Ordinary were correct.

Decree affirmed, and petition of appeal dismissed, with costs.

Attorneys—A. F. Sheppard, for appellant; Harrison, Beal & Harrison, for respondent.

MATRIMONIAL.

1868.

June 19;

July 14.

LEMPRIERE v. LEMPRIERE
AND ROEBEL.

Judicial Separation—Adultery of Wife—Conduct of Petitioner conducing to the Adultery—Par Delictum—Practice.

The adultery of the respondent having been proved, and also cruelty and misconduct on the part of the petitioner which conduced to such adultery, the Court refused to allow a prayer for judicial separation to be substituted for that for dissolution of marriage, in order that the evidence of the misconduct of the petitioner should be expunged.

It is doubtful whether the principles of compensatio criminis and par delictum, as laid down in the Ecclesiastical Courts, are any longer applicable to matrimonial suits under the Divorce Acts, by which greater restrictions have been placed on the relief to be granted in such cases.

This was a petition by the husband, praying for a dissolution of his marriage with the respondent, by reason of her adultery with the co-respondent. The respondent pleaded adultery by the hus-

band and cruelty. By leave of the Court she filed a cross-petition, in which the same charges were made against him. The petitions were heard before the Judge Ordinary without a jury.

Dr. Tristram appeared for the petitioner. *Kenealy* and *Pater*, for the respondent.

The JUDGE ORDINARY (July 14).—On the trial of this cause it was intimated by the Court that the adultery of the respondent was established. It was also established on evidence in the suit, independently of the cross-petition which the Court permitted the respondent to file, that the petitioner had for many years treated his wife with great barbarity. He was an habitual drunkard, and had savagely beaten his wife on numerous occasions. She had continually sought the protection of the law, and he had been many times before the magistrates. Finally he was sentenced to one month's imprisonment for an assault upon her, and on regaining his liberty he went to Birmingham instead of seeking his wife, and lived a considerable time apart from her. After a time, and as I believe after the adulterous intercourse with the co-respondent had commenced, she went to Birmingham for a fortnight, during which she cohabited with her husband. But her object in thus returning to him was to see her children, and I do not believe she intended to condone the past. On this state of the facts it is plain that the petition for dissolution of marriage must fail, for the husband has been guilty of misconduct which conduced, and in my judgment very largely conduced, to his wife's adultery. Indeed, it is scarcely too much to say, that his treatment of his wife drove her into cohabitation with another man. But it is contended that although the petitioner thus fails under the provisions of the Divorce Act, the Court ought to allow him to amend his petition in order to convert it into a petition for judicial separation; and then it is said that his cruelty and misconduct will be no answer to the wife's adultery, and he would be entitled to a decree. It seems to me it would be a great injustice if he could thus obtain a decree against his wife in respect of the adultery which he so largely aided

to bring about, and I shall therefore give him no aid in doing so. A similar application was made in *Boreham v. Boreham* (1), and refused by the Court. Whenever the question here mooted arises in a suit properly instituted for judicial separation, it is desirable that it should be gravely considered whether, since the Divorce Act, a husband guilty of cruelty or desertion can sue for a judicial separation on the ground of his wife's adultery; still more, whether he can do so in case his own cruelty or desertion has, in the judgment of the Court, led to the adultery of which he complains. I am aware that in the Ecclesiastical Courts there is more than one decision that by way of *compensatio criminis* cruelty is no answer to adultery. At the same time there are passages to be found, in one judgment at least, which tend to make it doubtful whether such a rule would be applied where the cruelty preceded and brought about the adultery. "There may by possibility be cases where cruelty on the part of the husband may directly lead up to the wife's adultery; I say nothing upon such a case." This is the language of Dr. Lushington in *Dillon v. Dillon* (2). But the Divorce Acts made a great change in the law of the Ecclesiastical Courts by constituting desertion a matrimonial offence, and by giving the larger remedy of dissolution of marriage for the wife's adultery. It will be proper to consider how far these changes and the general restrictions made under which relief is given by those acts in cases of divorce do or do not multiply the restrictions within which judicial separation should be granted beyond those which were recognized in the Ecclesiastical Courts in suits for divorce *a mensa et thoro*. And the more so because this doctrine of *compensatio criminis* is not a wholly satisfactory one or capable of being logically adopted as a guide in granting or refusing relief. It is said that the cruelty of the husband will not justify the adultery of the wife, but so neither will his own adultery, and yet the latter has ever been held to be a bar. Again, what is *par delictum*? What stand-

ard has the Court for the measure of matrimonial offences, except the punishment with which they are visited, or the relief to which they give a title? In a suit for divorce *a mensa et thoro*, adultery and cruelty stood upon a level in those respects, and in a suit for judicial separation they do so now. There is much to consider under these and some other heads, whenever the question arises. In the present case both the petitions must be dismissed, the wife to have her costs of establishing the cruelty.

Attorneys—Chilton, Burton & Co., agents for W. & A. F. Morgan, Birmingham, for petitioner; A. Warraud, for respondent.

PROBATE. }
1868. } *In the goods of THOMAS BIGGS.*
June 23. }

Will—Residuary Legatee a Married Woman—Renunciation with Consent of Husband—Husband a Creditor—Rule 50. (1862).

Rule 50, (Rules and Orders, 1862,) which directs that no person who renounces probate or administration in one character shall be permitted to take representation to the deceased in another, does not apply to the husband of a residuary legatee who signs a renunciation, executed by his wife, merely to signify his assent to her act. As a creditor he may take administration notwithstanding his signature to such a document.

Thomas Biggs, late of 17, Upper St. James Street, Brighton, Sussex, corn-merchant, died on the 2nd of April, 1868, having executed a will, dated the 30th of March, 1868, in which he named Thomas Cutten and William Coppard executors, and divided the residue of his personal estate equally amongst his brothers and sisters living at his decease. The deceased's estate being insolvent, the executors and residuary legatees declined to act, and by instruments under their hands and seals renounced probate of the will of the deceased and of administration with such will annexed. Three of the residuary legatees

(1) 35 Law J. Rep. (N.S.) Prob. & M. 49.

(2) 3 Curt. 94.

are married women, namely, Elizabeth Caffyn, wife of Richard Caffyn; Sarah Turner, wife of William Turner; and Jane Webber, wife of Henry Webber; and in executing the renunciation they expressly declared that they did so with the consent of their husbands respectively, testified by their husbands executing the renunciation itself. The renunciation was signed by the three husbands. Richard Caffyn having applied to the district registry, at Lewes, for administration with the will annexed, as a creditor, an objection was raised in the principal registry that he came under the 50th rule (1862), which is to the following effect: "No person who renounces probate of a will or letters of administration of the personal estate and effects of a deceased person in one character is to be allowed to take a representation to the same deceased in another character."

Dr. Middleton moved that administration should issue to Mr. Caffyn. Rule 50. is not applicable. Mr. Caffyn has renounced no right to which he is himself entitled; he has merely consented that his wife should renounce her right to administer the deceased's effects.

SIR J. P. WILDE was of opinion that that was the proper interpretation of the renunciation, and granted administration to Mr. Caffyn.

Proctors—Moore & Currey.

PROBATE.	}	P— v. S— AND OTHERS.
1868.		
July 7.		

Nullity of Marriage—Whether Marriage Void or Voidable for Impotence.

The impotence of one of the parties to a marriage does not render the marriage void but only voidable. The validity of such a marriage can only be questioned in the lifetime of both of the parties and by the party who suffers an injury from it:—Held, accordingly, that the next-of-kin of a deceased married woman could not op-

pose the grant of administration to her husband on the ground of his impotence.

The plaintiff applied for a grant of administration of the effects of his deceased wife.

The defendants, who were the next-of-kin of the deceased, opposed the grant, and filed an act on petition, in which they alleged that the deceased had been married to the plaintiff on the 8th of June, 1854, and that the marriage was null and void by reason of the impotence of the plaintiff.

The plaintiff filed an answer denying that the marriage was null and void.

The case was argued, before Sir J. P. Wilde, on the 16th of June, 1868.

Searle, for the plaintiff.—The impotence of one of the parties to a marriage does not render the marriage void, but merely voidable. A voidable marriage can only be questioned in the lifetime of both of the parties. He cited *Elliott v. Gurr* (1).

T. Jones and *Dr. Swabey*, for the respondents.—The impotence of one of the parties to a marriage renders the marriage void. Physical ability to consummate the marriage is a condition precedent to its validity. They cited *Swinton's Justiciary Reports*, 437, *Fraser on the Law of Personal and Domestic Relations*, 51, 52, *Browning v. Reane* (2), *Haydon v. Gould* (3), *Pride v. the Earl of Bath and Montague* (4), *Shelford on Marriage and Divorce*, 483, *H— v. C—* (5).

Cur. adv. vult.

THE JUDGE ORDINARY.—The defendants, who are the next-of-kin of the deceased, have filed an act on petition claiming the administration to her estate, on the ground that although she died married to the plaintiff for fourteen years, yet that the marriage was in truth void on account of the plaintiff's impotence. These pleadings disclose a great novelty—an attempt to question a marriage as void on the ground of impotency, after the death of

- (1) 2 Phill. 16.
- (2) Ibid. 69.
- (3) 1 Salk. 119.
- (4) Ibid. 120.
- (5) 29 Law J. Rep. (N.S.) Prob. & M. 81.

one of the parties; and that, too, as a collateral matter arising in the Probate Court. I will deal with this last difficulty first. It may be safely asserted that a question of impotency as a ground of nullity has never yet been raised in the temporal courts of this country. The various restrictions on marriage, such as a prior existing marriage, insanity, illegality under the Royal Marriage Act, and, since Lord Lyndhurst's Act, consanguinity or affinity. All these matters when they arise incidentally in the temporal courts have in modern times been there dealt with for the purposes of the suit in which they may have arisen. In older times all questions of marriage were relegated to the ecclesiastical authorities. Upon the old plea of *ne unques acropiè* in the action for dower the validity of the controverted marriage used always to be determinable by the bishop's certificate. The gradual declension of spiritual authority in matters temporal has brought it about that all questions as to the intrinsic validity of a marriage, if arising collaterally in a suit instituted for other objects, are determined in any of the temporal courts in which they may chance to arise; though, at the same time, a suit for the purpose of obtaining a definitive decree, declaring a marriage void, which should be universally binding, and which should ascertain and determine the status of the parties once for all, has from all time up to the present been maintainable in the ecclesiastical courts or Divorce Court alone. How, then, it may be asked, does it happen that the particular ground of nullity which is raised incidentally in this suit, has not followed the fate of all other grounds of nullity, and become cognizable in the temporal courts? The answer is, that impotence does not render a marriage "void," but only "voidable." And this brings me to the second objection, viz., that this matter can only be discussed and adjudicated in the lifetime of both parties. The distinction between "void" and "voidable" is not a mere refinement, but expresses a real difference in substance. This real distinction is well known and perfectly recognized at common law with regard to many contracts, in respect of which it is held that the injured party may treat the contract as void or not at his option. This

is notably the case in some instances of fraud, and it is this option to hold to the contract or cancel it which is the distinguishing feature of a contract "voidable as compared with a contract intrinsically void." Questions of this kind arise most commonly where the rights of third parties have become involved. Now, it is obvious enough that this matter of impotence is one which ought to be raised only by the party who suffers an injury from it, and who elects to make it a ground for asking that the contract of marriage should be cancelled. For although it has been said that the procreation of children is one main object of marriage, yet it cannot be doubted that marriages between persons so advanced in years as effectually and certainly to defeat that object are perfectly legal and binding. The truth is, *consensus, non concubitus, facit matrimonium*. In the case of all incapacities to marriage in which society has an interest and which rests on grounds of public policy, it would be wrong and illogical that validity or invalidity should rest upon the option of the parties. And in all such cases, as I have already shewn, the marriage is absolutely "void," and not "voidable" only. But impotency has always hitherto been considered in the ecclesiastical courts (and since their abolition in the Divorce and Matrimonial Court) as a matter of personal complaint only. I do not find the principle of the Court's interference to cancel such a marriage anywhere distinctly set forth. Its original exercise was, it is likely enough, mixed up with the interests of those who asserted it. But I conceive that it has a sound basis of justice in the consideration that the party complaining was (though perhaps unintentionally) deceived in the contract, and ought not to be bound by it. But, whatever the ground, it has been and is always dealt with as a matter of personal complaint and grievance; and that it has been so dealt with is apparent from the fact that the Courts have been in the habit of requiring many conditions to be fulfilled before they would grant relief, all of which are inconsistent with the notion that the marriage is absolutely void. Thus the party complaining must be sincere in the ground upon which he is asking relief; there must be no unreasonable delay, and the defect must be incur-

able. I will only stop to point out that a contrary system would give rise to some almost intolerable results. The question whether two persons are married or not may arise on a great variety of occasions and be raised by third persons, as creditors or otherwise. Now, if the parties themselves, in a case of impotency, are content with *consortium vitæ*, and prefer to maintain the bond of matrimony intact, would it not be almost intolerable that a third person should have the right to insist upon an inquiry into the nature of their cohabitation and the revelation of their physical defects? With these observations I will quit the subject. It has been endea-

voured in the above remarks to vindicate the propriety of confining the question of impotence as a ground for nullity of marriage to a suit brought by one of the parties to the marriage and in the Matrimonial Court. Whether I am justified or not in these views, this much is clear, that the practice of the Courts, both temporal and spiritual, from all time has been inconsistent with the attempt now made, and it is not supported by a single authority. The Court, therefore, pronounces the contention of the defendant to have wholly failed. It overrules the act on petition, and grants administration to the plaintiff with costs.

INDEX

TO THE SUBJECTS OF CASES IN

THE COURT OF PROBATE,

AND

THE COURT FOR DIVORCE AND MATRIMONIAL CAUSES.

MICHAELMAS TERM, 1867, TO MICHAELMAS TERM, 1868.

ADMINISTRATION — *with will annexed: legatee a married woman: refusal of husband: attorney*]

—The deceased left her property to her sister, a married woman, for her sole use, and not to be liable to the control of any husband. She appointed no executor. The husband of the legatee refused, except on certain unreasonable terms, to consent to her taking administration or to join in the bond. The Court, under 20 & 21 Vict. c. 77. s. 73, decreed administration to the attorney of the legatee, without the sanction of the husband. *In the goods of Warren*, 12

— *with will annexed: to creditor or to widow and residuary legatee*] — The Court will not grant administration with the will annexed to a creditor under 20 & 21 Vict. c. 77. s. 73. by reason of the insolvency of the estate of the deceased, if the widow and residuary legatee be willing to take it; much less will it do so if the insolvency is disputed. *Hawke v. Wedderburn*, 33

— *de bonis non: joint grant to next-of-kin and another*] — A joint grant of administration to the person by law entitled to administration, and to another, is a grant to a person other than the one entitled within the meaning of section 73. of 20 & 21 Vict. c. 77. *In the goods of Grundy*, 21
A joint grant of administration *de bonis non* was made to the next-of-kin, and a person entitled in distribution; under the 73rd section of 20 & 21 Vict. c. 77, where the next-of-kin consented, and there were special circumstances rendering such a grant convenient. *Ibid.*

— *residuary legatee a married woman: renunciation with consent of husband: husband a creditor*] — Rule 50. (Rules and Orders, 1862), which directs that no person who renounces probate or administration in one character shall be permitted to take representation to the deceased in another, does not apply to the husband of a residuary legatee who signs a renunciation, executed by his wife, merely to signify his assent to her act. As a creditor he may take administration notwithstanding his signature to such a document. *In the goods of Biggs*, 79

ADULTERY — *wilful misconduct conducing to adultery*] — If an intimacy springs up between a married woman and a man of such a character as to be dangerous to her honour, and the husband knows so much of it as to perceive the danger, and yet purposely or recklessly disregards it, he

is guilty of wilful misconduct which may conduce to adultery. *Dering v. Dering*, 52

ALIMONY — *pendente lite: respondent and co-respondent living together*] — Where the wife has sufficient means of support independent of the husband, even although they be derived from the co-respondent, she will not be entitled to an allotment of alimony. *Madan v. Madan*, 10

— *pendente lite: husband a master mariner out of employ*] — On an application for alimony *pendente lite* on the husband's answers, from which it appeared that he was a master mariner and a part-owner in a sailing-vessel, but that he had not had any employment for three months, the Court nevertheless allotted alimony on the average of his admitted earnings during the previous three years. *Thompson v. Thompson*, 33

— *amendment of petition*] — Where the petitioner filed a petition for alimony, in which she set forth certain property which she asserted she held to her separate use, and the respondent answered the petition on oath, the Court permitted the petitioner to amend her petition for alimony, by adding thereto allegations of further income of the respondent, and a denial of a greater part of the income she had attributed to herself in her petition. *Harker v. Harker*, 11

— *pendente lite: wife supporting herself*] — Alimony *pendente lite* refused to a wife, who, for some time before the institution of the suit, had been and still was supporting herself in service. *George v. George*, 17

— *wife subpenning husband*] — A wife may subpoena and examine her husband in support of her petition for alimony. *Anderson v. Anderson*, 64

AMENDMENT — of petition. See Alimony.

APPEAL — *practice on appeal*] — It is not competent to a Court of appeal to consider whether or not the jury have arrived at a proper conclusion upon a question of fact submitted to them. *Ryves v. the Attorney General (H.L.)*, 75

Any objection to the verdict, on the ground of the rejection or improper reception of evidence, must be raised by bill of exceptions or by motion for new trial. *Ibid.*

Where a decree contains nothing more by way of recital than the findings of the jury, the only

duty of the Court of appeal, when this decree is brought before it, is to ascertain whether the verdict has been properly applied. *Ibid.*

ATTACHMENT—against bankrupt co-respondent for damages and costs—A decree having been made in a suit of dissolution of marriage, whereby the co-respondent was condemned in damages and costs, and an order issued that the damages should be paid into the registry within three weeks from the time such order was served upon him, and before the expiration of that period, and before the costs had been taxed, the co-respondent, on his own petition, was adjudicated a bankrupt, and subsequently he obtained an order of discharge:—*Held*, that as both the damages and costs were debts which might have been proved under the bankruptcy, and are covered by the order of discharge, this Court could not allow an attachment to issue against the co-respondent for their non-payment. *Wood v. Wood*, 25

— for non-compliance with subpoena. See Subpoena. Practice.

BANKRUPTCY—Co-respondent. See Attachment.

COLLUSION. See Adultery. Practice.

CO-RESPONDENT. See Attachment. Practice.

Costs—amendment of declaration and withdrawal of defendant in testamentary suit—The plaintiff propounded the will of the deceased in a declaration in the ordinary form, and the defendant pleaded thereto. Subsequently the plaintiff brought in a special declaration in lieu of the first, and in such special declaration he alleged that the will had been executed under the circumstances and with the formalities required by the law of the State of New York, America; that the deceased at the time was domiciled in that State; and that after his death the will received probate in the competent Court of the State. The defendant pleaded to this declaration, and evidence was taken on both sides, under a requisition directed to the authorities of the State of New York. Afterwards the plaintiff applied to amend his special declaration by adding a clause that the deceased was a British subject, and had his domicile of origin in Ireland. The amendment having been made, the defendant withdrew from the suit:—*Held*, that as the plaintiff, in amending his special declaration, had relinquished the legal position intended to be maintained by it, the defendant was not liable for any costs incurred subsequently to the filing of such declaration. *Archer v. Burke*, 30

— contents of destroyed will: costs against destroyer—In decreeing probate of the contents of a destroyed will, the Court condemned in costs a defendant who had destroyed the will, although he had not entered an appearance. *King v. Gillard*, 4

— testamentary suit: notice under Rules—In a testamentary suit defendants, with their

pleas, gave notice that they merely insisted upon the will being proved in solemn form of law, by the production of the attesting witnesses, and that if both such witnesses were produced, they only intended to cross-examine the witnesses in support of the will. The plaintiff examined both the attesting witnesses:—*Held*, that under the rules a sufficient notice had been given, and that defendants, one of whom was an executor under an earlier will of the deceased than the one propounded, were not liable to be condemned in costs. *Leeman v. George*, 13

COUNTY COURT—Reference of proceedings to. See Testamentary Suit.

CRUELTY—what amounts to—The essential feature of cruelty (such as, when coupled with adultery, will entitle a wife to a divorce) is, that there must be actual violence of such a character as to endanger personal health or safety, or there must be a reasonable apprehension of it. *Milford v. Milford* (H.L.), 77

DAMAGES AND COSTS. See Practice.

DESERTION—husband supporting deserted wife: cause of desertion—A husband who permanently puts an end to co-habitation with his wife against her consent is guilty of desertion, although he may continue to support her. The words "desertion without cause," in section 25. of 20 & 21 Vict. c. 85, mean "desertion without reasonable cause," and are equivalent to "desertion without reasonable excuse." *Yeatman v. Yeatman*, 37
Semle—That conduct short of a matrimonial offence sufficient to found a decree of judicial separation, may be a sufficient cause to bar a deserted wife of all remedy for the desertion. *Ibid.*

Infirmity of temper on the part of a wife, unless shewn in some marked and intolerable excesses, is not a reasonable cause for desertion. *Ibid.*

— deed of separation—Where the parties have separated voluntarily under a deed of separation, such separation will not be converted into a desertion merely because one of the parties does not fulfil all the terms of the bargain he entered into with the other on parting. *Crabb v. Crabb*, 42

DISCOVERY—in testamentary suit: purposes auxiliary to the trial of a question of fact—The Court has power, under 20 & 21 Vict. c. 77. s. 36, to order a party to the suit to file an affidavit setting out what letters written to or by the deceased, or by his direction, are in the custody or under the control of such party, even although the letters are not distinctly affirmed to have reference to the testamentary intentions of the deceased. Discovery is a purpose auxiliary to the trial of a question of fact. *Hunt v. Anderson*, 27

DISSOLUTION OF MARRIAGE—Intervention of Queen's Proctor. See Practice.

— See Adultery. Estoppel.

ESTOPPEL—unsuccessful suit for judicial separation on ground of cruelty—A petitioner, whose petition for judicial separation, on the ground of cruelty, has been dismissed for defect of proof, is estopped from setting up the same charges of cruelty in a suit for dissolution of marriage on the ground of adultery and cruelty. *Finney v. Finney*, 43

— *estoppel by petition dismissed by reason of petitioner's adultery*—The petitioner applied to the Court of Divorce to dissolve his marriage by reason of his wife's adultery with A. A. pleaded that the petitioner had himself been guilty of adultery with his wife's sister. The Court held that this charge was proved, and dismissed the petition. The petitioner again applied to the Court to dissolve the marriage by reason of his wife's adultery with B. and C. Neither the respondent nor either co-respondent filed answers to the petition. The Queen's Proctor intervened and pleaded the former judgment, and also the adultery with the respondent's sister; the jury before whom the issue was tried found that the petitioner had not committed adultery with his wife's sister:—*Held*, that the former judgment must be received as conclusive evidence of the adultery of the petitioner; but that, under the special circumstances of the case, the Court was justified in the exercise of its discretion in making a decree nisi to dissolve the marriage. *Conradi v. Conradi*, 55

EVIDENCE—of parties on issue of cruelty—The 2nd section of 29 Vict. c. 32, which empowers the Court to grant a judicial separation when prayed in an answer to a suit for dissolution of marriage, has not altered the law of evidence. Where, therefore, an answer to a suit for dissolution of marriage on the ground of adultery charges cruelty, and prays for a judicial separation, the evidence of the parties upon the question of cruelty is inadmissible. *Bland v. Bland*, 74

— **Declarations by testator.** See Will.

EXECUTOR—according to the tenor: appointments—Testator in his will left his property, after payment of his debts and funeral expenses, to certain persons, and constituted and appointed A. and B. to be his trustees, with full power to dispose of all his property, and convert the same into money, to be deposited in government funds for the purposes above stated:—*Held*, that A. and B. were executors according to the tenor of the will. *In the goods of Chappell*, 32

— *according to the tenor*—Testatrix by her will appointed A. trustee, with power to convert the residue of her estate into money, and after payment of her debts and personal expenses, to dispose of the property in accordance with the directions given in such will, and she also appointed him executor. By a codicil she revoked that part of her will which gave the property in trust to A, and in lieu of him appointed her nephews B. and C, and providing

C. should not be in England his brother D, to act in his capacity. She also revoked the appointment of A. as executor, and in his place appointed B. and C. B. renounced probate of the will of the deceased; C. at the time of her death was not in England:—*Held*, that D. was an executor according to the tenor of the will, but that power must be reserved to make a grant to C. in case he should return to this country. *In the goods of Goodworth*, 49

— *substituted executor*—The deceased by her will appointed as executors A, and failing him, B. By her first codicil she appointed C. in the place of B, and by a second codicil she cancelled the appointment of A, and in his room appointed D. D. declined to act alone, and renounced his right to probate:—*Held*, that C. was entitled to probate as the substituted executor on the failure of D. *In the goods of Colquhoun*, 1

— *substituted executor*—Testator appointed A, an officer in the Navy, his executor, "and in case of his absence on foreign duty," he appointed B. his executrix. When the testator died A. was in England, but shortly afterwards he went abroad on foreign service, and still remained abroad:—*Held*, that B. was entitled to probate as substituted executrix, testator's intention being that she should act if A. were abroad when the necessity for proving the will arose. *In the goods of Langford*, 20

— *appointment of executors*—The deceased left in her will "one sovereign to the executor and witness of my will for their trouble, to see that everything is divided justly." No person was named as executor in the will; but opposite the names of the attesting witnesses, and beneath the signature of the deceased, were the words "witnesses and executors," which words were written by one of such witnesses by direction of the deceased previous to the execution of the will:—*Held*, that the deceased had failed to make a lawful appointment of executors. *In the goods of Woods*, 23

— See Will.

INTERVENTION OF QUEEN'S PROCTOR. See Practice.

JUDICIAL SEPARATION—conduct of petitioner conducing to the adultery: par delictum: practice

—The adultery of the respondent having been proved, and also cruelty and misconduct on the part of the petitioner which conduced to such adultery, the Court refused to allow a prayer for judicial separation to be substituted for that for dissolution of marriage, in order that the evidence of the misconduct of the petitioner should be expunged. *Lempriere v. Lempriere*, 78

It is doubtful whether the principles of *compensatio criminis* and *par delictum*, as laid down in the Ecclesiastical Courts, are any longer applicable to matrimonial suits under the Divorce Acts, by which greater restrictions have been placed on the relief to be granted in such cases. *Ibid*.

JURISDICTION—after reference to County Court. See Testamentary Suit.

NULLITY OF MARRIAGE—*impotency of husband: surgical report inconclusive: uncorroborated statement of wife*—In a suit of nullity by reason of the husband's impotency, the surgical report stated that the physical appearances of the wife were such that she might have had regular connexion with her husband during cohabitation. The wife, during the two years' cohabitation, had not complained to her family on this matter, and had separated from her husband by reason of his alleged violence. The respondent affirmed on oath that the marriage had been consummated. The Court declined to pronounce the marriage invalid on the unsupported oath of the party seeking to be relieved from its obligations. *U—, falsely called J—, v. J—, 7*

— *Scotch and Belgian marriage between same parties: dissolution of Belgian marriage by Belgian Court, and subsequent marriage in England by one of the parties*—A, an Englishwoman, married in Scotland B, a domiciled Belgian. They took up their abode in Belgium, and there went through the ceremony of marriage according to the law of Belgium. The Belgian marriage was dissolved in Belgium on the ground of mutual consent. A, in the lifetime of B, afterwards married C. in England:—*Held*, that as the Scotch marriage was valid by the law of England, and the Belgian marriage conferred no new status on the parties, A.'s marriage with C. was void. *Birt v. Boutinez, 50*

— *due notice under Registration Acts: no person to consent*—Since the passing of 19 & 20 Vict. c. 119, all analogy between a marriage by banns and one by notice to the registrar, under the Registration Acts, has been effaced. The attempt at securing the consent of parents or friends to a marriage of the latter class by publicity has been relinquished, and the procurement of actual consent substituted in the same manner as has always been used in marriages by licence. The due notice, therefore, required by the statute is a notice conforming to the formalities by the statute provided, and will be sufficient, even although the contents thereof in respect of the christian names or residence and other details are not strictly true or accurate. *Holmes v. Simmons, 58*

It is doubtful whether the marriage of a minor can be declared null and void by reason of undue publication of banns if there be no parent or guardian whose consent or dissent can be given to such marriage. *Ibid.*

— *whether marriage void or voidable for impotence*—The impotence of one of the parties to a marriage does not render the marriage void, but only voidable. The validity of such a marriage can only be questioned in the lifetime of both of the parties and by the party; therefore, the next-of-kin of a deceased married woman cannot oppose the grant of administration to her

husband on the ground of his impotence. *P. v. S., 80*

PRACTICE—*misnomer of respondent: irregularity*—In a suit for dissolution of marriage, after a decree nisi, with costs against the co-respondent, an attachment for non-payment of those costs was granted. The citation and subsequent proceedings, in which the co-respondent was erroneously styled William Abbott, were served upon William Brains Abbot, who took no objection to the irregularity until the attachment was granted. He then applied to have it set aside:—*Held*, that as he had stood by during the progress of the suit and allowed judgment to go against him in a wrong name, the attachment must stand. *Churchill v. Churchill, 41*

— *opponent withdrawing from suit: permission to others to intervene in his place: costs*—A will propounded by the executors was opposed by the plaintiff, one of the next-of-kin. The issues were tried by a jury, and were found for the executors, and the will was pronounced for. After an order nisi for a new trial, on the ground that the verdict was against the weight of evidence, had been granted, the plaintiff abandoned further opposition to the will. The Court, upon the application of two of the next-of-kin, who had been cited to see proceedings and had appeared, but had not pleaded, allowed them to plead and adopt the proceedings already had in the suit. The order for a new trial was ultimately made absolute, the executors being allowed their costs up to that time out of the estate. *Boulton v. Boulton (Kendall intervening), 19*

— *service of citation*—An undertaking by the respondent's solicitor to appear is not sufficient. The citation must be served upon the respondent. *De Nicerville v. De Nicerville, 43*

— *suit for dissolution: Queen's Proctor's intervention: collusion: suppression of material facts: particulars: costs*—A husband having obtained a decree nisi in a suit in which neither of the respondents appeared, the Queen's Proctor intervened and (*inter alia*) charged collusion between the petitioner and the respondent, and that material facts had not been brought before the Court:—*Held*, by the Court, on reversing the decree and dismissing the petition, first, that the fact that the husband before and after the institution of the suit had had frequent interviews with his wife, and had then given her money, and urged her not to oppose the suit, established collusion; secondly, that the fact that the husband had been in the habit of going with his wife and the co-respondent to places of amusement, and of allowing her to dance frequently with the co-respondent there, and then leaving her in the care of the co-respondent, was conduct conducing to the adultery, and as such was a material fact which ought to have been brought before the Court. *Barnes v. Barnes, 4*

A wife being entitled to alimony *pendente lite*, the voluntary gift of money by a husband to her

during the progress of a suit by him for a divorce, does not *per se* prove collusion. *Ibid.*

Where the Queen's Proctor intervenes and charges the suppression of material facts, without specifying such facts, the petitioner is entitled to particulars. *Ibid.*

Where the Queen's Proctor intervened and charged collusion, that material facts had not been brought before the Court, and that the petitioner had been guilty of adultery, and at the hearing established the first two charges and abandoned the last, the Court refused to condemn the petitioner in costs, on the ground that he had been put to great expense in preparing to defend the charge of adultery. *Ibid.*

— *intervention of Queen's Proctor and other parties: witnesses: identical pleas*—The petitioner, in a matrimonial suit, having obtained a decree nisi to dissolve his marriage, the Queen's Proctor and other parties intervened. The questions for the jury, raised by the latter, were collusion and connivance; by the former, collusion, connivance and misconduct which conduced to the adultery of the respondent:—*Held*, that although the counsel for the Queen's Proctor and the other interveners might respectively produce and examine witnesses, and cross-examine the witnesses produced by the petitioner, only one counsel could be heard in reply. *Dering v. Dering*, 53

— *right of co-respondent who has not answered to cross-examine and be heard*—A co-respondent from whom damages are claimed, who has appeared, but has not filed an answer, cannot at the hearing cross-examine the petitioner's witnesses, nor address the jury upon the question of damages. He is, however, entitled to be heard upon the question of costs; and when the decree has been pronounced, he will, as to that question, be allowed to recall and cross-examine the petitioner's witnesses, and also address the Court. *Lyne v. Lyne*, 9

— *leave to be excused from making a co-respondent*—A husband petitioning for a divorce must obtain leave to proceed without making a co-respondent, although the petition only charges adultery with a person unknown. *Pitt v. Pitt*, 24

— *intervention of Queen's proctor: no affidavits filed by him: pleas of connivance, collusion and misconduct conducing to adultery*—In a suit for dissolution of marriage by reason of the adultery of the respondent and co-respondent, a decree nisi was made. Subsequently certain parties intervened and filed affidavits, and two questions were directed to be tried by a special jury, namely, whether the petitioner had connived at the adultery of the respondent, and whether the decree nisi had been obtained by collusion. Afterwards the Queen's Proctor obtained leave to intervene, and, without filing affidavits, pleaded collusion, that material facts had not been brought to the knowledge of the Court, connivance and misconduct which conduced to the adultery:—*Held*, that when the

Queen's Proctor has obtained leave to intervene, he may plead any material facts in addition to the plea of collusion; and that it is not necessary he should elect to proceed under the first or second part of the 23 & 24 Vict. c. 144. s. 7, and vary his proceedings accordingly. *Dering v. Dering*, 35

— See Appeal. Testamentary Suit.

PROBATE—*will of married woman: foreign settlement: foreign decree of separation*—A Frenchman and an Englishwoman, in anticipation of a marriage, which was afterwards celebrated between them in France, entered into a contract, one of the conditions of which was that the survivor should enjoy the usufruct of one-half of the goods of the pre-deceased. Subsequently a separation was decreed between the parties by the proper tribunal of the country of their then domicile. The wife, being resident in this country, executed a will in accordance with the law of this country, by which she disposed of the whole of her property. The husband was still living:—*Held*, that the Court could decree probate of such will, but limited to such property as the deceased had a right to dispose of. *In the goods of D'Estève de Pradel*, 2

— *of will: of realty: appointment of executor who has renounced*—The Court will grant probate of a will which disposes of realty only if an executor be appointed therein, even although such executor renounces his rights under it. *In the goods of Jordan*, 22

RESTITUTION OF CONJUGAL RIGHTS—*answer by facts not amounting to legal cruelty*—In a suit for restitution of conjugal rights the Court will not reject, on demurrer, an answer which contains only facts which apparently do not constitute a case of legal cruelty. *Stace v. Stace*, 51

— *answer charging adultery and praying judicial separation: abandonment of prayer for restitution at trial: evidence of parties as to adultery*—The answer to a petition for restitution of conjugal rights charged adultery, and prayed for a judicial separation. At the trial, the petitioner abandoned his prayer of restitution, and offered no evidence:—*Held*, first, that such abandonment did not take away the respondent's rights to go for a judicial separation. Secondly, that the evidence of the parties was admissible upon the question of adultery, there being no "suit or proceeding instituted in consequence of adultery" within the meaning of 14 & 15 Vict. c. 99. s. 4. *Blackborne v. Blackborne*, 73

REVOCATION. See Will.

SEPARATION—Deed of. See Desertion.

SETTLEMENT—*alterations: power of appointment: new trustees*—The Court refused to carry out alterations in the settlement agreed upon between the parties, whose marriage had been dissolved,

so as to extinguish the power of appointment given to the respondent by the settlement, or to affect the appointment of new trustees. *Davies v. Davies*, 17

SETTLEMENT (continued)—*power to deal with, where no issue living: locus standi of trustees*—The Court has no power to deal with marriage settlements under section 5. of 22 & 23 Vict. c. 61, where there has been issue of the marriage, unless a child be still living. So held by the *Judge Ordinary*, and *Montague Smith, J., Pigott, B.* dissenting. *Corrance v. Corrance*, 44

The trustee of a marriage settlement may be heard against, but not in favour of, an alteration in the settlement. *Ibid.*

SUBPENA—*to bring in a will: non-compliance*—Where a subpoena has been personally served upon an individual to bring in a testamentary paper, and such individual fails to comply therewith, the Court will not at once order an attachment to issue against him, but will make a preliminary order that he shall attend in court to be examined in reference to his possession of such paper. *Parkinson v. Thornton*, 3

TESTAMENTARY SUIT—*three wills: last will propounded: executor of first will opposing: practice*—The deceased left behind him three executed wills, each of which in fact revoked the previous one. The last will was propounded by the executors named in it against the next of kin. The executors of the first will obtained leave to intervene to propound their will, and to plead, as regarded the last will, that it was not duly executed, that the deceased was not of testamentary capacity at the time he signed it, and that it was obtained by undue influence and fraud:—*Held*, that the executors of the last will could not as such propound the second will as well as their own, merely to prove that it revoked the first will, and therefore deprived the executors of the first will of any interest in the estate of the deceased. *Parton v. Johnson*, 67

—*reference of proceeding to County Court and jurisdiction of that Court*—When contentious proceedings in a testamentary suit are referred by the Court of Probate to a county court, the Court of Probate has no further jurisdiction, except by way of appeal, over such proceedings. *Macleur v. Macleur*, 68

WILL—*residuary legatees: presumption as to interlineation*—Deceased, at the time she executed her will, in the presence of witnesses, covered over the writing with a piece of paper, so that the witnesses could form no opinion whether certain interlineations appearing thereon were written at the time of execution. These interlineations in each case were required to complete the sentences to which they belonged, and did not appear, on inspection of the writing, to have been made at a different time from the body of the will:—*Held*, that the presumption that

unattested additions have been made after execution, does not apply to such a case, and probate was decreed of the will, including the interlineations. *In the goods of Cadge*, 15

"What is left, my books and furniture, and all other things," are words sufficiently comprehensive to cover the general residue. *Ibid.*

—*seaman being at sea: ship permanently stationed in port*—A mate, whilst on board Her Majesty's ship *Excellent*, which is permanently stationed in Portsmouth harbour, and when under age, executed a will, of which probate was granted to one of the executors named in it. (On an application to revoke the probate, the Court held that the deceased came under the exception contained in 1 Vict. c. 26. s. 11. as a seaman at sea, and, although a minor at the time, that he had legally executed a will. *In the goods of M'Murdo*, 14

—*undue influence*—A pressure of whatever character, whether it acts on the fears or the hopes of an individual, if so exerted as to overpower the volition, without convincing the judgment, is a species of restraint under which no valid will can be made. *Hall v. Hall*, 40

—*evidence: declarations by testator: revocation by later will not forthcoming: intestacy*—Verbal declarations or written statements made by a testator in and respecting the making of his will, preceding or accompanying acts done by him in relation thereto, are admissible in evidence in order to shew the quality and nature of such acts. *Johnson v. Lyford*, 65

Deceased made a will in 1840, and in 1867, while on a visit to a friend, he employed himself much in writing, and stated he was writing out his will, and he gave his friend a paper-writing which, he said, was a copy of his will which he was going to execute. Shortly after he duly executed a will, which, however, could not be found. The paper-writing revoked all former wills:—*Held*, that the will of 1840 was revoked by a will made in 1867, which, not being forthcoming, must be presumed to be revoked by destruction, and an intestacy was decreed. *Ibid.*

—*revocation of second will and revival of first will by codicil*—By 1 Vict. c. 26. s. 52, in order that a codicil should revive a will which in any manner has been revoked, it must shew an intention to revive the same:—*Held*, that such intention will not be shewn by a mere reference to such will by date, but the codicil must contain express words referring to a will as revoked, and importing an intention to revive the same or a disposition of the testator's property inconsistent with any other intention, or some other expression conveying to the mind of the Court with reasonable certainty the existence of the intention in question. *In the goods of May*, 63

— See Practice. Probate. Testamentary Suit.

TABLE OF CASES.

Anderson v. Anderson, 64
Archer v. Burke, 30

Barnes v. Barnes, 4
Biggs, in the goods of, 79
Birt v. Boutinez, 50
Blackborne v. Blackborne, 73
Bland v. Bland, 74
Boulton v. Boulton, 19

Cadge, in the goods of, 15
Chappell, in the goods of, 32
Churchill v. Churchill, 41
Colquhoun, in the goods of, 1
Conradi v. Conradi, 55
Corrance v. Corrance, 44
Crabb v. Crabb, 42

Davies v. Davies, 17
De Niceville v. De Niceville, 43
Dering v. Dering, 35, 52
D'Estève de Pradel, in the goods of, 2

Finney v. Finney, 43

George v. George, 17
Goodworth, in the goods of, 49
Grundy, in the goods of, 21

Hall v. Hall, 40
Harker v. Harker, 11
Hawke v. Wedderburn, 33
Holmes v. Simmons, 58
Hunt v. Anderson, 27

Johnson v. Lyford, 65
Jordan, in the goods of, 22

King v. Gillard, 4

Langford, in the goods of, 20
Leeman v. George, 13
Lempriere v. Lempriere, 78
Lyne v. Lyne, 9

Macleur v. Macleur, 68
Madan v. Madan, 10
M'Murdo, in the goods of, 14
May, in the goods of, 68
Milford v. Milford, (H.L.), 77

Parkinson v. Thornton, 3
Parton v. Johnson, 67
Pitt v. Pitt, 24
P— v. S—, 80

Ryves v. Attorney General, (H.L.), 75

Stace v. Stace, 51
Steele, in the goods of, n., 72

Thompson v. Thompson, 33

U—, falsely called J—, v. J—, 7

Warren, in the goods of, 12
Wilson, in the goods of, n., 72
Wood v. Wood, 25
Woods, in the goods of, 23

Yeatman v. Yeatman, 37

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THE
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FOR
THE YEAR 1868:

CASES

IN THE

High Court of Admiralty,

REPORTED BY

ROBERT ALBION PRITCHARD, Esq., D.C.L., BARRISTER-AT-LAW.

AND ON APPEAL THEREFROM

TO THE

Privy Council.

REPORTED BY

EDWARD BULLOCK, Esq. BARRISTER-AT-LAW.

MICHAELMAS TERM, 1867, TO MICHAELMAS TERM, 1868.

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CASES ARGUED AND DETERMINED

IN THE

High Court of Admiralty,

AND IN THE PRIVY COUNCIL ON APPEALS FROM THAT COURT.

COMMENCING WITH

MICHAELMAS TERM, 31 VICTORIÆ.

1867. }
Nov 5; Dec. 7. } THE HALLEY.

*Collision — Damage — River Scheldt —
Compulsory Pilotage—Law applicable.*

The owners of a Norwegian vessel having sued, in the High Court of Admiralty, a British vessel for damage done by collision, are entitled as to compulsory pilotage to rely upon the law of Belgium, within whose territorial waters the collision took place.

The petition of the plaintiff in this cause set forth that the Norwegian barque *Napoleon*, of the burden of 740 tons, while riding at anchor in Flushing Roads, in the month of January of this year, was run into by the British steam-ship *Halley*, and thereby suffered considerable damage. In the 11th article of the answer the defendants, the owners of the *Halley*, stated that "by the Belgian or Dutch laws, which prevail in and over the river Scheldt, and to which the said river is subject, from the place where the river pilot came on board the *Halley*, and thence up to and beyond the place of the aforesaid collision, it was compulsory on the said steamer to take on board and to be navigated under the directions

and in charge of a pilot, duly appointed or licensed according to the said laws; and that it was by virtue of such laws that the *Halley* was compelled to take on board and to be given in charge, and until the time of the said collision as aforesaid to remain in charge of, and did take on board, and was given in charge, and up to the time of the said collision remained in charge of the said river pilot, who was duly appointed or licensed according to the said laws, and whom the defendants or their agents did not select, and had no power of selecting;" and that the collision was caused by the negligence, default, or want of skill of such pilot. To this defence the owners of the *Napoleon* replied as follows: That "by the Belgian or Dutch laws in force at the time and place of the said collision, the owners of a ship which has done damage to another ship by collision are liable to pay and to make good to the owners of such lastly-mentioned ship all losses occasioned to them by reason of such collision, notwithstanding that the ship which has done such damage was, at the time of the doing thereof, being navigated under the direction and in charge of a pilot duly appointed or licensed according to the said laws, and notwithstanding that

such damage was solely occasioned by the negligence, default, or want of skill of such pilot, without any contributory negligence on the part of the master or crew of such lastly-mentioned ship, and notwithstanding that it was, at the time and place of the collision, by the said laws compulsory on such lastly-mentioned ship to be navigated under the direction and in charge of such pilot; and that the defendants, the owners of the *Halley*, are by virtue of the said laws liable to pay and make good to the plaintiffs all losses occasioned to them by the said collision, even if the statements contained in the 11th article of the said answer be true."

Mr. Brett and *Mr. V. Lushington*, on behalf of the defendants, moved the Court to reject the reply.—This case must be decided according to the *lex fori*. The plaintiffs, who have commenced the proceedings, have thereby elected the tribunal before which the case is to be tried, and cannot complain if the law of that tribunal is administered. It is contrary to the common law of this country that a master is responsible for the acts of a servant whom he is bound to employ; and as to the compulsion, the Belgian and English law correspond. The present question relates to the remedy, and not to the right of the party suing, and the cases shew that in such instances the *lex fori*, and not the *lex loci commissi delicti*, should prevail.

Mr. Manisty and *Mr. E. C. Clarkson* appeared on behalf of the plaintiffs.—The plaintiffs have suffered an injury from the acts of those on board the defendants' vessel, and it is for the defendants to shew that they are not responsible. The rule as to exemption from the consequences of compulsory pilotage is one arising from the construction of English statutes, and in its effects occasions so much hardship to an innocent sufferer that it should not be extended by implication. This Court, which administers the law of nations, will apply to the present case the general maritime law, which would compel the wrongdoer to make complete restitution. The present question relates to the right of the plaintiffs to indemnity, and not to the remedy, i. e. the mode in which that right is to be enforced; and this contention is fully borne out by the reported cases. The defendants

themselves if they invoke the Belgian law must be bound by it altogether, and cannot ignore the fact that by Belgian law it is also provided that though the owners of vessels are bound to employ a pilot, they must nevertheless be responsible for his acts.

The cases cited are fully referred to in the judgment.

SIR R. PHILLIMORE.—One of the functions, and not the least important, of the High Court of Admiralty is to administer international justice in maritime suits between foreigners who resort to its jurisdiction, or, as in the present instance, between the foreigner and the British subject. The prize jurisdiction of this Court administers the *jus inter gentes*, or public international law, and what is called the instance jurisdiction administers the *jus gentium*, or private international law. The rules of pleading, and the general mode of investigating and trying the merits of such cases when they come before it, are therefore simple, free from technicality, and calculated to do substantial justice. In this Court, as *Sir J. Nicholl* observes in *The Girolamo* (1), "the law maritime according to the law of nations is to be administered"; and again he says (p. 189), it "is governed by the rules" (he is not speaking of the Prize Court) "of international law." To the same effect is *The Zollverein* (2), where *Dr. Lushington*, in the case of a collision between a British and foreign vessel, says, "The case must be decided by the law maritime, by those rules of navigation which usually prevail among nations navigating the seas where the collision takes place." And in *The Golubchick* (3) he says, "Upon general principles, I apprehend that this Court, administering, as it does, a part of the maritime law of the world, would have a right to interpose in cases of the present description." If, therefore, this collision had taken place upon the high seas, it must, upon general principles, have been adjudicated according to the *Lex Maris*.

The claim of the petitioner in this case is founded, according to the Norman lan-

(1) 3 Hagg. 177.

(2) Swa. 99.

(3) 1 W. Rob. 147.

guage of our common law, upon a tort committed by the defendant; according to the language of jurisprudence, familiar to this Court, upon an *obligatio ex maleficio*, or as it is more generally, though perhaps less accurately, termed, an *obligatio ex delicto*, incurred by the defendant. "Res sic habet," Donellus says, "ut omne delictum est maleficium, ita non ex quovis delicto nascatur obligatio sed solum ex maleficio"—Donellus, l. xv. c. 23. In the case before me this tort was committed, or this *obligatio* was incurred, in the territory of a foreign state. I think it expedient, therefore, to dwell for a moment on the peculiar character of this *obligatio*, with the reasoning upon which my judgment is in some measure connected.

According to the Roman law, which on this subject has been generally adopted by continental Europe, the facts which give rise to a legal obligation are said to be four—*contractus*, *quasi contractus*, *maleficium*, *quasi maleficium*. The two former create an obligation with the consent of the obliged person (*obligatus*); the two latter without his consent. It is with the third alone with which we are at present concerned, namely, *obligatio ex maleficio*, or *delicto*, for it is not necessary to consider the distinction between this and the *obligatio ex quasi delicto*.

"Delictum," Donellus says, with his usual accuracy and perspicuity, "id est factum id, quo nocetur alteri, jure ita coercetur, ut acriat alteri quod abstulit. Ex tali culpa" (that is *maleficio*)—l. xii. c. 11. Grotius says, "Obligatio naturaliter oritur, si damnum datum est, nempe ut id resarciatur"—*De Jure Belli et Pacis*, l. ii. c. xvii. s. 1. This is, in truth, the language of natural justice. The form of remedy under the Roman law was supplied by the *Lex Aquilia*. The passage in the *Digest* upon this very subject of collision at sea contains (as so many other passages in that repertory of jurisprudence do) the written equity which the reason of the thing requires: "Si navis tua impacta in meam scapham, damnum mihi dedit, quaesitum est, quae actio mihi competeret? Et ait Proculus, si in potestate meorum fuit, ne id acciderit, et culpa eorum factum sit, lege Aquilia cum nautis agendum: quia parvi refert, navem immitendo, aut serraculum ad navem ducendo,

an tua manu damnum dederis; quia omnibus his modis per te damno adficior: sed si fune rupto, aut, cum a nullo regeretur navis incurrisset, cum domino agendum non esse"—*Dig. l. ix. tit. ii. 29, 2*. According to the principles of natural justice, the wrong-doer to this Norwegian vessel is bound to replace her owner in the position in which he was before the wrong was done; the owner is entitled to what civilians call a *restitutio in integrum*.

I gladly avail myself of Dr. Lushington's language in this matter, in a case in which he distinguishes (speaking of the duty of the Registrar and merchants, as referees of the High Court of Admiralty) between cases of collision and cases of insurance. "One," he says—*The Gazelle* (4), "of the principal and most important objections to the report under consideration is this, that the registrar and merchants, in fixing the amount to be paid for repairs, and the supply of new articles in lieu of those which have been damaged or destroyed, have deducted one-third from the full amount which such repairs and new articles would cost. This deduction, it is said, has been made in consideration of new materials being substituted for old, and is justified upon the principle of a rule which is alleged to be invariably adopted in cases of insurance. The first question, then, which I have to consider is, the applicability of the rule in question to a case of the present description; and this question, it is obvious, involves a principle of considerable importance, not only as regards the decision in this particular case, but as establishing a rule for assessing the damages in all other similar cases. Now, in my apprehension, a material distinction exists between cases of insurance and cases of damage by collision, and for the following reasons." And then the learned Judge explains the nature of an insurance contract; and he continues, "With regard to cases of collision, it is to be observed that they stand upon a totally different footing. The claim of the suffering party who has sustained the damage arises not *ex contractu*, but *ex delicto* of the party by whom the damage has been done; and the measure of the indemnification is not

limited by the terms of any contract, but is co-extensive with the amount of the damage. The right against the wrong-doer is for a *restitutio in integrum*, and this restitution he is bound to make, without calling upon the party injured to assist him in any way whatever. If the settlement of the indemnification be attended with any difficulty (and in those cases difficulties must and will frequently occur), the party in fault must bear the inconvenience. He has no right to fix this inconvenience upon the injured party, and if that party derives incidentally a greater benefit than mere indemnification, it arises only from the impossibility of otherwise effecting such indemnification, without exposing him to some loss or burden which the law will not place upon him."

Again, in the case of *The Amalia* (5), the same learned Judge says, "The principle of limited liability" (and in this case it is contended that the liability of the British owner is taken away altogether) "is that full indemnity, the natural rights of justice, shall be abridged for political reasons." This is a subject to which I must again advert in another part of my judgment. At present it is enough to say that the dictates of natural justice appear to be in favour of the petition of the Norwegian vessel in this case, which prays this Court to cause the British vessel, the wrong-doer, to make that reparation for wrong done to her which the *lex loci delicti commissi*, had the suit been brought in a Belgian court, would have enforced.

It is, however, contended on behalf of the British vessel that this Court cannot apply such law to this case; that it must, partially at least (the importance of this qualification will be presently seen), disregard the law of the place in which the wrong was done, and apply that of the place in which the action for redress is brought; that, in other words, the *lex fori*, and not the *lex loci delicti commissi*, governs this case. If this be so, the foreign owner will obtain no compensation for the wrong done to his vessel by the British ship, the owner of which will practically escape altogether unscathed. It is not, therefore, too much to say that the arguments and the

precedents which are brought forward in favour of such a result must be narrowly examined and carefully scanned. It certainly may be that the hands of the Court are tied by municipal law, and prevented from administering the relief which, upon general grounds, it must desire to administer to the petitioner in this case.

The contention on the part of the British owner is, that the *lex fori* must govern this case, not because that law is made binding on the Court, as in the case of *The Amalia* (5), by a British statute, but because it is made binding on the Court by an established principle of law, which is to be collected from judicial decisions and the dicta of accredited writers. It is contended, then, that this question belongs to the domain of the *lex fori*, inasmuch as it is a question relating to the remedy, and not to the right, of the party suing. It becomes important to see what authority, in principle or precedent, there is for this proposition. It is well settled by decisions of the tribunals of this country that all which relates to the form of the remedy, and the mode of enforcing it, all that relates to the conduct of the suit in court, the rules of evidence and to procedure, shall be governed by the *lex fori*. Indeed, it is a well-established rule of international comity, as old, certainly, as the time of Bartolus, that "*de his quæ pertinent ad litis ordinationem inspicitur locus judicii.*" But to the further proposition, namely, that the nature and character of the remedy itself—for instance, the measure of civil damages for a breach of contract, or for the non-fulfilment of any legal obligation—is to be regulated by that law, I cannot assent. I am not aware of any direct authority for it; certainly it cannot, in my opinion, be maintained upon principle; and so far as the analogy of the obligation arising from contract applies to this case of *obligatio ex delicto*, the judicial precedents which I have been able to find are adverse to this proposition.

Mr. Justice Washington, in a judgment delivered in the District Court of Pennsylvania, observes, "The rate of damages to be recovered for a breach of contract is a part of the right to which the injured party is entitled, and it is totally distinct from the remedy provided for enforcing it.

(5) 1 Bro. & Lush. 152.

In the former case the *lex loci*, where the contract was made or broken, is to prevail; and in the latter, the *lex loci* of the *forum*, where the remedy is provided" (6). The same learned Judge, in an earlier and very singular case (7), laid down the same principle. It was an action in the Pennsylvanian court on a note given in Guadaloupe, where a particular custom prevails in relation to the payment of such notes in sugar. Mr. Justice Washington said, "The laws of the country where this contract was made must govern. These notes were payable in Guadaloupe, in sugar, at a valuation. The defendant having sued here cannot complain if his situation is not made worse than it would have been in Guadaloupe. But as, according to our forms of proceeding (and as to them the laws of our country must govern), a judgment cannot be rendered for sugar, the value in money must be given, which, in effect, is the precise sum stated in the note." Mr. Justice Story refers to these and to other American, as well as some English, cases in the following paragraph: "Analogous to the rule respecting interest would seem to be the rule of damages in cases of contract, where damages are to be recovered for a breach thereof *ex mora*, or where the right to damages arises *ex delicto*, from some wrong or injury done to personal property. Thus, if a ship should be illegally or tortiously converted in the East Indies by a party, the interest there will be allowed by way of damages in a suit against him. So the rate of damages on a dishonoured bill of exchange will be according to the *lex loci contractus* of the particular party. So, if a bill of exchange be made in one state and indorsed in another state, and again indorsed by a second indorser in a third state, the rate of damages upon the dishonour of the bill will be against each party according to the law of the place where his own contract had its origin, either by making or by indorsing the bill. So, if a note made in a foreign country is for the payment of a certain sum in sugar, and by the custom of that place the like notes are payable in sugar at a valuation, the law

of the place is to govern in assessing the damages for a breach thereof" — *Story's Conflict of Laws*, c. viii. s. 307.

In the case of *The Zollverein* Dr. Lushington observed, "The principle which governs all these questions of jurisdiction and remedies is admirably stated by Mr. Justice Story (*Conflict of Laws*, c. xiv. s. 556), 'In regard to the rights and merits involved in actions, the law of the place where they originated is to be followed; but the forms of remedies'" (it is important to observe these words), "'and the order of judicial proceedings are to be according to the law of the place where the action is instituted, without any regard to the domicile of the parties, the origin of the right, or the country of the act.'" And in another part of his judgment he says, "Generally, when a collision takes place between a British and foreign vessel on the high seas, what law shall a Court of Admiralty follow? As regards the foreign ship, for her owner cannot be supposed to know or to be bound by the municipal law of the country, the case must be decided by the law maritime, by those rules of navigation which usually prevail among nations navigating the seas where the collision takes place; if the foreigner comes before the tribunals of this country, the remedy and form of proceeding must be according to the *lex fori*." It is to be observed here that the learned Judge is reported as having used the expressions "*the remedy and form of proceeding must be according to the lex fori*," but I think that if these words be correctly reported, there must be an unintentional error in the language of the learned Judge, who must have meant to say, "*the form of remedy and of proceeding*," an alteration which brings these words and the judgment in harmony with the previous citation from Story, on which, indeed, it was mainly founded.

I must not, however, pass by two judgments of my immediate predecessor in this chair, to which I drew the attention of counsel, because they may be fairly cited by the defendants as favourable to the position for which they contend. They are, in fact, the converse of the present case. In them the Judge decided that the *lex fori*, where more favourable to the foreign suitor than the *lex loci contractus*, should be ad-

(6) Peter's Circuit Court Reports, 230.

(7) *Courtois v. Carpentier*, 1 Washington's American Rep. 377.

ministered. In the case of *The Milford* (8), the question as to the application of section 191. of the Merchant Shipping Act, 1854, to the suit of a foreign master against the freight for wages arose, and the Court observed as follows:—"There are no negative words which tend to shew that the Court should not apply section 191. to foreign masters and seamen. As there are no such words, is it consistent with justice that the Court should hold its hand in all these matters, and say that as to foreign masters it will impose a restriction not in the statute? I think I am bound to apply the remedy given by the statute." In the case of *The Jonathan Goodhue* (9), Dr. Lushington remarked, "When this case was first brought before the Court, it was said that the American law would exclude the master from the benefit of the statute; that it was a legal incident of the contract that the master should have no lien on either ship or freight for wages or advances. But, pending that question, the Court decided in the case of *The Milford* that the remedy must follow the *lex fori*, and that a foreign master was entitled to the same remedy against ship and freight as a British master. I adhere to that judgment, though I repeat what I then said, that it was a case of great doubt and difficulty."

I must say that the reasoning of the learned Judge which led to the decisions in these cases was never satisfactory to my mind, and I am glad to learn that in a more recent case, mentioned to me by Mr. Clarkson, the learned Judge expressed himself willing to reconsider the principle of these decisions. It is to be observed also that they rested in great measure upon the construction of a British statute, and in the present case we have no statute to consider.

With respect to the application of the *lex fori* to this case, an observation of some importance arises out of the special character of the law itself. The *lex fori* in this instance is founded, as Lord Stowell observed in *The Carl Johann* (10), upon considerations of domestic policy. The English legislature has thought it expedient that only certain persons, under certain

restrictions, shall be allowed to act as pilots in certain British waters, and that it shall be compulsory upon all masters of ships to place the navigation of their vessel while passing through these waters under the control of one of these licensed pilots. And the common law of England has ruled that in such cases the natural responsibility of the owner of the vessel for injuries done to the property or persons of others by the unskilful navigation of that vessel shall cease and be transferred to the pilot. This law holds that the responsibility of the owner for the acts of his servant is founded upon the presumption that the owner chooses his servant and gives him orders which he is bound to obey, and that the acts of the servant, so far as the interests of third parties are concerned, must always be considered as the acts of the owner. No such presumptions, it is said, exist in the case of compulsory pilotage, in which the state forces its own servant upon the owner, and indeed to some extent reverses the usual order of things on board ship by rendering it incumbent on the master to obey the orders of the pilot. But the considerations of domestic policy which have created this peculiar law are not founded on principles of universal law or natural justice. They are considerations of British policy, which apply to British waters and territory, but not to the Flushing Roads in which this collision took place. In the earlier part of this judgment, I said that natural justice appeared to favour the admission of the plaintiff's reply in this case. To say to the innocent owner of a ship which has been damaged, perhaps destroyed, by unskilful navigation,—"You cannot recover any damages from me, because I had a pilot on board, and I obeyed his orders; you may bring your action against the pilot, from whom you cannot obtain any substantial redress,"—to say this is surely not to speak the language of natural justice. Should the innocent sufferer reply,—"That, if the state chooses to compel you to employ an officer of its own, it is no reason why a third person, no party to this arrangement, should suffer a grievous wrong without redress. It may be a reason why you should have an action against the pilot, or why the state should combine with the measure for your exemption from a natural liability, some

(8) 1 Swa. 367.

(9) Ibid. 526.

(10) 1 Hagg. 118.

measure for the reparation of the innocent sufferer; but this is a matter with which he is not concerned. He has a right to compensation,"—this would be a reply entitled to a hearing surely in any Court desirous to adjudicate upon the case according to the ordinary principles of justice.

Lord Stowell's mind, furnished as it was with the principles of jurisprudence, naturally rejected the argument for the immunity of the wrong-doing vessel. In the case of *The Neptune the Second* (11), he said: "It is acknowledged in this case that the damage was done by the ship proceeded against; but it has been set up, in the way of excuse, that she was at the time under the care of a regular pilot, and was acting in obedience to his directions; and it has been contended in the argument that the pilot alone is answerable for any damage that may have been sustained in consequence of the mismanagement of the vessel. If the position could be maintained, that the mere fact of having a pilot on board, and acting in obedience to his directions, would discharge the owners from responsibility, I am of opinion that they would stand excused in the present case; for I think it is sufficiently established in proof that the master acted throughout in conformity to the directions of the pilot. But this, I conceive" (says this great master of jurisprudence), "is not the true rule of law. The parties who suffer are entitled to have their remedy against the vessel that occasioned the damage, and are not under the necessity of looking to the pilot, from whom redress is not always to be had, for compensation. The owners are responsible to the injured party for the acts of the pilot, and they must be left to recover the amount as well as they can against him. It cannot be maintained that the circumstances of having a pilot on board and acting in conformity to his direction can operate as a discharge of the responsibility of the owners."

I will frankly say that it appears to me difficult to reconcile the claims of natural justice with the law which exempts the owner, who has a licensed pilot on board, from all liability for the injuries done by the bad navigation of his ship to the property of an innocent owner. *Obbligatio* is

(according to the admirable definition in the *Institutes*) "*vinculum juris quo necessitate astringimur alicujus rei solvendæ*"; it is "*lien de droit*," as the French say. No one acquainted with the working of this law, which exempts the wrong-doing vessel from liability in this court, can be ignorant that it is fruitful in injustice. The master is tempted to abstain from all control over his vessel, lest he should afford grounds for the argument that by interference with the pilot he has deprived himself of the legal immunity which he would otherwise enjoy. And it is obvious that great inducements may be offered to the pilot to shield the incapacity or mismanagement of the master and his officers by taking all the blame upon himself. It is true that by so doing he may subject himself to censures and punishment from the Trinity House; and certainly, in cases where the evidence clearly established very gross negligence or want of skill on his part, such would be the result; but the greater number of cases are not of this extreme description. It is impossible to doubt that an owner who, as in a recent case before me, would, but for the fact of having a licensed pilot on board, have been compelled to pay perhaps 25,000*l.* in respect of the ship which he had sunk, lies under a very strong temptation to take whatever measures may be necessary for obtaining the two necessary statements of the pilot; namely, first, that he alone had the management of the vessel; and secondly, that his orders were obeyed: the two stereotyped questions necessarily and invariably put to the pilot by those who conduct the defence of the wrong-doing vessel.

Again, I cannot help thinking that the doctrine, so clearly explained by Lord Cranworth in *Reedie v. the London and North-Western Railway Company* (12) of the owner being responsible only for the acts of his own servant, has been somewhat strained in its application to the case of the licensed pilot. I do not quite understand why, because the State insists upon all persons who exercise the office of pilot within certain districts being duly educated for the purpose, and having a certificate of their fitness, that the master shall, within these districts, take care of these persons

(11) 1 Dod. 467.

(12) 4 Exch. Rep. 255.

on board to superintend the steering of the vessel, the usual relation of owner and servant is to be entirely at an end; and still less do I see why the sufferer is to be deprived of all practical redress for injuries inflicted upon him by the ship which such a pilot navigates. If compulsory pilotage be at all expedient, a question open to very considerable doubt, it seems to me more just that the master of the wrong-doing ship should be left to his action against the pilot who has badly navigated her, than that the owner of the injured ship should be placed in that predicament. I incline to the opinion that the Belgian law, as it appears in these pleadings, is more consonant with natural justice than our own on this subject. Be this, however, as it may, it has not been argued that the Belgian law is inadmissible here, because it is at variance with natural justice; and if such an argument had been advanced, I should have expressed my dissent from it.

Having regard, then, to the fact that the *lex fori* is founded upon special considerations of public policy applicable only to British territory, and that the admission of the foreign law, the *lex loci delicti commissi*, to govern this case, is not prevented by reason of its repugnance to natural justice or to public policy, if the question before me were as to the law which ought to govern the fulfilment of the obligation arising out of an ordinary contract made in Belgian territories, it could not, I think, be successfully contended that I ought to apply the English law to such a case.

To such a contract I might apply the principle of Lord Stowell's judgment in *Dalrymple v. Dalrymple* (13), and adopting with a slight alteration his very words, say, this contract, being established in an English Court, must be adjudicated according to the principle of English law. But the only principle applicable to such a case by the law of England is, that the character of this obligation (Lord Stowell says the validity of Miss Gordon's marriage rights) must be tried according to the law of the country in which it had its origin. Having furnished this principle, the law of England withdraws altogether, and leaves the legal

question to the exclusive judgment of the law of Belgium. The question, however, arises as to whether, because in this case the obligation to pay damages arises, not, as in a case of contract, out of the free will of the obligor, but out of the order of the law consequent upon the wrongful act of the obligor, the application of the principle ought to be different. Does it affect the principle upon which justice ought to be administered, that the obligation arises out of a *delictum*, and not out of a *contractus*? The authority of Savigny, which it was truly said would have great weight with me, is cited in favour of the application of the *lex fori* in such a case—*Savigny, Systéme des R. R.* viii., pp. 208, 278. The opinion of this most learned and admirable writer is, that the law which prevails in the place in which a contract was intended to be fulfilled ought to be administered by the *forum* before which the fulfilment is sought to be enforced. He places the exceptions to this rule under two categories; it is only with the first that we are now concerned. Under this category of exceptions he ranges all cases in which the *lex loci* or the *lex loci solutionis* comes into conflict with what he calls a positive stringent law of the forum. Having laid down this principle, he proceeds to place the *obligatio ex delicto* under it. The passages in which he does so are perhaps the least satisfactory in his work, and this particular branch of his subject is but cursorily treated. I think, however, that under this category of a positive stringent law, he did not intend to include such a law as the English law with respect to pilots and the irresponsibility of masters. He is not to be understood as saying that a *lex fori* which is founded exclusively on local considerations should be applied to the transactions of a foreigner happening in a place to which these local considerations do not apply. But if he is to be so understood, if his proposition be unqualified and universal, it is opposed to the opinion of a great, I believe the greater, number of German jurists. Dr. Bar, the assessor to the Royal Court of Hanover, a jurist of eminence, expressing his dissent from the opinion of Savigny, lays down the contrary doctrine, and refers in a note to the opinion of many of his brother jurists, who are of the same opinion—

Bar, Das Internationale Privat und Strafrecht, Hanover, 1862, pp. 66, 317, 437, 477. To these may be added John Voet, who says, "Ita quoque delinquens videtur tacite per delictum, velut contractum involuntarium sese obligasse ad talem poenæ modum qualis præstitutus est per legem loci in quo delictum perpetravit"—L. 48, t. 19, xi.

It is well remarked by Savigny, that in applying the principles with respect to the enforcement of the obligations which arise *ex contractu* to the obligations which arise *ex delicto*, some difficulty is caused by the peculiar character of the latter obligation, inasmuch as the enforcement of it borders very closely upon the administration of criminal law. Now, it is a maxim of private international law, not indeed universally recognized, but I think firmly incorporated into the jurisprudence of this country, that the Court of one State cannot be required to administer the criminal law of another. It is with the view of getting rid of any embarrassments created by this difficulty between the civil obligation and the punishment of the criminal offence, that eminent jurists have generally adopted the following distinction, which appears to me just and sound. The *obligatio ex delicto* may be followed by two distinct consequences: to make compensation in civil damages for the injury inflicted, and the liability to undergo a punishment, such as a penal fine or imprisonment, whether at the instance of the person injured or by the intervention of a public officer of the State. "Eodem delicto et civilis persecutio ad poenam privatum et judicium publicum esse possit" John Voet (L. 47, t. 1, i.) says; and Donellus distinguishes between the civil action "de privato damno et pecunia quam inde debitam actor prosecutur," and "quatenus de his agitur criminaliter ad poenam et vindictam criminis"—*Comment. de Jure Civili*, L. xvii. c. 16. To the same effect is the passage in the *Institutes*, L. 4. t. 4. It is with the former consequence alone of the *delictum* that the forum of a foreign State can be properly concerned.

It is said that the case of *The Amalia* decided in this Court, and afterwards adjudicated upon by the Privy Council, renders it incumbent upon me to apply the *lex fori* to the present case. *The Amalia*

was a cause in which the owners of a British steam-ship, the *Amalia*, petitioned this Court for the purpose of obtaining a declaration of the limitation of their liability under section 54. of the Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63), in respect of a collision which had taken place between that vessel and a Belgian steam-vessel, the *Marie de Brabant*, in consequence of which the *Marie de Brabant* with her cargo was sunk and lost; and several of the crew drowned. The collision in question happened on the 15th of May, 1863, in the Mediterranean Sea. When this case was before this Court, Dr. Lushington observed, "The principle of limited liability is, that full indemnity, the natural right of justice, shall be abridged for political reasons." And further on he observes, "I have always recognized the full force of this objection, that the British parliament has no proper authority to legislate for foreigners out of its jurisdiction. Now, fully recognizing the force of this objection, I do not think it is removed by the ingenious suggestion that limited liability is a part of the *lex fori*." And here I may ask, if the limitation of liability be not part of the *lex fori*, why should the exemption from all liability belong to that category? And Dr. Lushington then decided that the construction of the 54th section of the Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63), which contained the words "the owners of any ship, whether British or foreign, shall not," &c., related equally to British and foreign vessels, and that to the latter, in a British court, as well as the former, must be applied the doctrine of limited liability. The Judicial Committee of the Privy Council upheld this decision. Lord Chelmsford, who delivered the judgment of their Lordships, observed, "The appellants say that the moment a collision occurs there is a lien upon the vessel which is in fault, and, supposing the vessel injured to be a foreign one, that the foreigner immediately acquires this lien to the extent of the damage, and cannot be deprived of it by the municipal law of this country. But suppose the foreigner, instead of proceeding *in rem* against the vessel, chooses to bring an action for damages in a court of law against the owners of the vessel occasioning the injury, the argument arising out of the

acquired lien would be at once swept away, and the rights and liabilities of the parties be determined by the law which the Court would be bound to administer. And it may be asked, what breach of international law or interference with the natural rights of foreigners is produced by the legislature saying that all suitors having recourse to our Courts to obtain damages for an injury from a person not himself actually in fault, but being responsible for the acts of his servant, shall recover only to the value of the thing by which the loss or damage was occasioned, estimated in a particular manner. It is to be observed that, under this view of the 54th section, the foreigner will be entitled to the benefit of the act, as well as the British owner of a ship occasioning damage, and he will, therefore, not be exposed to a more extensive liability than the British subject" (14).

It is not necessary for me to make any remark upon the reasoning by which their Lordships arrived at this conclusion. I may be permitted to observe, however, that the limitation of the owner's liability to the whole value of the vessel which did the damage, stands upon a very different footing, with respect to the claims of natural justice, from the total exemption of the owner from all liability whatever for the act of his vessel. However this may be, the judgment in *The Amalia* does not appear to me to govern this case. The *res decisa* in *The Amalia* was that the 54th section of the Merchant Shipping Act, 1862, must be holden by a British Court of Justice to apply to a foreign as well as a British vessel, although the collision had taken place between them upon the high seas. It was a decision upon the words of that statute, and so far it is binding upon this Court. In no other way am I able to reconcile their Lordships' judgment in this case with the principles of their previous decision in the case of the *Bold Buccleuch*, *Harmer v. Bell* (15). In that case Lord Chief Justice Jervis, delivering the opinion of their Lordships, says as to the character of the lien which binds the wrong-doing vessel from the moment that the collision has taken place. "Having its origin in this rule of the Civil law, a maritime lien is well

defined by Lord Tenterden to mean a claim or privilege upon a thing to be carried into effect by legal process; and Mr. Justice Story (16) explains that process to be a proceeding *in rem*, and adds that wherever a lien or claim is given upon the thing, the Admiralty enforces it by a proceeding *in rem*, and indeed is the only Court competent to enforce it. A maritime lien is the foundation of the proceeding *in rem*, a process to make perfect a right inchoate from the moment the lien attaches; and whilst it must be admitted that where such a lien exists a proceeding *in rem* may be had, it will be found to be equally true that in all cases where a proceeding *in rem* is the proper course, there a maritime lien exists, which gives a privilege or claim upon the thing to be carried into effect by legal process. This claim or privilege travels with the thing, into whosoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process, by a proceeding *in rem*, relates back to the period when it first attached. This simple rule, which in our opinion must govern this case, and which is deduced from the Civil law, cannot be better illustrated than by reference to the circumstances of *The Aline* (17), referred to in the argument, and decided in conformity with this rule, though apparently upon other grounds. In that case, there was a bottomry bond before and after the collision, and the Court held that the claim for damage in a proceeding *in rem* must be preferred to the first bondholder, but was not entitled against the second bondholder to the increased value of the vessel by reason of repairs effected at his cost. The interest of the first bondholder taking effect from the period when his lien attached, he was, so to speak, a part owner in interest at the date of the collision, and the ship in which he and others were interested was liable to its value at that date for the injury done, without reference to his claim. So by the collision the interest of the claimant attached, and dating from that event, the ship in which he was interested having been repaired, was put in bottomry by the master acting for all parties, and he could be bound by that

(14) 1 Moore, N.S. 484.

(15) 7 Moore, 284.

(16) 1 Sumner (American) Rep. 78.

(17) 1 W. Rob. 111.

transaction. This rule, which is simple and intelligible, is, in our opinion, applicable in all cases." The decision in *The Amalia* therefore does not, in my opinion, govern the case now before me.

In the case of *Smith and others v. Condry* (18), to which I was referred by Mr. Clarkson, two ships belonging to subjects of the United States in North America came into collision in the port of Liverpool. The action was brought in the Circuit Court for the district of Columbia, and came up by writ of error to the Supreme Court. Mr. Chief Justice Taney, in delivering the opinion of the Court, observed as follows: "Upon the evidence above stated, the defendant asked the Court to instruct the jury that under the statutes of Great Britain of the 37 Geo. 3. c. 78, 52 Geo. 3. c. 39. and 6 Geo. 4. c. 125, the defendant was not responsible for any damage occasioned by the default, negligence or unskilfulness of the pilot. The Court gave this instruction, and that is the subject of the first exception. The collision having taken place in the port of Liverpool, the rights of the parties depend upon the provisions of the British statutes then in force; and if doubts exist as to their true construction, we must of course adopt that which is sanctioned by their own Courts" (19). This decision of the Supreme Court of the United States of North America seems to go the whole length of the way which the Norwegian plaintiff desires me to travel, for it is in fact a decision that the Court before which a plaintiff sues for the enforcement of the damages growing out of an *obligatio ex delicto* ought to measure those damages by the law which bound the obligor and the obligee at the time when the *factum obligans* (as civilians speak) took place, or, in other words, when the *delictum* was committed.

Lastly, I must observe upon not the least remarkable feature in the present proceeding, namely, that the defendant is the first to invoke in his own favour the law of Belgium. He pleads that by that law, applicable to this case, the taking of a pilot on board was compulsory, and there his citation from the Belgian law ceases. The plaintiff, not unnaturally, pleads in his turn the other part of the Belgian law,

which is to the effect that the compulsory taking on board of a pilot does not release the master from his liability under the general law for all damages occasioned by the unskilful navigation of his vessel. The defendant contends that the plaintiff has no right to finish the citation, so to speak, which he the defendant has begun, from the Belgian law; that I must only look at that portion of it which he has selected as being in his favour, and which, as such, he is pleased to lay before me; that it is my duty not to apply either the general *Lex Maris*, mentioned at the beginning of this judgment, or the whole Belgian law, which combines the obligation to take a pilot with the continuing responsibility of the owner; but to take the former part of that law which relates to the obligation to take a pilot, and add to it the English law which exempts the owner from responsibility. This is the tessellated piece of jurisprudence which I am told the law requires to be applied to the case before me. I hope there is no law or legal rule in this country which would compel me to do an act of, what seems to me, such manifest injustice; as at present advised I know of none.

Upon the whole, after an anxious and, I trust, careful consideration of the principles of law applicable to this case, and of the authorities and arguments which have been laid before me, I am of opinion that the plaintiff is entitled to plead that the law of Belgium, within whose territorial waters his vessel received damage from the vessel of the defendant, renders the owner of the latter vessel, although compelled to take a pilot on board, liable to make reparation for the wrong which she has done. The question is one of grave importance, and submitted in this country for the first time unhappily to my decision. I am glad to remember that, if I have erred, my error will be corrected by the Court of Appeal, and I will readily accord to the defendant, if he desire it, the permission to appeal, which the statute requires, from this decision upon the admissibility of the plaintiff's plea.

Attorneys—Field, Roscoe & Co., agents for Lowndes & Co., Liverpool, for plaintiffs; Clarkson, Son & Cooper, for defendants.

(18) 1 How. U.S. Rep. 28; s. c. 14 Curtis, 48.

(19) *Ibid.* 32.

1867. }
Nov. 12. } THE VICTORIA.

Jurisdiction—Disbursements by Mate.

The High Court of Admiralty has no jurisdiction to adjudicate upon a mate's claim for wages paid to the crew, and necessary disbursements made by him in foreign ports.

This vessel, against which several other suits had been instituted, had been sold, and the proceeds, which were insufficient to meet all claims against the ship, were in court.

On the 11th of July, in this year, the vessel then being under arrest, to satisfy the before-mentioned claims, a suit was instituted on behalf of Manuel Storca-y-orta, a Spaniard, who claimed the sum of 76*l.* 18*s.* for wages as chief mate of the *Victoria*, and also a large sum, amounting together to 84*l.* 5*s.*, for wages paid to the crew, and for necessary disbursements in foreign ports. The plaintiff stated in his petition, that the disbursements were made at the request of Carlos Layer, the owner of the vessel, on whose behalf and at whose request he received and paid moneys.

Mr. C. P. Butt now moved the Court to reject the petition.—The 10th section (1) of the Admiralty Court Act, 1861, only gives the Court jurisdiction over a master's claim for disbursements, and not for money paid by a mate. The petition was framed to bring the claim under the 4th section (2) of

the act, for building, equipping and repairing; and even if the claim could be brought under this section, the plaintiff having only paid the money, and not being himself the material man, could not sue. It clearly appeared from the facts that the plaintiff was the agent of the owner, who did not appear in the original suit, and who was trying by this method to possess himself of a large sum of money.

Mr. Bruce, for the plaintiff.—The Court has jurisdiction over a claim for equipment. Money advanced for wages constitutes a claim for wages, and money advanced for equipment constitutes a claim for equipment. The following were cited in the argument—*The Alexander* (3), *The Gosfabrick* (4), *The Admiralty Court Act*, 1861, ss. 4. and 10.

SIR R. PHILLIMORE was of opinion that the High Court of Admiralty had no jurisdiction in this case under either the 4th or 10th sections of the Admiralty Court Act, 1861, and he directed the petition to be reformed by striking out every claim but the one for the plaintiff's own wages.

Attorneys—*Neal & Philpot*, agents for *Edward Cotton*, Liverpool, for plaintiff; *Pritchard & Sons*, agents for *Bateson & Co.*, Liverpool, for defendant.

1867. }
Nov. 11, 12. } THE QUEEN.

Collision—Assistance by the Tug of the innocent Vessel—Right to Salvage.

Two vessels having come into collision, a tug towing the innocent vessel rendered assistance to the wrong-doer:—Held, that the tug was entitled to salvage remuneration.

This was a cause of salvage brought by the steam-tug *Retriever*, 54 tons register, with two disconnecting engines of 140 horse-power nominal, against the paddle steam-vessel *Queen*, for services rendered

the ship, or the proceeds thereof, are under the arrest of the Court."

(3) 1 W. Rob. 238.

(4) Swab. 345.

(1) Section 10.—"The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship: provided always, that if in any such cause the plaintiff do not recover 50*l.*, he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the Judge shall certify that the cause was a fit one to be tried in the said Court."

(2) 24 Vict. c. 10, s. 4.—"The High Court of Admiralty shall have jurisdiction over any claim for the building, equipping, or repairing of any ship, if at the time of the institution of the cause

to the latter, at the entrance of the Queen's Channel, on the 14th of December last. It appeared that the *Retriever* had been towing a ship called the *Hannibal* towards Liverpool, when a collision took place between the *Hannibal* and the *Queen*, the result of which was that the *Queen* was greatly damaged; and that the *Retriever* thereupon having towed the *Hannibal* clear of the *Queen*, proceeded to the assistance of the *Queen*, and after considerable difficulty brought her to Liverpool and placed her safely alongside the Prince's landing-stage. It was also alleged for the *Retriever* that but for her timely assistance in towing the *Hannibal* away, the *Queen* would have been sunk by the *Hannibal*, and but for her help after the *Hannibal* was towed clear, the *Queen* would inevitably have gone ashore on some of the banks by which she was surrounded, to the certain destruction of herself and all on board; and that no other steamer able to render assistance was near.

Mr. Brett and Mr. V. Lushington appeared for the *Retriever*.

Dr. Deane and Mr. Butt, for the *Queen*.

SIR R. PHILLMORE.—The Court has already pronounced the *Queen* to blame for the collision with the *Hannibal*, and it appears that the *Retriever*, which at the time of the collision was towing the *Hannibal*, afterwards came to the assistance of the *Queen*, and towed her into Liverpool, a distance of about eleven miles from the scene of the collision. For these latter services the *Retriever* now claims salvage remuneration. The Trinity Masters were of opinion that the *Queen*, her cargo and crew, were in some, but not great, danger. It occurred to me, however, that, before determining whether any and what salvage was due to the *Retriever*, there arose a question whether, under the provisions

contained in 25 & 26 Vict. c. 63. (1), the rendering of salvage in this instance had not been taken out of the category of a voluntary service, and become the mere discharge of a positive duty cast by the statute upon the salvor, for the neglect of which he would have been punishable; and as the interpretation of this clause had not been the subject of any judicial decision, I deferred my judgment. The clause was, as is well known, introduced into the statute by Lord Kingsdown, in consequence of some case which came within his cognizance while sitting in the Judicial Committee of the Privy Council, and in which, after a collision, one ship had sailed away and left the other to perish. The clear object of the clause is to visit with deserved penalty and punishment such a transgressor; and it could not have been the intention of the framer of the clause to prevent a vessel which had been an innocent sufferer from obtaining a salvage reward in this Court, to which, upon the ordinary principles of law, it would have been entitled. In this case the tug itself did not come into collision, but the ship which it towed; and it has been argued that the case of a towing ship is a *casus omissus* from the statute; but I am not of that opinion, and I think the *Retriever* is entitled to salvage remuneration.

Attorneys—Gregory, Rowcliffes & Rawle, agents for Duncan, Squarey & Co., Liverpool, for the *Queen*; Pritchard & Sons, agents for Bateson & Co., Liverpool, for the *Hannibal*; Jennings & Sons, agents for Simpson & North, Liverpool, for the *Retriever*.

(1) 25 & 26 Vict. c. 63. s. 33: "In every case of collision between two ships, it shall be the duty of the person in charge of each ship, if and so far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision. In case he fails so to do, and no reason-

able excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default; and such failure shall also, if proved upon any investigation held under the Third or Eighth Part of the Principal Act, be deemed to be an act of misconduct or a default for which his certificate (if any) may be cancelled or suspended."

1867. }
 Nov. 12; } THE SYLPH.
 Dec. 3. }

Jurisdiction—Personal Damage—Award of Arbitrator and subsequent Suit.

The High Court of Admiralty has jurisdiction to entertain an action and to assess damages in respect of personal injuries done by a ship.

*A claim for personal injury done by a ship was referred to an arbitrator, with a condition reserving the claimant's rights and remedies in case the award should not be performed. The arbitrator awarded 410*l.* which had not been paid:—Held, that under the circumstances the claimant had not barred himself of his right to sue in the Admiralty Court.*

This was a cause to recover compensation for personal injury, and was instituted by Ellis Jevons, a marine diver, against the vessel *Sylph* and Alexander Shand, the mortgagee.

The plaintiff was a marine diver residing at Liverpool, and in the exercise of his calling was, on or about the 29th of October, 1866, engaged in diving in the river Mersey, a little to the south of the great landing-stage, for the purpose of reporting upon the state and condition of a ship which had been sunk there, and a boat was anchored and the plaintiff attached thereto by means of ropes, and supplied with air by a tube passing between him and the boat. Whilst the plaintiff was so engaged the vessel *Sylph*, which was then employed as a ferry-boat between the great landing-stage and New Ferry, and was proceeding from the stage to New Ferry, was so negligently managed that she came into contact with the plaintiff, and the ropes whereby the plaintiff was attached to the boat; and the paddle-wheel or vessel caught the ropes, and the plaintiff was carried round by the paddle-wheel and much injured, and is likely never to recover the proper use of his left arm or to be able to follow his calling of a marine diver.

The plaintiff's claim in respect of the injury was referred to an arbitrator, who on the 15th of January last awarded a sum of 410*l.* as the proper compensation for his injuries, which the defendant has never

paid; and by the agreement of reference, all the rights and remedies of the plaintiff were expressly reserved in case the award of the arbitrator should not be performed. The plaintiff therefore prayed the Court to order that the sum of 410*l.*, or such other sum as to the said Judge may seem proper, be paid to the plaintiff, or, if necessary to refer the damage to the registrar and merchants, and to condemn the defendants and their bail therein, and in the costs of the suit.

Mr. C. P. Butt, on behalf of the defendant, moved the Court to reject the petition, and in effect to dismiss the claim: first, upon the general ground of want of jurisdiction; secondly, on the particular ground that the plaintiff had, by submitting his case to arbitration, abandoned his right to institute any suit or bring any action upon the same subject in any Court.

Mr. V. Lushington, and *Mr. R. G. Williams*, for the plaintiff, contended that, though there was no direct precedent in favour of the plaintiff, yet, both upon general principles and especially upon the authority of the 7th section of the Admiralty Court Jurisdiction Act, the High Court of Admiralty had power and ought to entertain the case; and that as to the arbitration, the agreement especially reserved to the plaintiff the right of resorting to a Court of justice in the event of the award of the arbitrator being unexecuted by the defendant.

The cases cited in the argument are fully referred to in the judgment.

SIR R. PHILLIMORE (after stating the facts, said)—That this Court had originally jurisdiction in such a case as the present, I have no doubt whatever. It is given by the terms of the patent under which I hold my office, and it is clear from the old authorities upon the subject that the Court had jurisdiction over all torts and injuries done within the ebb and flow of the tide as well as upon the high seas. The whole law upon the subject is collected in the judgment delivered by Mr. Justice Story in the case of *De Lovio v. Boit* (1), and this judgment in truth exhausts all the learning upon the subject. The exer-

(1) 2 Gallison's American Rep. p. 393.

cise of jurisdiction in this case is also supported among other authorities by that of the Black Book of the Admiralty, to which Lord Stowell on various occasions referred as a repertory of the common law and customs of the sea and of the jurisdiction of the Admiralty Court.

There is no doubt that in and before the reign of Edward the Third the plaintiff would have had his remedy here for this tort, but this original power has been curtailed in various respects by statute law and by prohibitions by which at one time the jealousy of the common law Courts thwarted and confined the jurisdiction of a Court whose proceedings were founded upon the Civil law. The statute of 3 Ric. 2. c. 5, which is generally referred to as the first restraining statute, enacts that the admirals and their deputies shall not meddle henceforth of anything done within the realm, but only of a thing done upon the sea, according as it has been duly used in the time of Edward the Third. The 2 Hen. 4. c. 11. confirms the statute of Richard by the addition of penalties and other means.

It was upon the construction of these statutes that the common law Courts endeavoured to abridge the jurisdiction of this Court as to various subjects over which the patent of the Judge still gives him authority, especially with regard to contracts made at sea.

The Admiralty Court in the United States has recovered jurisdiction on this and on other subjects, which it is perhaps not now competent to this Court to entertain.

This Court has always had a jurisdiction over personal injuries committed on the high seas, and has entertained actions *in personam* against captains of merchant vessels for inflicting, while on the high seas, excessive punishment upon seamen. In *The Agincourt* (2) Lord Stowell condemned the captain of an East Indiaman in 100*l.* damages with costs. In *The Louther Castle* (3) he entertained a similar action, but held the charge against the captain not proved. In *The Ruckers* (4) Lord Stowell went a step further, and allowed a civil suit by a

passenger against a master for ill treatment on the high seas. Reports of cases were then of recent date (both of the Admiralty and Ecclesiastical Courts), but the registrar, on searching the records back to 1730, found many instances of such suits. These were cases of action against the person; the present is a suit *in rem*. They were cases also in which the tort was committed on the high seas, and not, like the present, in the body of a county. No prohibition upon this matter has ever been issued to this Court, and I am sure it would not be the disposition of Courts of common law, in these days, to grant prohibitions as they were formerly granted, out of mere jealousy of the jurisdiction of this Court, especially since this Court has been created, by recent statute, a Court of Record; still, having regard solely to the old law of this Court, I should have hesitated to entertain this suit; but the jurisdiction of this Court has been of late years much extended. By 3 & 4 Vict. c. 65. s. 6, it is provided that "The High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever, in the nature of salvage for services rendered to or damage received by any ship or sea-going vessel; or in the nature of towage, or for necessities supplied to any foreign ship, or sea-going vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county or upon the high seas, at the time when the services were rendered, or damage received, or necessities furnished, in respect of which such claim is made." And by the Admiralty Court Act (24 Vict. c. 10. s. 7), it is enacted that the "High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship."

In the case of *The Diana* (5) Dr. Lushington said (p. 540), that the object of this act, as stated in the title and preamble, is "to extend the jurisdiction" of the Court. The 7th section, which deals with the subject of damage, does not particularize any circumstances which the jurisdiction of the Court is to extend, but gives the Court jurisdiction in the widest and most general terms. In the previous case of *The Malvina* (6) he had holden that the

(2) 1 C. Rob. 271.

(3) 1 Hagg. Adm. 385.

(4) 4 C. Robin. 78.

(5) 1 Lush. 539.

(6) *Ibid.* 493.

utmost jurisdiction is given to the Court in cases of collision, and that the 7th section of the Admiralty Court Act extended to the body of a county; and in the case of *The Uhla*—with a manuscript report of which Mr. Browning, the reporter of this Court, has furnished me (7)—the Court allowed the Falmouth Dock Company to institute a cause of damage against a ship for injury done to a breakwater (7th June, 1867).

Looking to these decisions, to the very wide language of the latter statute, and to the exercise of jurisdiction by Lord Stowell in like cases over torts committed on the high seas, I think I cannot refuse the plaintiff permission to institute this suit, unless he has by the agreement to submit to arbitration debarred himself from the power of resorting to this Court. I have looked into the cases cited on this subject—*Gascoyne v. Edwards* (8) and others, but

(7) The following case was decided by the late Judge, the Right Hon. Dr. Lushington, on the 7th of June last.—

1867.
June 7. } THE UHLA.

Claim by a Dock Company in respect of injury done to their breakwater by a ship.

This was a cause of damage instituted by the Falmouth Docks Company against the brig *Uhla*. The petition stated that the *Uhla*, having put into the port of Falmouth on the 12th of March, came to an anchor there in the outer harbour, and so remained till the 17th, when, under the influence of a heavy gale, she dragged her anchor and her master and crew having abandoned her drove with great violence against the breakwater, and remained beating against it for about two hours, in consequence of which the breakwater was greatly damaged.

Mr. E. C. Clarkson, for the defendants, moved the Court to reject the petition, by reason that the Court had no jurisdiction—*The Robert Pow* (1).

Mr. V. Lushington, in support of the petition.

DR. LUSHINGTON.—The true question is as to the construction of the 7th section of the Admiralty Court Act, 1861. I take it to mean every case of damage done by any ship; there is neither limitation nor restriction expressed in the act. The case of *The Robert Pow* is distinguishable from this in that it was not a case of collision at all. I am of opinion that the petition must be admitted.

The cause was then heard, and the *Uhla* was found to blame for the collision.

(1) Bro. & Lush. 99.

(8) 1 You. & J. 19.

if I understand rightly the fifth article of the petition, they do not govern this case. I have borne in mind also the other objections which were stated by the counsel for the plaintiff; among them, that arbitration could not be put higher than a judgment; and the case of *Nelson v. Couch* (9) was cited, establishing the principle that a judgment in another Court upon the question of personal damages would not prevent proceedings *in rem* in the Court of Admiralty. With respect to the argument that this Court is without the proper machinery to estimate personal damages, I have already adverted to the cases in which damages have been awarded for personal torts; and it is therefore clear that as an incident to this jurisdiction the Court must be able to exercise the power of assessment. Moreover, it has done so already in the case of *The Rouen*, the owners of which were condemned to pay damages to the personal representatives of the deceased—see *Taylor v. Dewar* (10); and I do not see why this Court, with the assistance of the registrar, and, if necessary, other competent persons, should be unable to do justice in the matter.

I certainly did not understand why the plaintiff had, by pleading the circumstances as to the arbitration, forestalled the possible defence of the defendant, and answered by anticipation an objection which it was for the defendant to raise. I was informed, however, that this was the result of some arrangement between the parties to bring all the facts connected with the case before the Court in the first instance; and as I have been desired to express, and have expressed, my opinion upon the effect of these details, I shall not direct them to be struck out, though this manner of pleading is open to objection, and must not be repeated in any other case.

Petition admitted.

Attorneys—Nethersole & Speechley, agents for J. W. Carr, Liverpool, for plaintiff; Gregory, Rowcliffes & Rawle, agents for Duncan, Squarey & Co., Liverpool, for defendant.

(9) 33 Law J. Rep. (N.S.) C.P. 46.
(10) 5 Best & S. 64.

[IN THE PRIVY COUNCIL.]

1867. } CHARLES LA BLACHE, appel-
 Dec. 20. } lant, JAIME SABINO RANGEL
 1868. } respondent.
 Feb. 4. } "THE NINA."*

*Jurisdiction of the Admiralty Court—
 — Foreign Ship — Wages — "Admiralty
 Court Act, 1861" (24 Vict. c. 10), s. 10. —
 Construction—Admiralty Rules, 1859, Rule
 10.—Foreign Consul—Protest—Costs.*

*Section 10. of the Admiralty Court Act,
 1861, enacts that "the High Court of
 Admiralty shall have jurisdiction over any
 claim by a seaman of any ship for wages
 earned by him on board the ship, whether
 the same be due under a special contract or
 otherwise, and also over any claim by the
 master of any ship for wages earned by him
 on board the ship, and for disbursements
 made by him on account of the ship."*

*The Admiralty Rules, 1859, provide, by
 rule 10, that "in a wages cause against
 a foreign vessel, notice of the institution of
 the cause shall be given to the consul of the
 State to which the vessel belongs, if there be
 one resident in London":—Held, that the
 object of this section was to extend the juris-
 diction which the Court had in the ordinary
 case of wages to the case of wages under a
 special contract, and of disbursements on
 account of the ship.*

*Held also, that the High Court of Admi-
 ralty has jurisdiction, under section 10. of the
 above statute, to entertain a suit for wages
 against a foreign ship, the words of the
 act being "any" ship; but that the Court
 ought not to exercise jurisdiction without first
 giving notice to the consul of the nation to
 which such ship belongs.*

*The protest of a foreign consul does not
 ipso facto operate as a bar to the prosecution
 of the suit; but the Court ought to determine
 according to its discretion, judicially exer-
 cised, whether, having regard to the reasons
 advanced by the consul, and the answers
 offered on behalf of a claimant, it is fit and
 proper that the suit should proceed or be
 stayed.*

* Present, the Right Hon. the Master of the
 Rolls (Lord Romilly), Sir J. W. Colville, Sir E. V.
 Williams and Sir R. T. Kindersley.

*The appellant (a British subject) having
 shipped on board a Portuguese ship as mate,
 and having signed an agreement to be bound
 by the law of Portugal, which required him
 to submit all differences between the master
 and seamen to the Portuguese consul, arrested
 the ship, and instituted a suit against the
 owners in the High Court of Admiralty
 in England for wages, whereupon the
 Portuguese consul entered a protest against
 the proceedings:—Held (affirming the judg-
 ment of the Judge of the High Court of
 Admiralty), that the suit ought to be dis-
 missed and the ship released; but without
 costs.*

This was an appeal from a decree of the
 Judge of the High Court of Admiralty of
 England, Sir R. Phillimore.

In the month of May, 1867, the Portu-
 guese vessel *Nina* was at Havana, destined
 to proceed thence to Greenock, in North
 Britain, with a cargo of sugar.

The *Nina* belonged to the port of Macao,
 a Portuguese settlement, governed by Portu-
 guese law; and the respondent, Jaime Sabino
 Rangel, of Macao, shipowner, was the sole
 registered owner of the *Nina*.

Whilst the *Nina* was at Havana, her
 then master, Francisco Dias Perez d'Almeida,
 engaged a crew, among whom was the
 appellant. The whole crew, including the
 appellant, were engaged by a written
 instrument, called a *matricula* or roll, made
 in conformity with the law of Portugal.

By this *matricula* or roll the appellant
 submitted himself to the provisions of
 the Portuguese Commercial Code, by which
 code it is provided that any dispute arising
 between the master of any Portuguese ship
 and any mate or seaman of such ship, shall
 be decided by the Portuguese consul in or
 near the port in which the vessel may
 chance to be.

The appellant served on board the *Nina*
 on her said voyage to Greenock as *piloto*
 or mate, and upon the 8th of August, 1867,
 he left the service of the *Nina*, having
 been two months and twenty days on board
 her.

The appellant, after he left the *Nina*,
 caused her to be arrested at the port of
 Cardiff, and instituted the present suit for
 wages and disbursements.

The appellant did not before instituting

proceedings in the Court of Admiralty in England take any means to have his claim settled by the Portuguese consul.

The respondent had always been willing that the claim should be so settled.

Notice of the suit was given to the Portuguese Consul-General in London who thereupon intervened, and protested against the suit proceeding.

The Judge of the Admiralty Court, after hearing the case, ordered the *Nina* to be released from arrest, and condemned the appellant in damages and costs.

The following are the material parts of the judgment of the Judge of the High Court of Admiralty:

"In this case the *Nina*, a Portuguese vessel, was arrested on the 21st of October in this year, by warrant from this Court, at the instance of Charles La Blache, who, in the affidavit which, according to the practice of this Court, precedes the issue of the warrant, described himself as 'master mariner, late chief officer and navigator on board the Portuguese vessel *Nina*, now lying in the port of Cardiff.' The plaintiff filed his petition on the 2nd of November, 1867, in this Court, in which he stated that he was a British subject; that on the 2nd of March last, by arrangement with Captain Almeida, the owner of the Portuguese vessel the *Nina*, then at Havana, he shipped on board the *Nina*, under a charter for a voyage to the Clyde and port or ports in the United Kingdom; from thence to Hong Kong and Macao, there to load coolies for Havana, where the voyage was to terminate. In his petition he says that he so shipped as chief officer and commander, at the rate of 18*l.* a month, with a bonus of 10*s.* a head on all coolies to be shipped at Macao, and with liberty to take with him his wife, child and servant the entire voyage at the ship's expense. He states that the agreement, under which he shipped, was made before the Consul-General of Portugal at Havana; that he has performed his duty under the agreement in all respects; and the sixth paragraph contains the averment that 'the plaintiff, whilst in command of the ship, made divers disbursements on account of the ship.' He then avers that he has been wrongfully dismissed, and concludes as follows: 'By reason of the premises a large

sum is due to the plaintiff for wages, disbursements and compensation.'

"A long and full answer was put in on behalf of the owner and master, of which the most material points are,—that the plaintiff shipped as a mate on board the *Nina*, that he is so described in the *matricula* or roll of that ship, that he entered into a special agreement to be bound by the commercial law of Portugal as to all disputes or questions which might arise between him and the captain; that, according to that law, no mate could take proceedings in a court of justice against the captain, without previously submitting the case to the arbitration of the Portuguese consul; and that he had not done so, though the consul was perfectly ready and willing to entertain the question. Here I may observe that the *matricula* itself, entirely bears out the averments contained in the affidavit. There is a heading, 'Special Obligations,' and the seventh of the special obligations is this: 'He must submit to everything foreseen and contained in the *Codigo Commercial* (Portuguese Commercial Code).' The roll is headed, 'Portuguese Consulate-General, in the archipelago of the Spanish Antilles, with residence at Havana. Articles and names of the crew of the Portuguese ship *Nina*, captain Almeida, and of which is owner Jaime Sabino Rangel, proceeding on a voyage to Greenock, with passport from Macao, &c. At the office of the Consul-General of the Portuguese nation, in the archipelago of the Spanish Antilles, in Havana, was matriculated and registered the crew of the Portuguese ship *Nina*, of which is captain Almeida, whose signature herein I certify as true, and who declared this to be the true and original register of said vessel.'

"The affidavit goes on to state, moreover, that the present plaintiff arrested this ship in Scotland, which arrest, owing to his non-appearance in support of it, had been dismissed, with costs.

"All these averments are sustained by ample documentary evidence, and by a very important affidavit of the Portuguese consul in London, which I will read.

"The affidavit is that of J. Francisco Ignacio Vanzellar. He says,

'I am Consul-General in London of His Most Faithful Majesty the King of Portugal.

The above-named vessel *Nina*, proceeded against in this cause, is a Portuguese ship belonging to the port of Macao, of which Jaime Sabino Rangel is the duly registered owner. The island of Macao is a Portuguese settlement, and is governed by Portuguese law. I have inspected the certificate of the *matricula* and roll under which the *Nina* was sailing when she arrived at Greenock in the month of June, 1867, and I say that such *matricula* or roll purports to have been duly executed as required by Portuguese law, before Fernando de Gaver e Tiscar, the Consul-General of His Most Faithful Majesty the King of Portugal at Havana. I say that by the law of Portugal the masters of all Portuguese vessels are required, before taking any officer or seaman to sea in a Portuguese vessel, to enter into a *matricula* or roll, setting forth the voyage upon which the ship is about to sail, and that the officers and seamen about to proceed in her have agreed to serve for that voyage, and such *matricula* or roll is, by Portuguese law, the only mode in which a binding engagement can be entered into between the master of a Portuguese ship and his officers and seamen; and the *matricula* or roll when entered is signed by the master, officers and seamen. The *matricula* or roll under which the *Nina* so arrived at Greenock purports to have been entered into for a voyage from Havana to Greenock only, and for no other voyage. The plaintiff in this action, Charles La Blache, has by the said *matricula* or roll, submitted himself to the provisions of the *Codigo Commercial* of Portugal, by which the said Charles La Blache is restricted from taking any proceeding against the *Nina* or her master, and is required to submit any dispute or disputes that might be existing between them, either to the Portuguese vice-consul at Glasgow or to myself. The said Charles La Blache has not, as I am informed and believe, submitted or attempted to submit any dispute or disputes existing between him and the master of the *Nina* to the Portuguese vice-consul at Glasgow, and the said Charles La Blache has not submitted or attempted to submit any such dispute to me, which I would have readily entertained had the said Charles La Blache so done. The said Charles La Blache, being subject to the provisions of the *Codigo Commercial*, and

not having taken the proper measures thereby adopted to settle his dispute with the master of the *Nina*, I respectfully submit that it is not within the jurisdiction of this Honourable Court to entertain the claim of the said Charles La Blache; and as the commercial representative of His Majesty the King of Portugal, I consider it to be my duty to respectfully and formally protest against the exercise of the jurisdiction of this Honourable Court in or about the dispute existing between the said Charles La Blache and the master of the Portuguese ship *Nina*.

"In these circumstances, an application was made to me on behalf of the master and owner of the vessel to release this foreign ship from arrest, and to enable her to proceed on her voyage according to her charter-party, and to condemn the claimant in costs and damages. I thought the *prima facie* evidence of the abuse of the process of this Court, and of the gross injury done thereby to a foreign subject by the detention of his vessel in this country, warranted me in calling upon the claimant in a summary manner to shew cause why the prayer of the foreign owner should not be granted. The matter came on for discussion in court. The counsel for the claimant prayed for further time to consider the statements and affidavits, and to reply to them, and I gave him time for that purpose.

When the case was called on, an affidavit by the claimant was brought into court, of which it has been truly said that every averment contained in it, whether true or not, referred to matters which had been in the knowledge of the person making it when the suit was first instituted. It is difficult to believe that its late introduction in court on the morning of the hearing was unconnected with purposes of delay. I allowed it, however, to be read and commented upon, and have taken it into consideration in the judgment which I am about to give. It is chiefly remarkable for the entirely new version of the case set up by the plaintiff. He now says that the ship was a Peruvian, and not a Portuguese ship, and attempts to set up a verbal agreement which is to supersede the written agreement, or the *matricula* which he admits that he signed. He does not deny that he arrested the ship under process of the Scotch Court.

on the 5th of September, or that the suit was dismissed with costs against him. He represents that his wife's health compelled him to leave Scotland, that he had no notice of the proceedings in the Scotch court; in fact, that that Court acted with flagrant injustice towards him. He does not, however, deny, in this affidavit, that the document which he signed did contain an express undertaking that he would submit himself to the Portuguese law. A suggestion was, indeed, made by counsel that the copy *matricula* is the only document before the Court without signature; but it is not denied that the original is, according to the law of Portugal, in the custody of the Portuguese consul at Havana, and, as I have said, that it contains the signature of this person.

"One word as to the last device—for so I must designate it—of the plaintiff; a device not thought of when he was before the Scotch Court; namely, that the vessel is a Peruvian vessel. I cannot but think that this total variation from the original statement to be found in every document before the Court, and in every averment hitherto made by the plaintiff—viz., that this vessel, sailing under a Portuguese flag, and hitherto described as a Portuguese vessel, is a Peruvian vessel—that this total variation arises out of a desire to take the case out of the application of a principle which has hitherto governed this Court in the matter of suits for wages by foreign seamen. Be my suggestion, however, right or wrong, I am satisfied that I ought not to allow the plaintiff so entirely to alter the grounds upon which his claim was instituted, or so to change the position on the strength of which he obtained the warrant of this Court.

"It has been most strenuously urged upon me by counsel for the plaintiff that I am nevertheless bound to entertain this suit, and to allow the plaintiff to continue the arrest upon this foreign vessel, which is thereby deprived of fulfilling the obligations of her charter-party. It is not quite, but very nearly maintained that I have really no discretion to exercise in this matter. The attention of counsel was drawn to the various well-known cases which established the proposition that when a seaman sues a foreign ship in this Court

for wages, the Court usually requires the consent of the foreign consul before it entertains the suit; and the 10th Rule of Court, framed in 1859, expressly provides that—'in a wages cause against a foreign vessel, notice of the institution of the cause shall be given to the consul of the State to which the vessel belongs, if there be one resident in London, and a copy of the notice shall be annexed to the affidavit.' The authority of these cases, and the rule founded on them, were said to be obsolete; indeed, never to have been founded on strict law, and at all events to be entirely abrogated by the 10th section of stat. 24 Vict. c. 10.—the act which enlarges the jurisdiction of this Court. I find no words in that section which limit the discretion hitherto claimed and exercised by this Court. I know no rule of law applicable to the construction of statutes, which, in the absence of express words, would give such effect to the section. It is to be observed, also, that the case of the *Franz et Elise* (1) has been decided according to the old practice, subsequently to the passing of this statute, and also that a similar argument, used I believe by myself, arose out of section 191. of the Merchant Shipping Act, 1854, and was expressly overruled by the Judge in March, 1861. I hold, therefore, that I have the same discretion as my predecessor in this chair possessed, in suits of this description. I am sure that it is most expedient, upon grounds of international comity, that the Court should possess this discretion. It is no unfrequent cause of complaint on the part of foreign States that the law of England does not in general accord, in British ports, to foreign consuls, that reasonable authority in mercantile transactions between the seamen and masters of their own ships which is almost invariably accorded to foreign consuls by the law of other States. I am desirous, however, of not being misunderstood. I do not say that this Court will never entertain a suit of this kind without the sanction of the foreign consul. Each case may depend upon its own circumstances, and I entirely agree with the opinion expressed on this question by Dr. Lushington, in *The Golubchick* (2). But I do say that I will not

(1) 1 *Maritime Cases*, 157.

(2) 1 *W. Robin*, 143

entertain this suit, in which the plaintiff has shipped on board a Portuguese vessel, with a Portuguese flag and papers, as mate, and has deliberately bound himself by a written instrument, duly entered into before a Portuguese consul, to conform to the law of Portugal, which requires him to submit to the arbitration of the Portuguese consul, who is here ready and willing to discharge his duties. I do say I will not entertain this suit contrary to the protest of the Portuguese consul, at the instance of a plaintiff who, from his first affidavit, which led the warrant, to his last affidavit, filed the other day, has continually varied all the material statements of his case, and who has already been condemned in a Scotch court in costs and damages for the arrest of this very vessel. I agree with Mr. Lushington that a more regular course of proceeding should have been adopted to bring this question before the Court, and I shall expect the more regular course to be adopted in other cases of the kind. But having regard to the peculiar circumstances of this case, which I have stated, I will not be deterred by any technical reasons from doing justice now in this matter. I think the process of the Court was abused originally, in the arrest of this foreign ship, and I decree that she be forthwith released, and I condemn the plaintiff in costs and damages incident to these proceedings."

Dr. Deane and *Mr. Lushington*, for the appellant.—The jurisdiction of the learned Judge of the Admiralty Court is absolute. He has no discretion in the matter. He is bound to entertain the suit. The language of "The Admiralty Court Act, 1861," is very comprehensive. Section 10. provides, "The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship." The words are "any ship"; such words must include a foreign ship; the learned Judge has therefore no discretion in the matter; he is bound to hear the cause. But even if he had a discretion, it is a discretion to be judicially exercised, having regard to all the circumstances of the case. But it is said that the Admiralty Rules, 1859, by rule 10, which requires notice to be given to the consul of a foreign State when a suit is commenced against

a foreign ship, deprive the Admiralty Court of jurisdiction if the consul of the State to which the ship belongs sees fit to enter a protest against the proceedings; but the Admiralty Act, by section 10, which gives the Admiralty Court jurisdiction in the case of any ship, in effect abolished the practice established by the Admiralty Rules of 1859. It is said that a seaman of a foreign ship cannot sue for wages without the consent of the consul of the State to which the ship belongs. But in a cause of collision or bottomry the practice does not prevail. Is there then any peculiarity in a suit for wages which requires the sanction of the representative of the State to which the vessel belongs? Besides, the decree of the Court below was of a most sweeping description. The learned Judge says, I have jurisdiction, but I have also an arbitrary discretion in the matter to entertain the suit or to refuse to entertain the suit, and I exercise my discretion by dismissing the claimant's suit, and with costs. Such a doctrine of discretion is altogether without authority or precedent. If the learned Judge of the Admiralty Court had a discretion in the matter, it must be a discretion to be exercised judicially according to some fixed principle. The question in fact is, can the consul or other representative of a foreign State exercise a restraint on the Courts of this country? The maxim which governs such a question should be *actor sequitur forum rei*.—They referred to *The Golubchick* (2).

The Queen's Advocate (*Sir Travers Twiss*) and *Mr. Clarkson*, for the respondent.—The whole question turns on the construction to be put on the 10th section of the Admiralty Court Act, 1861, taken together with the Admiralty Rules, 1859. The section gives the Admiralty Court jurisdiction "over any claim by a seaman of any ship for wages earned by him on board the ship." The Admiralty rule provides "that in a wages cause against a foreign vessel, notice of the institution of the cause shall be given to the consul of the State to which the vessel belongs." Beyond all question, the learned Judge had jurisdiction in the cause if he saw fit to exercise it; but the Admiralty Act, 1861, taken together with the Admiralty Rules, 1859, clearly shews that the Judge has a discretion in the

matter, to be exercised no doubt judicially, but nevertheless a discretion, under all the circumstances of the case, to entertain the suit. It is for the Judge to determine whether to hear the cause or not, after considering all that may be said by the representative of the foreign State and by the plaintiff in the Admiralty Court. It is said that to require the consent of the consul of a foreign State to proceedings in the Courts in this country, or, in other words, to allow such foreign representative to put a veto on the proceedings of our Courts, is an extravagant proposition; but when duly considered, this is not unreasonable. A foreign ship is part of the foreign State to which she belongs, and it may well be that no proceeding *in rem* ought to be taken against such foreign ship, she being in the estimation of law, a part of the dominion of a foreign State. The seaman may proceed under the Merchant Shipping Act, 1854, ss. 188, 190, which provides a remedy other than a proceeding against the ship. It is, after all, a question where such an inquiry can most conveniently take place, whether before the High Court of Admiralty or before the consul of the foreign State; and in the present case the appellant has signed a formal instrument consenting to refer disputes to the consul of the State to which the ship belonged.—They referred to *The Admiralty Court Act*, 1861, *The Merchant Shipping Act*, 1854, *The Herzogin Marie* (3), *The Franz et Elise* (1), *Lloyd v. Guibart* (4), *The Milford* (5), *The Octavie* (6), *The Courtney* (7), *The Harriet* (8) and *Damon v. White* (9).

Dr. Deane, in reply.

Their LORDSHIPS intimated that they should humbly submit to Her Majesty that the judgment of the High Court of Admiralty should be affirmed; but declined to make any order as to costs.

On the 4th of February, 1868, the judgment of their Lordships was delivered by—

- (3) *Lush*, 292.
- (4) 2 *Maritime Cases*, 26.
- (5) *Swa. Adm. Cas.* 366.
- (6) 1 *Maritime Cases*, 420.
- (7) *Lush*, 285.
- (8) *Edwards*, 239.
- (9) 7 *Ves.* 35.

LORD ROMILLY—In this case their Lordships, to avoid delay, intimated, on the 20th of December, the nature of the report and recommendation they had agreed humbly to submit to Her Majesty; and Her Majesty was pleased, by her Order in Council of the same date, to approve of that report, and to direct that the same be carried into execution. Their Lordships will now proceed to state more fully the reasons of that decision, which could not be stated at their last sitting before the adjournment of the Committee.

This is an appeal from the Court of Admiralty, which dismissed the respondent from this cause and all further observance of justice therein, and condemned the plaintiff in the costs and damages consequent on the arrest of the vessel *Nina*, and also condemned him in the costs of the cause, and decreed the vessel to be released. The vessel is a Portuguese vessel; the appellant is a British subject.

In April, 1867, the appellant commenced his services on board the *Nina*, then lying at Havana. He signed the articles in the common form which was supplied to him, a certified copy of which is in evidence. On arrival at Greenock, he alleges that he was, by D'Almeida, the nominal captain, turned out of the vessel without payment of what was due to him for wages and disbursements on account of the ship; upon which he arrested her in Scotland; but not prosecuting the case with sufficient diligence in Scotland, the suit was dismissed and the ship released. The *Nina* then came to Cardiff, where the appellant again arrested the ship and instituted this suit in the Admiralty Court for wages and disbursements.

In accordance with the 10th of the Rules of the Admiralty Court, published in 1859, notice of the suit was given to the Portuguese consul residing in this country, whereupon the consul sent in a protest which, as far as is material, is as follows—[His Lordship read parts of the protest].—In this state of things, several questions arise: First, whether the Court of Admiralty has any jurisdiction at all in the case of a claim for wages by seamen for service on board of a foreign vessel. Secondly, If it has such jurisdiction, whether, before exercising it, the Court is bound to send notice of the case to the consul of the State to which the

vessel belongs. Thirdly, If the foreign consul intervenes and protests, whether such protest operates *ipso facto* as an absolute bar to the prosecution of the suit, or whether the Judge is to take into consideration the grounds and reasons advanced by the consul, and to determine according to his discretion whether, having regard to those grounds and reasons, it is fit and proper that the suit should proceed or be stayed. Fourthly, Whether the grounds and reasons put forward in the protest of the Portuguese consul in the present case are sufficient to satisfy the Court that the suit ought to be stayed.

Their Lordships at the conclusion of their judgment, stated that they should humbly advise Her Majesty to affirm so much of the decree in the Court below which dismissed the respondent from the suit ; but their Lordships declined to make any order as to costs.

On the first question, no doubt whatever is entertained by their Lordships. From the time of Lord Stowell down to the present, the Court of Admiralty has always asserted and exercised this jurisdiction. And if there remained any doubt on the subject, the 10th section of the 24 Vict. c. 10. expressly gives jurisdiction to the Court of Admiralty in the case of *any* ship, which, as the context and the rest of the act plainly shew, means the ship of any nation.

Nor have their Lordships any more doubt upon the second question. It has been argued at the bar that the 10th section of the 24 Vict. c. 10, before referred to, has the effect of abolishing the practice enjoined by the 10th of the Rules of the Admiralty Court of 1859, before referred to, of sending notice to the consul of the nation to which the foreign ship belongs. To this argument their Lordships cannot accede. If it had been intended by the legislature to abolish the practice, that 10th rule, which, it is to be observed, has the force of statute, would have been expressly referred to by the act, and repealed. This is not done. The 10th section of the act is perfectly consistent with the rule. The only object of that section was to extend the jurisdiction which the Court already had in the ordinary case of wages, to the

cases of wages under special contract, and of disbursements on account of the ship.

With respect to the third question, their Lordships are of opinion that the protest of the foreign consul does not, *ipso facto*, operate as a bar to the prosecution of the suit. The foreign consul has not the power to put a veto on the exercise of its jurisdiction by the Court of Admiralty. It is well observed by Dr. Lushington, in the case of the *Golubchick*, that the jurisdiction of the Court of Admiralty cannot depend upon the will of a foreign consul ; that as he cannot confer the jurisdiction, so he cannot take it away. If the consul protests, but advances no reason, the suit will proceed. If he advances reasons for staying the suit, the plaintiff must be at liberty to dispute the facts and answer the reasons put forward by the consul ; and then the Judge of the Court of Admiralty is to exercise his discretion, and determine whether, having regard to those reasons, with the answers thereto, it is fit and proper that the suit should proceed or be stayed. By discretion, is meant, to use the words of Lord Eldon (9), not an arbitrary, capricious discretion, but one that is regulated upon grounds that will make it judicial. That the exercise of this jurisdiction by the Court of Admiralty lies in the discretion of the Court in the sense before stated, is established by a long line of authorities, from the time of Lord Stowell down to the present. They are all one way, and they are, in the opinion of their Lordships, conclusive on this subject. And their Lordships concur in the decision of the late learned Judge of the Court of Admiralty in the case of the *Octavie* (6), that this discretion is not taken away by the 10th section of the Admiralty Jurisdiction Act already referred to.

Upon the first three questions, then, their Lordships are of opinion that in the case of a suit for wages by seamen for service on board of a foreign vessel, the Court of Admiralty has jurisdiction ; but it will not exercise it without first giving notice to the consul of the nation to which the foreign vessel belongs ; and that if the foreign consul, by protest, objects to the prosecution of the suit, the Court will determine, according to its discretion, judicially exer-

cised, whether, having regard to the reasons advanced by the consul, and the answers to them offered on the part of the plaintiff, it is fit and proper that the suit should proceed or be stayed. Their Lordships are further of opinion that it makes no difference that the plaintiff is a British subject. It is the nationality of the vessel, and not the nationality of the individual seaman suing for his wages, that must regulate the course of procedure.

With respect to the fourth question, which is, whether the facts and reasons adduced by the foreign consul are established, and if so, whether they are sufficient to induce the Court to stay the further prosecution of this suit, their Lordships think that they are so. The plaintiff does not deny that the roll or *matricula* which he signed was in the usual form, and that it contained the usual printed conditions which now appear on the certified copy produced in court. By these he agrees to be bound by the Portuguese law; the consul asserts the law to be, that in case of difference between the seamen and the captain, the case shall be determined by the Portuguese consul residing in the country where the ship is arrested. The consequence is, that he is the judge to determine the contest between the appellant and respondent, and he is ready and willing to hear and dispose of the case. No evidence is given to contest the accuracy of this statement, and, this being so, their Lordships are of opinion that the appellant has agreed to refer such matters to the decision of the Portuguese consul resident here, and that this constitutes a sufficient ground to induce the learned Judge of the Court of Admiralty to come to the conclusion that, in the proper exercise of his discretion, this suit should not be proceeded with. It must be a very strong case in which their Lordships would be disposed to overrule the discretion of any Judge which had been *bona fide* exercised on judicial principles, and they are of opinion that the decision of the learned Judge is correct in dismissing the cause and releasing the vessel; but the decree in the Court below proceeds to award costs and damages to the respondent against the appellant. Their Lordships are unable to discover on what principle this

can be rested. The question in the Court below, and now before their Lordships, is not whether the appellant was right in his suit, for the suit has not properly come to any hearing on the merits. The evidence necessary for arriving at a decision on the merits has not been produced. The only question properly before the Court below was, whether the suit instituted by the appellant should be allowed to proceed or not: in other words, whether the facts and reasons set forth by the Portuguese consul were sufficient to induce the Court to refuse to allow the suit to proceed; and these facts and reasons were the only matters which could be properly contested in the Court below. The learned Judge arrived at the conclusion, as their Lordships think, correctly, that the suit should not proceed; but that very circumstance made it impossible for the Court to come to a safe and satisfactory conclusion as to what would have been the result if the suit had been allowed to proceed, the proofs on both sides given in the usual manner and the cause heard on the merits.

Their Lordships, therefore, are unable to concur with the learned Judge of the Court of Admiralty in that portion of his decree which fixes the appellant (the plaintiff below) with the payment of costs and damages, and have therefore humbly reported to her Majesty that the decree of the Court of Admiralty be varied by striking out of it so much as relates to such costs and damages.

The decree runs thus: Her Majesty dismisses the defendant from this cause and all further observance of justice therein, and decrees the said vessel to be released; but their Lordships do not think fit to make any order as to costs, either in the Court below, or in the appeal to her Majesty in Council.

Attorneys — Cotterill & Sona, for appellant;
Clarkson, Son & Cooper, for respondent.

1868.
Feb. 10.

WILLIAM INMAN, *appellant*,
F. BECK AND OTHERS, *respondents*.
THE CITY OF ANTWERP.
THE FRIEDRICH.*

Admiralty—Collision—Sailing Ship—Steamer, Duty of—Admiralty Court—Pleadings.

In a cause of collision between a sailing ship and a steamer, although the sailing ship may be found to have been guilty of misconduct, or not to have observed the sailing regulations, yet the steamer will be held culpable if it appears that it was in her power to have avoided the collision.

It is the duty of a steamer where there is risk of collision, whatever may be the conduct of the sailing vessel, to do everything in her power that can be done consistently with her own safety in order to avoid a collision.

Where a steamer is charged for omitting to do something which she ought to have done, there must be clear proof, first, that the thing omitted to be done was clearly within the power of the steamer; secondly, that, if done, it would in all probability have prevented the collision; and, thirdly, that it was an act which would have occurred to any officer of competent skill and experience in command of the steamer.

The party against whom a judgment is given in the Admiralty Court is entitled to know from the complaint of his adversary what is the default imputed to him, in order that he may have an opportunity of meeting the case by his defence.

This was an appeal from a decree of the High Court of Admiralty of England.

The decree was made in cross-causes of damage instituted on behalf of the owners of the two ships, the *City of Antwerp* and the *Friedrich*, to recover damages occasioned by a collision in the Irish Channel on the morning of the 28th of March, 1867.

The *City of Antwerp* was a screw steamship, of 1,625 tons register, belonging to the port of Liverpool, and on a voyage to New York.

The *Friedrich* was a sailing vessel, of 937 tons register, belonging to the port of New York, laden with a cargo of corn,

* The Right Hon. Lord Westbury, Sir J. W. Colville and Sir R. T. Kindersley.

NEW SERIES, 37.—ADMIRALTY.

cotton and other merchandise, and bound for the port of Liverpool.

On behalf of the appellant, it was alleged that the *City of Antwerp* was in the Irish Channel about twenty miles from Tuskar, steering south-west-half-west. That the night was fine, with a fresh breeze from the west by north, and that the steamer was making about eleven knots an hour. That the regulation lights were properly fixed and burning brightly, and a good look-out was being kept on board. That the ship *Friedrich* was seen ahead, and slightly on the port bow of their vessel, distant about a mile and a half. That no lights of the *Friedrich* were then visible. That the *Friedrich* was observed and was shortly made out to be a vessel on an opposite course to that of the steamer, and with the wind free. That the helm of the *City of Antwerp* was thereupon put a-port, and then hard a-port. That if the *Friedrich* had kept her course, the two vessels would have passed port side to port side at a considerable distance apart, but the *Friedrich* put her helm a-starboard, and came rapidly round under her starboard helm, ran stem-on at great speed into the *City of Antwerp's* port main-rigging, doing much damage. As the two vessels approached each other, the *Friedrich's* starboard light—a dim green light—was seen. That at the time of collision the *City of Antwerp* had paid off between five and six points under her port helm, and the *Friedrich* must have come round about the same number of points under her starboard helm.

On behalf of the respondents, it was alleged that the *Friedrich* prosecuted her voyage in St. George's Channel, and was steering her channel course, north-east, and making about nine knots an hour. That the night was fine. That there was a fresh breeze from about west-north-west. That the *Friedrich* had her coloured regulation lights duly exhibited and burning brightly, and that a good and careful look-out was being kept on board. That a sail was reported ahead, which was ascertained to be a small schooner on the same course as the *Friedrich*, at a considerable distance and about half a point on her port bow. The *Friedrich* thereupon continued her course till she neared the schooner, and then ported about one point, so as to pass her with safety

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about half a cable's length to leeward of her. That before the *Friedrich* had passed the schooner the look-out of the *Friedrich* reported a light ahead, which proved to be the masthead light of the *City of Antwerp*; that the port light of the said steam-ship was at the same time visible about a point on the port bow of the *Friedrich* and apparently at a considerable distance. That after clearing the schooner the *Friedrich* was brought to her proper channel course, north-east. That the *City of Antwerp* was at such time about a point and a half on the lee bow of the *Friedrich*, distant between a quarter and half a mile, having meanwhile shut out her port light and opened her starboard light, as if intending to pass to leeward of both the schooner and the *Friedrich*. That the latter was accordingly luffed up about half a point; but almost immediately afterwards the steam-ship altered her course, and, shutting in her starboard light, again shewed her port light on the starboard bow of the *Friedrich*, causing immediate danger of collision, whereupon the helm of the *Friedrich* was put hard down, in order to bring her sails aback so as to lessen the mischief if possible; notwithstanding which the steam-ship ran across the bows of the *Friedrich*, catching that ship's jibboom with her port main-rigging, and with her port side catching the stem of the *Friedrich*, tore it open from the wood ends of her starboard bow, causing a dreadful leak, in consequence of which the *Friedrich*, in spite of every effort that could be made to save her, foundered in about three hours with everything on board her.

The learned Judge of the Admiralty Court, being assisted by two of the elder brethren of the Trinity Corporation, and having heard counsel on both sides, pronounced that the collision in question was occasioned by the fault or default of the master and crew of the vessel *City of Antwerp*, and by the fault or default of the master and crew of the vessel *Friedrich*; that the damage arising therefrom ought to be borne equally by the owner of the vessel *City of Antwerp* and by the owners of the vessel *Friedrich*, and for a moiety only of the damage proceeded for; and he condemned the defendants and their bail in the moiety of the damage.

The Solicitor General (Sir Baliol Brett), Mr. Milward and Mr. Butt, for the appellant.

The Attorney General (Sir J. B. Karslake) and *the Queen's Advocate (Sir Travers Twiss)*, for the respondents.

LORD WESTBURY delivered the judgment of their Lordships.—This case comes before their Lordships in a peculiar form, —a collision having occurred in the Irish Channel between a Bremen sailing-ship of large tonnage and one of the Liverpool American steamers, the result of which was the total loss of the ship and her cargo, and some damage to the steamer. Cross-suits were instituted in the Court of Admiralty by the owners of the steamer and by the owners of the sailing-vessel, which came on to be heard before the Judge of the Admiralty Court, assisted by two of the elder brethren of the Trinity House, who gave judgment that both vessels were to blame, and that the damage sustained ought to be equally divided between them. The result is, that the owners of the steamer will have to pay a very considerable sum of money, amounting probably to 20,000*l.*, as one moiety of the value of the *Friedrich* and her cargo. The sentence therefore is, in effect, a severe judgment against the owners of the steam-ship. The case made on behalf of the *Friedrich* in her petition is distinctly stated, and if it had been believed by the Court below, it would have been impossible to hold that the *Friedrich* was to blame; but, as it was rejected by the Court below, and the *Friedrich* has not appealed from the decision declaring that she was in the wrong, it is *res judicata* that the case made by her petition is not substantiated, and that her allegations are not entitled to credit.

We begin, therefore, with this admitted fact, and we have only to inquire whether the steamship is or is not to be held to have been in the wrong also. There is no statement in the petition of the *Friedrich* of any ground or reason why, supposing the *Friedrich* to have acted wrongly, the *City of Antwerp* ought to be held to have been in the wrong also; and, unfortunately, we are not told in the judgment upon what ground the Court, after having rejected the case of the *Friedrich*, held that the *Antwerp*

ought to be condemned to pay this large sum of money.

It is undoubtedly true, in cases of collision between a sailing-ship and a steamer, that, although the sailing-ship may be found to have been guilty of misconduct, or not to have observed the sailing regulations, yet the steamer will be held culpable if it appears that it was in her power to have avoided the collision. It cannot be too much insisted on that it is the duty of a steamer, where there is risk of collision, whatever may be the conduct of the sailing-vessel, to do every thing in her power that can be done consistently with her own safety, in order to avoid collision. But, according to the settled rules for the administration of justice, the party against whom judgment is given is entitled to know from the complaint of his adversary what is the default or misconduct imputed to him, that he may have an opportunity of meeting the case by his defence, and also by his evidence. And it is difficult to suppose a greater case of hardship than that a defendant, after having met and disproved the case made by the plaintiff, should yet have judgment pronounced against him upon some ground of complaint which was neither pleaded by his adversary, nor stated in argument during the discussion of the cause, and not even disclosed in the judgment of the Court. But, inasmuch as this has been done, it is our duty to examine with great care the facts of the case, for the purpose of ascertaining whether the conclusion is just that the steamer, if she had done something which it was plainly in her power to do, might have prevented the collision which occurred.

Taking the undisputed facts of the case, it appears that the *Friedrich*, at about half-past two o'clock in the morning of the 28th of March last, was shaping her course to Liverpool up St. George's Channel, with her head to the north-east. There was a fresh breeze from the west-north-west, and the *Friedrich* therefore was running free. The weather was fine, and the night clear. About half-past two in the morning she first sighted the steamer, which had left Liverpool and was on her way to Queens-town, her course being south-west-half-west. The *Friedrich* was making about nine knots an hour, and the steamer

about eleven knots. Taking, therefore, the combined speed of the two vessels, they would pass over a nautical mile in three minutes. Between the *Friedrich* and the steamer there was a schooner steering the same course as the *Friedrich*, and which, according to the evidence of the *Friedrich*, was, when she first sighted the steamer, about 600 yards distant lying on the same course, but a little to windward. When the *Friedrich* first saw the lights of the steamer, she made out the white light and the red light; and it is the case of both vessels that, when first seen by each other, each vessel was about a point or a point and a half on the port side of the other. The *Friedrich*, being a better sailer, forereached the schooner, passing her on the (schooner's) starboard side, and for that purpose ported about one point. She then luffed up, so as to regain her former course, and laid her head again to the north-east. Her witnesses say that from the time she ported to run to leeward of the schooner and the time of luffing about eight minutes elapsed, and the *Friedrich* is then described as afterwards sailing on her original course for about a minute longer before she again observed the lights of the steamer.

These circumstances are material as tending to shew two things: First, that there was a very imperfect look-out on the part of the *Friedrich*; secondly, that she had got very near the steamer indeed before, as she alleges, she observed the green light of the steamer. The evidence of the second mate of the *Friedrich* is, that he suddenly saw the green light of the steamer, and that the latter vessel was then only a quarter of a mile distant from the *Friedrich*, on the starboard-bow. The mate says that he then luffed, and put his vessel under a starboard-helm, until she rounded to about five points from her original course, and her head was brought north-by-west. But it is clear, upon the evidence, that the steamer never was on the starboard-bow of the *Friedrich*, and such must have been the opinion of the Court below, for otherwise it would have been impossible to hold that the *Friedrich* acted wrongly. With the exception of the fact of the position of the steamer, there is an agreement between the witnesses on both sides as to the distance between the steamer and the *Friedrich* at

the time when the latter began to starboard her helm; for the captain of the steamer says that the *Friedrich* was distant about a quarter of a mile from the steamer at the time when the *Friedrich* began to round to under her starboard-helm. The material inquiry then arises whether, in this state of things, it being clear that the steamer was on the port side of the ship, anything was done by the steamer that ought not to have been done, or whether anything was omitted to be done that ought to have been done, and which, if omitted or done, would have prevented the collision. It appears that the steamer made out the *Friedrich* as soon as she passed the schooner, and that she ported her helm whilst the ship was at least a mile distant, and afterwards, as the *Friedrich* approached nearer, put her helm hard aport, and that the steamer had, before the collision, gone off under her port-helm five points to the westward; but that the *Friedrich* rounding to very quickly, under her starboard-helm, brought her head within six points of the head of the steamer. In this state of things, the captain of the *Friedrich*, for the first time, came on deck from below, and his evidence is material. He tells us that, on his coming on deck, he found the bow of his vessel only half a ship's length from the steamer, and that collision was inevitable; in fact, he states that the collision actually took place within four or five seconds after he came on deck. He describes the steamer as lying, at the time when he came on deck, across the bow of the *Friedrich*, about half a length on one side and half a length on the other side of the bow, so that the stem of the *Friedrich* was pointing at the midships of the steamer, and that the *Friedrich* was still luffing, but her sails had begun to shake in the wind. Now, this position of the two ships must have been produced either by the steamer running down from the starboard side of the *Friedrich*, close under her bows, or by the *Friedrich* rounding to, under a starboard-helm, until she brought her stem within a few yards of the steamer's midships on the port side. We are of opinion that the latter was clearly the case, and that the steamer being on the port side of the *Friedrich*, could not have anticipated or avoided, more than she did, this unexpected, sudden and erroneous

proceeding on the part of the ship. We are pressed by the counsel of the *Friedrich* to hold that, when the steamer first observed the *Friedrich* coming round under a starboard-helm, it was the duty of the steamer, by stopping and reversing her engines, to have gone astern out of the way of the *Friedrich*, and that she did wrong in going ahead. But there is no witness who gives evidence to any such effect, and even if we were to conclude that the stopping, reversing and getting sternway on so large a steamer as the *Antwerp*, would not have occupied more than three minutes, yet it seems plain from the evidence, and particularly from the testimony of the captain of the *Friedrich* himself, that such an attempt would not have prevented the collision. In fact, the act done by the captain of the *Friedrich*, the instant he came on deck, confirms the conclusion, that the best course for the *Antwerp* to pursue was to go ahead as rapidly as she could; for the course taken by the captain was to put down his helm as hard as possible, in order to throw his sails aback, so that he might avoid striking the *Antwerp* a direct blow with the stem of his vessel, and might weaken the collision by striking her with his starboard-bow; and this he appears to have effected, for it is clear, upon the evidence, that the direction of the blow was from aft to forward on the side of the steamer. It was impossible for the captain of the steamer, when he first observed that the *Friedrich* was luffing, to know or suppose that she would do anything so unnecessary and foolish as to round to five points under a starboard-helm. She might have luffed one or even two points without danger, and if she had then steadied and kept on her course, she would have passed clear of the steamer; but the evil arose from the *Friedrich* rounding to five points under a starboard-helm, very quickly, which, as she was so very near the steamer, gave no time for any other course to be adopted than that which was adopted, and which the Liverpool pilot on board, though not in charge of the steamer, and who is a disinterested and competent witness, states was the only possible thing to be done.

When a steamer is condemned for having omitted to do something which she ought to have done, it seems just to require clear

proof of three things,—first, that the thing omitted to be done was clearly within the power of the steamer to do; secondly, that if done, it would, in all probability, have prevented collision; and, thirdly, that it was an act which would have occurred to any officer of competent skill and experience in command of the steamer. These conditions do not appear to their Lordships to be fulfilled by those who impute fault to the steamer in this case, and, in fact, all the trustworthy evidence in the cause leads to a contrary conclusion. Our opinion, therefore, is, after the most careful examination of the case, that the collision was due to the want of a proper look-out on the part of the *Friedrich*; inasmuch as after passing the schooner, the young man, who was the second mate of the *Friedrich*, and was the officer of the watch on board her, appears not to have observed the lights of the steamer until he was not more than five hundred yards distant from her, and that then, in the anxiety and confusion of the moment, he gave the order to starboard instead of keeping on his course, which, if he had done, would have avoided collision, inasmuch as the steamer had, by keeping her helm hard aport, gone off six points to the westward of the course she was pursuing at the time when she first sighted the sailing-vessel. At that time the course of the *Friedrich* was north-east, and the course of the steamer being on the port-bow of the *Friedrich*, was south-west-half-west; but at the time of the collision the steamer's head was lying west-north-west.

Their Lordships do not find it either stated or proved upon the pleadings or the evidence, that anything was done which ought not to have been done by the steamer, or that anything was omitted to have been done by her which it was possible to do, and which, if done, would have prevented the collision. They cannot, therefore, concur with the conclusion of the Court below, and they will feel it their duty humbly to advise Her Majesty that the decree of the Court of Admiralty ought to be reversed.

1868.

March 25; }

April 28. }

THE DARING.

Wages—Bottomry on Ship, Freight and Cargo—Master Part-owner—Consignees of Cargo—Priority.

Bottomry bond on ship, freight and cargo. Proceeds of ship and freight insufficient:—Held, that though the master bound himself by the bond, and was also a part-owner of the vessel, the owners of part of the cargo cannot oppose his right to be paid his wages and disbursements in priority to the bondholder.

In a suit against a vessel for master's wages the Court cannot entertain a counter-claim on behalf of owners of part of the cargo pledged by bottomry by the master.

This was a suit brought by the master of the *Daring* to recover the sum of 866*l.* 1*s.* 2*d.* for his wages and board-wages as master, and for disbursements made by him while in charge of the *Daring*.

On the 10th of May, 1866, the plaintiff took command of the *Daring*, then lying in the port of Valparaiso, partly laden with a cargo of guano, and bound on a voyage to Talcahuano to complete her cargo, and thence to a port in the United Kingdom for orders. The *Daring* arrived at Talcahuano on the 17th of June, 1866, from which place, after completing her cargo, she sailed for the United Kingdom on the 2nd of August following. The *Daring* met with bad weather and sprung a leak, in consequence of which the plaintiff was forced to put into Coronel Bay, where she came to anchor, where certain repairs were effected under survey, and some of the cargo was sold, and the *Daring* continued her voyage on the 25th of August, 1866. On the 26th and 27th of the said month of August the *Daring* met with a succession of gales, and again sprung a leak, which rendered it impossible for her to proceed further on her voyage, and she accordingly bore up for Talcahuano, and subsequently for Valparaiso, where she underwent a thorough repair, and the plaintiff, having neither funds nor credit at Valparaiso, was compelled to give a bottomry bond on the ship, her cargo and freight, for the sum of 7,807*l.* 1*s.* 2*d.* The vessel again left for the United

Attorneys—Gregory, Rowell & Rawle, agents for Druehan & Co., Liverpool, for appellants.

Proctor—H. G. Stokes, for respondents.

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Kingdom on the 24th of March, 1867, after having been obliged to put into the Island of Quira Quina, and afterwards to Port Stanley, in the Falkland Islands, and to jettison part of her cargo. On the 13th of July, 1867, the *Daring* arrived at Queens-town, and thence proceeded to London.

The plaintiff was also a part owner of the vessel, and had bound himself personally by the bond, and the proceeds of ship and freight were insufficient to discharge it.

The defendants, Messrs. Antony Gibbs & Co., were consignees of part, and representatives of the owners of another part of the cargo; and on their behalf it was contended that the money mentioned in the bond was borrowed on behalf of the plaintiff and the other owners of ship, and not on account of the owners of cargo, or on account of general average. That any sum which the owners of cargo may be compelled to pay in respect of the bond will be a debt due to them, the defendants, and recoverable by them by law from the plaintiff. And that the plaintiff, being part-owner as aforesaid, is not entitled to sue the ship or freight as master for his wages or disbursements, without submitting to an account between himself and his co-owners; and therefore that neither the wages nor the disbursements of the plaintiff should be pronounced for against the ship, or proceeds thereof, and freight, in prejudice to the interests of the aforesaid owners of cargo. The Court was prayed to stay all proceedings in this suit until the bottomry suit was determined.

Mr. E. C. Clarkson, for the plaintiff.—The defendants do not say that they have any defence against the ship and cargo, or that they have any claim against the master; but that at some future time they shall have certain rights against the plaintiff as part-owner. The action is not at all against the defendants, but by the plaintiff as master against the respondent. As regards the fund in court, the defendants are as any other creditor, and all they have is a mere right of action against joint owners for an indemnity. A co-owner is not bound by this bond; neither is the master as co-owner. The defendants' claim is only one for general average, and they have no right against the respondent.

Mr. V. Lushington, for the defendants.

—The owners of cargo have a right of action against the fund amongst other things for breach of contract.

Clarkson, in reply.

The following were referred to in the argument and judgment: *The Mary Ann* (1), *The Edward Oliver* (2), *The Cargo ex Galam* (3), *The Union* (4), *The Merchant Shipping Act*, 1854, s. 191, *The Glentanner* (5), *Duncan v. Benson* (6), *Averall v. Way* (7).

Sir R. PHILLIMORE.—There are several propositions of law and practice which I must consider as binding upon this case: First, that the master has a maritime lien *in rem*—that is, on ship and freight—for his wages and disbursements. Secondly, that this lien is liable to be postponed to that of the bottomry bondholder in cases where the master has, by the terms of the bottomry bond, bound himself, as well as ship and freight, for the payment of the bond, but that this rule does not extend to cases in which the bondholder would not be prejudiced by the master being paid before him. On this principle, in *The Edward Oliver* (2), where the master gave a bond which bound himself, ship, freight and cargo, and where the ship and freight proved insufficient to satisfy the claims of the master and bondholder, the proceeds of the ship and freight were ordered to be first applied in payment of the master's claim, the bondholder having a security by reason of the liability of the cargo for the full payment of his bond, and the Court holding that the owner of the cargo could not invoke a rule made for the protection of the bondholder. Practically, in that case, the cargo contributed, though indirectly, to pay the wages of the master. The contention of the defendants is, not that they have any specific lien against this ship and freight, nor against the proceeds in court, which represent the ship and freight. They do not claim to institute an action against the

(1) 1 Law Rep. A. & E. 8.

(2) 36 Law J. Rep. (N.S.) Adm. 13.

(3) 33 Law J. Rep. (N.S.) Adm. (P.C.) 97.

(4) 30 Law J. Rep. (N.S.) Adm. 19.

(5) Swabey, 415.

(6) 1 Exch. Rep. 337; s. c. 3 Ibid. 644; 17 Law J. Rep. (N.S.) Exch. 238; 18 Ibid. 165.

(7) 2 White & Tudor's Lead. Cas. 71.

plaintiff in his capacity of master, but they maintain that they expect to succeed in an action for general average brought in another Court against the plaintiff personally, and that, having so succeeded, they will make an application to this Court to apply, in some way, these proceeds in satisfaction of their claim, the amount of which, it is to be observed, is at present unascertained. But the action in this Court at present is not against the defendants personally, but against the *res*, and therefore what authority has this Court to refuse to entertain the action? It is prayed that proceedings may be stayed until the bottomry suit is determined; and if I could see any way of doing complete justice in the whole matter arising out of the several claims of the master, the bottomry bondholder and the owners of the ship and the cargo, I should be disposed to grant this prayer. But I am afraid I have no such power. Suppose that proceedings were stayed, and eventually the bottomry bond was ordered to be paid out of the cargo, such a result would give the owners no claim upon the funds now in court unless I have power to entertain a suit for general average. *The Cargo ex Galam* (3) is cited as proving that I may entertain such a suit; but in that case the question of general average was forced upon the Court by the peculiar circumstances, for the master had a common law lien on the cargo which was in his possession, and which the order of the Court had compelled him to bring into court. Moreover, in that case the Court had all the owners of the cargo before it; in this case, I have only some of the owners before me, and it has not been suggested that I have power to compel the absent owners to appear, or to enforce the proper contributions. The case of *The Union* (4) certainly establishes that, where the owner of the cargo has an interest in the administration of the fund in court, he is entitled to appear and contest the mariners' claim for wages; but the same case decided that the claim of the seamen was superior to the claim of the bondholder, and therefore to the claim of the owner of the cargo, who derives through the bond; and when the circumstances of that case are considered, it will appear that they were especially

favourable to the equitable claims of the owner of the cargo. Having arrived at the conclusion that I have no authority in this case to entertain a suit for general average it remains to consider whether the 191st section of the Merchant Shipping Act gives any *persona standi*, in this suit of the master for wages, to the owner of the cargo. I am of opinion that this section relates to claims between the master and the owners of the ship, or persons claiming under them, and does not contemplate the adjustment of counter-claims against the master as part-owner of the ship; and this section is, therefore, I think, inapplicable to this case. Claim of the plaintiff pronounced for, with costs out of the proceeds in court.

Proctors—Clarkson, Son & Cooper, for plaintiff;
Cyrus Waddilove, for defendants.

1868. }
Feb. 11. } THE CLEOPATRA.

Salvage—Alleged Misconduct of Salvors—Refusal to allow the Crew of the Salvaged Vessel to assist in the Salvage.

The Court will not lay down any general rule, but will be guided by the circumstances of each case in determining whether or no the master of the salvors' vessel is justified in refusing to allow the crew of the salvaged vessel to return to their own ship before the completion of the salvage.

On the 11th of November last, the screw steamship *Galicia*, of 749 tons and engines of 100-horse power, and with a crew of 27 men, being on a voyage from Middlesborough to Alexandria with railway iron, when about 270 miles from Malta, saw blue lights and rockets sent up, and on making for the place whence they came, found the *Cleopatra*, of 1,012 tons and 130-horse power, and with a crew of 30 men, and laden with grain, from Odessa. The *Cleopatra* was on her beam-ends in the trough of the sea; her port gunwale was awash, the sea breaking over her, and she was apparently in a sinking state, and her crew were about to leave her. The crew of the *Cleopatra* were got on board the *Galicia*, and the next morning the

Galicia took the *Cleopatra* in tow, and about five o'clock on the 14th brought her up in Valetta harbour. The value of the *Cleopatra* and her cargo and freight was 24,240*l.*, and of the *Galicia* and her cargo and freight about the same.

In answer to the salvors' claim it was contended that the master of the *Galicia* refused to allow the master of the *Cleopatra* and her crew to return to her on the morning after they were taken on board the *Galicia*, though they were ready to go; that had they returned, the danger to the *Cleopatra* in case of bad weather coming on again would have been obviated, as they could have baled much of the water out of her, and could have properly worked her; whereas she also incurred some risk by the salvors not understanding her patent windlass. It was also alleged that she had been plundered of some of her stores and furniture.

Dr. Deane and *E. C. Clarkson* appeared for the salvors.

Butt and *Prichard*, for the owners of the *Cleopatra*.

SIR R. PHILLIMORE was of opinion that, even upon the statements in the *Cleopatra's* own protest, it was difficult to conceive a state of more desperate peril to property or life than that of the *Cleopatra* and her crew at the time when the salvors came to their assistance. That as to the refusal to allow a master and crew to return to their vessel after having left her, his Lordship would not lay down any general rule, but would be guided by the circumstances of each case, and in the present instance he considered the master of the *Galicia* justified; and as the salvage was in his opinion one of the greatest merit, his Lordship awarded 5,000*l.*

Proctors—*Clarkson, Son & Cooper*, for plaintiffs;
Prichard & Son, for owners of the *Cleopatra*.

1868. }
Feb. 18. } THE JEUNE LOUISE.

Appeal from Salvage Award.

Unless the amount awarded by magistrates is wholly inadequate, the Court of Admiralty, upon appeal, will not disturb the award, even though the Court is of opinion that the magistrates should have given a somewhat larger sum.

This was an appeal from a salvage award made by the Justices sitting in Petty Sessions at Lowestoft, on the 5th of October last. The appellants were the owner, master, and crew of the fishing lugger *Children's Friend*, of Lowestoft. Their case before the magistrate was, that the master of the *Jeune Louise* (which was a St. Malo fruit "ketch," of the value of only 212*l.*) had agreed to give the sum of 300*l.* for certain services. The master of the *Jeune Louise* stated that, being unable to speak English, he wrote upon a table 300 francs as the sum he would give for the services to be rendered. The magistrate who investigated the case thought the salvors' claim for 300*l.* absurd, and awarded them the sum of 20*l.*

V. Lushington for the appellants; and
E. C. Clarkson, for the respondents.

SIR R. PHILLIMORE.—It is not the duty of the Court to disturb a magistrate's award, unless it appears to be wholly inadequate to the circumstances of the case. Had this case come before me originally, it is very probable, considering what the services were, that I might have given a larger amount to the salvors. I regret to observe that, so far from abandoning the preposterous claim of 300*l.*, the appellants actually instituted the appeal suit in the sum of 500*l.*, and that bail was given for 300*l.* The difference between the sum I should have given and that awarded by the magistrates is not sufficiently great to induce me to disturb their award. Under the circumstances, therefore, I confirm the award, with costs.

Proctors—*Shephard & Skipwith*, agents for *W. R. Archer, Lowestoft* (attorney), for appellants;
Clarkson, Son & Cooper, for respondents.

(IN THE PRIVY COUNCIL.)

1868.
July 2.

THE LIVERPOOL, BRAZIL AND RIVER
PLATE STEAM NAVIGATION COM-
PANY, appellants; HENRY BEN-
HAM AND OTHERS, respondents.*
(THE HALLEY.)

*Conflict of Law—Collision in Foreign
Waters—Suit in England—Compulsory
Pilotage—Merchant Shipping Act, 1854—
English Law—Dutch Law.*

*In a cause of damage in the High Court of Admiralty in England for a collision in Dutch waters by a Dutch ship against an English ship, it appeared that the collision was caused solely by the negligence of the pilot of the English ship, whom, by the Dutch law, the owners were compelled to take on board; but that, by the Dutch law (con-
flicting with the English law as declared by the Merchant Shipping Act, 1854), the owners of a ship doing damage to another ship are liable to make good the damage, notwithstanding that the ship doing the damage complained of was at the time navigated by and in charge of a licensed pilot.—Held, that an English Court of Justice will not enforce a foreign municipal law, or give a remedy in the shape of damages in respect of an act which, according to its own principles, imposes no liability on the person from whom the damage is claimed; and that the cause, being instituted in an English Court, ought to be decided by the principles of the law of England; and that the English ship was exempt from liability.*

This was an appeal from a judgment of the High Court of Admiralty of England.

The cause was a cause of damage, in which the respondents sought to recover damages in respect of a collision which took place in Flushing Roads.

In the petition the respondents stated that, on the 8th of January, 1867, the barque *Napoleon* was riding at anchor in Flushing Roads, when the steam-ship *Halley*, under both steam and sail, came into collision with the barque, and that the collision was caused by the negligent and improper navigation of the *Halley*. In their answer, the appellants alleged that, before and at the time of the collision, the *Halley*

was in charge of a pilot; whose employment was compulsory by law; that the appellants had no power of selecting him; and that the collision was occasioned by the negligence of the pilot; and was not in any way occasioned by the default of any person on board the *Halley*, except the said pilot. In reply the respondents pleaded the following article:—"That by the Belgian or Dutch laws in force at the time and place of the said collision, the owners of a ship which has done damage to another ship by collision are liable to pay and make good to the owners of such lastly-mentioned ship all losses occasioned to them by reason of such collision, notwithstanding that the ship which has done such damage was, at the time of the doing thereof, being navigated under the direction and in charge of a pilot, duly appointed or licensed according to the said laws, and notwithstanding that such damage was solely occasioned by the negligence, default, or want of skill of such pilot, without any contributory negligence on the part of the master or crew of such lastly-mentioned ship, and notwithstanding that it was, at the time and place of the collision, by the said laws, compulsory on such lastly-mentioned ship to be navigated under the direction and in charge of such pilot; and the defendants, the owners of the *Halley*, are, by virtue of the said laws, liable to pay and make good to the plaintiffs all losses occasioned to them by the said collision, even if the statements contained in the 11th article of the said answer be true." The appellants moved the Judge of the High Court of Admiralty that such article should be rejected on the ground that, even if true, the appellants would not be liable in the Court of Admiralty of England; but on the 26th day of November, 1867, the learned Judge ordered that the said article should not be struck out. From this judgment the present appeal was brought.

The case will be found reported in the Court below, 37 Law J. Rep. (N.S.) Adm. 1.

The Solicitor General (Sir B. Brett) and *Mr. Cohen*, for the appellants.—The damage done by the collision to the respondents' vessel is *damnum sine injuria*, unless it was occasioned by the negligence of some person under the control of the appellants. The respondents can have no right of action in this country

* Present Sir W. Erle, Sir J. W. Colvile, Sir E. V. Williams, Lords Justices Wood and Selwyn.

against the appellants unless the person whose negligence occasioned the collision was in the legal sense of the word a servant of the appellants. The appellants are not liable, inasmuch as the maxim *qui facit per alium facit per se* does not apply to the case under the circumstances admitted on this demurrer. There was no delict or tort of the appellants, there being no negligence on their part or on the part of any servant of theirs. Neither by the law of England, nor by the maritime law as administered in England, nor by the principles which have been termed the principles of natural justice, was the pilot who was taken on board under the circumstances the servant of the appellants. The High Court of Admiralty will not administer law upon principles different from the law of England and the maritime law as administered in England. The law by which liability is determined and pronounced is, in all actions of torts or delicts, the *lex fori*. The foreign law was invoked by the appellants for the purpose of proving the fact that the pilot was not the servant of the appellants. The fact of one party in a cause relying for certain purposes on the *lex loci* does not enable the Court to decide the ultimate liabilities and rights of the parties to that cause otherwise than by the application of the *lex fori*. The wrongdoer in this case was the pilot, and the question of the liability of the appellants ought not to be affected by any consideration of his not being able to make adequate compensation. They referred to *Scott v. Lord Seymour* (1), *The Ida* (2), *The Hanna* (3), *The Bold Buccleuch* (4), *The Druid* (5), *The Bilbao* (6), *The Amalia* (7), *The Union* (8), *The Pacific* (9), *Brown v. Mallet* (10), *Simpson v. Fogo* (11), *Milligan v. Wedge* (12), *Reedie*

v. London and North-Western Railway Company (13), *The Agricola* (14), *The Annapolis* (15), *Toulier, Droit Civil*.

Mr. Manisty and Mr. Clarkson, for the respondents.—If a cause of action arises in a foreign country, the law of the country where the cause of action arises governs the case if the form of procedure where the action is brought enables the Court to carry out such law. Whoever sends his goods to a foreign country renders himself liable to all damage which may be caused by such goods. The law of England, in the case of ships, is an exception to this rule. It is a statutory exception to the principle of the common law, *qui facit per alium facit per se*. It is said that there is a local remedy, but the local remedy is altogether illusory. *Prima facie* the injured vessel is enabled to recover in any country, but by the laws of this and some other countries the merchant seaman is compelled to place his ship under the control of a licensed pilot, and because he has not the power of selecting the pilot, over whom he has no control, the owner is excepted from liability so long as his ship is under the control of the pilot. The master is released from liability if the vessel is under the control of the pilot; but such is not the law of Belgium, and this question must be governed by the law of Belgium, in so far as that law can be given effect to by the English Courts. The relation between the pilot and the owner is the relation of master and servant. If the Belgian law is to be referred to the whole law of Belgium applicable to the subject must be considered. But the question arises in a proceeding in our Court of Admiralty. It is a lien on the ship to be given effect to in the courts of this country. The sole question is whether the English law or the Belgian law is applicable to this case. Clearly the law of Belgium must govern the decision of the English Courts. They referred to *Scott v. Lord Seymour* (1), *Mostyn v. Fabrigas* (16), *Cammell v. Sewell* (17), *Smith v. Condry* (18), *Huber v.*

- (1) 32 Law J. Rep. (N.S.) Exch. 61.
- (2) 1 Lush. 6.
- (3) 36 Law J. Rep. (N.S.) Adm. 1.
- (4) 7 Moo. P.C.C. 267.
- (5) 1 W. Rob. 399.
- (6) 1 Lush. 149.
- (7) 34 Law J. Rep. (N.S.) Adm. 21.
- (8) 1 Lush. 128; a.c. 30 Law J. Rep. (N.S.) Adm. 17.
- (9) 33 Law J. Rep. (N.S.) Adm. 120.
- (10) 5 Com. B. Rep. 599; a.c. 17 Law J. Rep. (N.S.) C.P. 227.
- (11) 32 Law J. Rep. (N.S.) Chanc. 249.
- (12) 12 Ad. & E. 737; a.c. 10 Law J. Rep. (N.S.) Q.B. 19.

- (13) 4 Exch. Rep. 244.
- (14) 2 W. Rob. 10.
- (15) 1 Lush. 295; a.c. 30 Law J. Rep. (N.S.) Adm. 201.
- (16) 1 Smith's Lead. Cas. 528.
- (17) 5 Hurl. & N. 728; a.c. 29 Law J. Rep. (N.S.) Exch. 350.
- (18) 1 Howard's U.S. Rep. 128.

Steiner (19), *Rafael v. Barras* (20) and *Castrique v. Imrie* (21).

Mr. Cohen, in reply.

LORD JUSTICE SELWYN delivered the judgment of their Lordships.—This is an appeal from an order by the Judge of the High Court of Admiralty, dated the 26th of November, 1867, admitting the 3rd article of the reply filed by the plaintiffs in the Court below, who are the present respondents. The cause is a cause of damage promoted by the respondents as owners of a Norwegian barque called the *Napoleon*, against a British steam-ship called the *Halley* and her owners, for the recovery of damages occasioned to the respondents by reason of a collision which took place on the 8th of January, 1867, in Flushing Roads, between the *Napoleon* and the *Halley*. In their petition the respondents state that the collision was caused by the negligent and improper navigation of the *Halley*.

The appellants in their answer to that petition state that the *Halley* is a steam ship belonging to the port of Liverpool, and that “by the Belgian or Dutch laws which prevail in and over the river Scheldt, and to which the said river is subject, from the place where the said river pilot came on board the *Halley*, and thence up to and beyond the place of the aforesaid collision, it was compulsory on the said steamer to take on board and be navigated under the direction and in charge of a pilot duly appointed or licensed according to the said laws, and it was by virtue of such laws that the *Halley* was compelled to take on board and to be given in charge, and until the time of the said collision as aforesaid, to remain in charge of, and did take on board, and was given in charge, and up to the time of the said collision remained in charge of the said river pilot, who was duly appointed or licensed according to the said laws, and whom the defendants or their agents did not select and had no power of selecting”; and that the collision was not caused by the negligence, default, want of skill, or improper conduct of any person on board the *Halley*, except the said river pilot.

In reply to this answer, the respondents

pleaded the following, being the 3rd article in their reply: “By the Belgian or Dutch laws in force at the time and place of the said collision, the owners of a ship which has done damage to another ship by collision are liable to pay and make good to the owners of such lastly-mentioned ship all losses occasioned to them by reason of such collision, notwithstanding that the ship which has done such damage was, at the time of the doing thereof, being navigated under the direction and in charge of a pilot duly appointed or licensed according to the said laws, and notwithstanding that such damage was solely occasioned by the negligence, default, or want of skill of such pilot, without any contributory negligence on the part of the master or crew of such lastly-mentioned ship, and notwithstanding that it was at the time and place of the collision, by the said laws, compulsory on such lastly-mentioned ship to be navigated under the direction and in charge of such pilot; and the defendants, the owners of the *Halley*, are, by virtue of the said laws, liable to pay and make good to the plaintiffs all losses occasioned to them by the said collision, even if the statements contained in the 11th article of the said answer be true.”

The appellants having moved the Court below to reject the 3rd article of the reply, on the ground that, even if the said article were true, the appellants would not be liable in the Court of Admiralty in England, the learned Judge of that Court has made the order now under appeal, by which he has refused the motion of the appellants, and has sustained the 3rd article of the reply.

The claim of the respondents is stated by the learned Judge to be founded upon a tort committed by the defendants in the territory of a foreign state, and we are not called upon to pronounce any opinion as to the rights which the respondents might have obtained either against the appellants as the owner of the *Halley* or as against that ship, if the respondents had instituted proceedings, and obtained a judgment in the foreign court. For this cause is a cause for damage instituted by petition in the High Court of Admiralty in England; and it is admitted by the counsel for the respondents that the question before us must be decided upon the same principles as would be applicable to an action for damages for the collision in question if

(19) 2 Bing. N.C. 202.

(20) 2 W. Black. 983.

(21) 8 Com. B. Rep. N.S. 405; s.c. 30 Law J. Rep. (N.S.) C.P. 177.

commenced in the Court of Queen's Bench or Common Pleas. But it is contended on their part, and has been held by the learned Judge in the Court below, that the respondents are entitled to plead that the law of Belgium, within whose territorial jurisdiction the collision took place, renders the owners of the *Halley*, although compelled to take a pilot on board, liable to make reparation for the injury which she has done.

Their Lordships agree with the learned Judge in his statement of the common law of England with respect to the liability of the owner of a vessel for injuries occasioned by the unskilful navigation of his vessel while under the control of a pilot whom the owner was compelled to take on board, and in whose selection he had no voice; and that this law holds that the responsibility of the owner for the acts of his servant is founded upon the presumption that the owner chooses his servant and gives him orders which he is bound to obey, and that the acts of the servant, so far as the interests of third persons are concerned, must always be considered as the acts of the owner. This exemption of the owner from liability when the ship is under the control of what has been termed a compulsory pilot has also been declared by express statutory enactments (22). In cases like the present, when damages are claimed for tortious collisions, a chattel, such as a ship or carriage, may be, and frequently is, figuratively spoken of as the wrong-doer, but it is obvious that although redress may sometimes be obtained by means of the seizure and sale of the ship or carriage, the chattel itself is only the instrument by the improper use of which the injury is inflicted by the real wrong-doer. Assuming, as for the purposes of this appeal their Lordships are bound to assume, the truth of the facts stated in the pleadings, and applying the principles of the common law and statute law of England to those facts, it appears that the tort for which damages are sought to be recovered in this cause was a tort occasioned solely by the negligence or unskilfulness of a person who was in no sense the servant of the appellants, a person whom they were compelled to receive on board their ship, in whose selection they

had no voice, whom they had no power to remove or displace, and who so far from being bound to receive or obey their orders was entitled to supersede, and had in fact at the time of the collision, superseded the authority of the master appointed by them; and their Lordships think that the maxim *qui facit per alium facit per se* cannot by the law of England be applied, as against the appellants, to an injury occasioned under such circumstances; and that the tort upon which this cause is founded is one which would not be recognized by the law of England as creating any liability in, or cause of action against, the appellants. It follows, therefore, that the liability of the appellants, and the right of the respondents to recover damages from them, as the owners of the *Halley*, if such liability or right exists in the present case, must be the creatures of the Belgian law; and the question is whether an English court of justice is bound to apply and enforce that law in a case where, according to its own principles, no wrong has been committed by the defendants, and no right of action against them exists.

The counsel for the respondents, when challenged to produce any instance in which such a course had been taken by any English court of justice, admitted his inability to do so, and the absence of any such precedent is the more important since the right of all persons, whether British subjects or aliens, to sue in the English courts for damages in respect of torts committed in foreign countries, has long since been established; and, as is observed in the note to *Mestyn v. Fabrigas*, there seems to be no reason why aliens should not sue in England for personal injuries done to them by other aliens abroad, when such injuries are actionable both by the law of England and also by that of the country where they are committed, and the impression which had prevailed to the contrary seems to be erroneous.

In the case of the *Amalia*, Lord Chelmsford, in delivering the opinion of the Judicial Committee, said: "Suppose the foreigner instead of proceeding *in rem* against the vessel chooses to bring an action for damages in a court of law against the owners of the vessel occasioning the injury, the argument arising out of the acquired lien would be at once swept away,

(22) Vide Merchant Shipping Act, 17 & 18 Vict. c. 104. s. 388.

and the rights and liabilities of the parties be determined by the law which the Court would be bound to administer."

As Mr. Justice Story has observed in his *Conflict of Laws*, p. 32, "It is difficult to conceive upon what ground a claim can be rested to give to any municipal laws an extra-territorial effect, when those laws are prejudicial to the rights of other nations or to those of their subjects." And even in the case of a foreign judgment, which is usually conclusive *inter partes*, it is observed in the same work, at s. 618A, that the Courts of England may disregard such judgment *inter partes* if it appears on the record to be manifestly contrary to public justice, or to be based on domestic legislation not recognized in England or other foreign countries, or is founded upon a misapprehension of what is the law of England—see *Simpson v. Fogo* (11). It is true that in many cases the Courts of England inquire into and act upon the law of foreign countries, as in the case of a contract entered into in a foreign country, where, by express reference or by necessary implication, the foreign law is incorporated with the contract, and proof and consideration of the foreign law therefore become necessary to the construction of the contract itself. And as in the case of a collision on an ordinary road in a foreign country, where the rule of the road in force at the place of collision may be a necessary ingredient in the determination of the question by whose fault or negligence the alleged tort was committed. But in these and similar cases the English Court admits the proof of the foreign law as part of the circumstances attending the execution of the contract, or as one of the facts upon which the existence of the tort or the right to damages may depend, and it then applies and enforces its own law so far as it is applicable to the case thus established; but it is, in their Lordships' opinion, alike contrary to principle and to authority to hold that an English court of justice will enforce a foreign municipal law, and will give a remedy in the shape of damages, in respect of an act which, according to its own principles, imposes no liability on the person from whom the damages are claimed.

The case of *Smith v. Condry* (18), in the Supreme Court of the United States, appears at first sight to have an important

bearing upon this case; but, upon an investigation of the report, it does not appear that any question as to a conflict between the English law and the American law was discussed in that case, or that the precise point now under consideration was noticed in the judgment, nor is it specifically mentioned in any of the three exceptions which were taken to the decision of the inferior Court; and there is no report of the arguments. Their Lordships think, therefore, that that case cannot be treated as an authority sufficient to support the contention of the respondents; and, on the whole, they think it their duty humbly to advise Her Majesty to allow this appeal, and to order that the 3rd article of the plaintiff's reply be rejected, and that there should be no costs of this appeal.

Judgment for the appellant.

Attorneys—Field, Roscoe & Co., agents for Lowndes & Co., Liverpool, for appellants; Clarkson, Son & Cooper, for respondents.

1868. }
Jan. 21, 22, 28. } THE GENEROUS.

Salvage—Appeal from Award by Justices—Further Evidence—Jurisdiction—“Sum in Dispute.”

When in a claim for salvage, heard before magistrates, the sum in dispute exceeds 50l., the High Court of Admiralty has jurisdiction to entertain an appeal, even though the value of the property saved is under 1,000l.

The Court will not, except for special reasons, admit new evidence on the hearing of an appeal from an award of magistrates.

Senable—“The sum in dispute” (mentioned in the section of the Merchant Shipping Act, 1854, with reference to appeals) does not mean the sum awarded by the magistrates.

This was an appeal from an award of salvage, made by two Justices of the Peace for the borough of Yarmouth. Before the services were completed, the master of the *Generous* signed an agreement as follows: "I agree to pay the sum of 5l. for getting my anchor on board the *Generous*, and for the ship to come into harbour I will pay the sum of 50l. to put her into safety." The magistrates awarded the sum of 53l. 11s., i.e. 55l., less the sum of 1l. 9s.

paid by the owners of the *Generous* to a tug to tow her into harbour. Against this award the owners of the *Generous* appealed.

Mr. Brett and *Mr. E. C. Clarkson*, for the appellants, contended that the *Generous* required no salvage services, that none were rendered, and that, therefore, the agreement was inequitable and void.

Mr. V. Lushington, for the respondents. — Before the magistrates, the appellants admitted their liability to pay the sum of 5*l.*, and only contested the claim as to 50*l.*, in respect of which the magistrates awarded 48*l.* 11*s.* The amount in dispute before the Justices did not exceed the sum of 50*l.*, and therefore the Court has no jurisdiction to entertain the appeal. *The Mary Ann* (1) and *The Andrew Wilson* (2). Again, the value of the property salvaged does not exceed 1,000*l.*, and therefore the provisions of the 464th section of the Merchant Shipping Act, 1854, do not apply (3).

Sir R. PHILLIMORE.—It was contended that by the joint operation of section 460. of the Merchant Shipping Act, 1854, and section 49. of the Merchant Shipping Act Amendment Act, 1862, the Court had no jurisdiction in this case, because the value of ship, freight and cargo was under 1,000*l.* I overruled this objection at the hearing, and upon reflection adhere to my decision. According to its true construction, section 49. of 25 & 26 Vict. c. 63. when read with

(1) 1 Bro. & Lush. 334.

(2) 32 Law J. Rep. (N.S.) Eccl. & Adm. 104.

(3) The following are the sections referred to: Merchant Shipping Act, 1854, s. 460. "Whenever any dispute arises.....between the owners.....and the salvors as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise, then, if the sum claimed does not exceed 200*l.*, such dispute shall be referred to the arbitration of any two Justices of the Peace resident as follows."

Section 464. "If any person is aggrieved by the award made by such Justices.....he may appeal to the High Court of Admiralty of England.....; but no such appeal shall be allowed unless the sum in dispute exceeds 50*l.*"

Merchant Shipping Act Amendment Act, 1862, s. 49. "Such provisions shall extend to all cases in which the value of the property saved does not exceed 1,000*l.*, as well as to the cases provided for by the principal act.....All the provisions of the principal act relating to summary proceedings in salvage cases, and to the prevention of unnecessary appeals in such cases, shall, except so far as the same are altered by this act, extend and apply to all such proceedings, whether under the principal act or this act, or both of such acts."

section 464. of the former statute, appears to me to extend and apply existing regulations, also to cases in which the value of ship and freight is under 1,000*l.*, and not to add a second condition, viz., that the value of the ship and property salvaged shall also be 1,000*l.* and upwards.

The jurisdiction of the Court was also objected to, on the ground, that according to the true construction of sections 460. and 464. of the Merchant Shipping Act, 1854, "the sum in dispute" did not exceed 50*l.*; and the cases of *The Andrew Wilson* (2) and *The Mary Anne* (1) were referred to. In the case of *The Andrew Wilson* (2) Dr. Lushington said, there undoubtedly was some obscurity in the words "sum in dispute," but he was of opinion that they did not mean the sum awarded by the Justices or the section would have been differently worded. In *The Mary Anne* (1) Dr. Lushington said, "In the case of *The Andrew Wilson* (2) I held that the 'sum in dispute' was not the sum awarded by the Justices, but the sum claimed by the salvors. Now, I lay out of my consideration all loose expressions which may have occurred in conversation between the master of the *Mary Anne* and the salvors; but it is clear that the salvors made a formal demand in writing of 40*l.* The plaintiffs by making this demand may not absolutely have debarred themselves from suing for the larger sum; but their demand before the Justices was not for a sum exceeding 50*l.*, but for a sum not exceeding 200*l.* I think this must be taken to have reference to the previous claim of 40*l.*, and therefore to constitute the 'sum in dispute.' The Court accordingly cannot entertain the appeal." These judgments really do not, as was suggested, conflict with each other. Dr. Lushington was of opinion, that upon the facts the sum claimed before the magistrates was above 50*l.* in one case, and under 50*l.* in the other. In this case the sum claimed was more than 50*l.* The Court therefore is not debarred from exercising its jurisdiction on account of the amount of the sum claimed.

A question was also raised as to the duty of this Court, sitting as an appellate court, with respect to the reception of evidence tendered for the first time before it. In the case of *The Thomas Wood* (4) Dr. Lushington said, "Although in cases of appeal the

(4) 1 W. Rep. 19.

decision of the appellate courts is generally guided by the evidence produced before the original tribunal, the practice has been different in this Court; and in the first case of this kind, which came before Lord Stowell, that learned Judge admitted an additional affidavit to be brought in, notwithstanding the objections that were raised against its reception. The practice of the Court, therefore, is not opposed to the admission of fresh evidence." The practice of the Court, therefore, at the time when this judgment was delivered, permitted the introduction of new evidence. But in subsequent instances it appears to have been the opinion of the Court that this permission ought to be placed under considerable restrictions. There is no difference in principle, I may observe, between appeals to this Court from the decisions of magistrates and appeals from the report of the Registrar and merchants. My learned predecessor during the course of his long administration of justice in this Court became quite sensible of the evil which ensued from allowing indiscriminately the admission of new evidence. In *The Glenmanna* (5), which was an appeal from the Registrar's report, Dr. Lushington said, with reference to admitting new evidence, "None of this evidence was produced before the Registrar and merchants, and, therefore, in truth, I am called on to decide a new case, and not simply whether the Registrar and merchants did right upon the case before them. I very much question whether this is a regular or competent course of proceeding. It deprives the Court of the advantage of the opinion of the Registrar and merchants upon the evidence. Some additional affidavits may be admissible; but it is an irregularity which for the future I shall not permit, to withhold evidence at the reference and make a new case before the Court." In *The Flying Fish* (6), upon objection to the admission of such new evidence, the Court observed, "Their Lordships do not think these rules have at all the effect of restraining the power of the Judge or of fettering his discretion as to the admissibility of fresh witnesses upon these occasions, a discretion which it is unnecessary to say must always be exercised with great caution and a careful regard to the peculiar circumstances of

each case." The practice of the Privy Council is, with very rare exceptions, to refuse the introduction of new evidence, unless the facts which it is to support are shewn upon affidavit to be *noviter preventa* to the party applying for their introduction. In the case before me I did admit, though reluctantly, some new evidence; but in all future cases the Court will require good reasons to be shewn why such evidence should be introduced in this Court, and will always exercise a discretion in this matter, entertaining, as it does, a strong opinion that such discretion should be exercised with great reserve and caution.

Proctors—Clarkson, Son & Cooper, for appellants;
Shephard & Skipwith, for respondents.

1868. }
April 24. } THE LION.

*Damage by Collision — Compulsory Pilotage—Passengers—The Merchant Shipping Act, 1854, s. 379.**

The owners of a wrong-doing vessel pleaded compulsory pilotage. It appeared that the master's wife and father-in-law were on board, and the master said he treated them as passengers, but no fare was demanded of them till after the collision:—Held, that the vessel was not "carrying passengers," so as to render it compulsory upon her owners to employ a pilot.

The *York Town*, an American ship, on the 8th of December, 1867, left the London Docks on her voyage to New York in tow of two tugs, and when rounding Blackwall Point, her starboard quarter was run into by the screw steamship *Lion*, and sustained considerable damage.

The defendants admitted the damage, and pleaded that the *Lion* was a passenger ship, bound from London to Hull, having two passengers on board, and being at the time of the collision in charge of a duly licensed pilot; that the employment of such pilot was compulsory by law upon the owners of the *Lion*; that the orders of

(5) 1 Lush. 115.

(6) 3 Moo. P.C. N.S. 85.

* "The following ships, when not carrying passengers, shall be exempt from compulsory pilotage in the London Districts and in the Trinity House Outport Districts, that is to say—First, ships employed in the coasting trade of the United Kingdom."

the pilot were promptly and implicitly obeyed ; that the collision, if it was caused by the *Lion* or any one on board of her, was solely caused by the pilot, and that neither the *Lion* nor her owners were liable.

The pilot of the *Lion*, in his evidence, said there were no passengers ; but it appeared that the master's wife and father-in-law were on board, and the master said he treated them as passengers, but that they did not pay anything for their board. No receipt was produced of the payment of fare by them, and nothing was said about such payment until the *Lion* arrived at Hull, when the fare was paid, as alleged by one of the witnesses ; and the master said he did not know that the carrying of passengers imposed upon him the necessity for compulsory pilotage.

The Solicitor General and *Mr. C. P. Butt* appeared for the plaintiffs, and

Mr. Milward and *Mr. E. C. Clarkson*, for the defendants.

SIR R. PHILLIMORE.—The *Lion* was under the charge of a duly licensed pilot, and the question therefore which remains is, whether he was taken compulsorily, which depends upon the further question, whether the two persons, the wife and father-in-law of the master, were or were not passengers. There is no definition of the term "passenger" in the Merchant Shipping Acts. For the limited and particular purpose of surveys and certificates of passenger steamships, it has been enacted, that the word shall include any person other than the master and crew, the owner, his family and servants. The legitimate inference from this enactment would seem to be, that persons other than the master and crew, the owner, his family and servants, would not have been necessarily considered by the law as passengers, and that it required this enactment to give them that character, which it only impressed upon them for the particular purpose which it mentioned. If I look to the Passenger Acts, the latest of which is 18 & 19 Vict. c. 119, the payment of fare would appear to be a necessary incident for the constitution of a passenger in the legal sense of that term, both as to his rights and duties. The Passenger Acts still leave a large proportion of passenger traffic under the common law. But I think the common law connects the payment of fare

with the status of a passenger. It was said in argument that the protection of life was the object of the statute in rendering the pilot necessary, but this seems to me too broad a proposition. The protection of the life of the crew is as important as the protection of the life of passengers ; and I think that the obligation to take the pilot was imposed by the legislature on the ground that the owner, if he made profit out of carrying a person not being one of the crew, should, in return, give him the protection which the skill and knowledge of the pilot could afford. It, I believe, not unfrequently happens that persons have secreted themselves on board a vessel, and have not been discovered till she was out at sea. In such cases it would be impossible to hold that there was an obligation on the vessel to take a pilot when she came into a river, roadstead or port in which it would be incumbent upon her to take a pilot if she had passengers on board. Upon the whole, I think that the payment of a fare is necessary to constitute the class of passengers whose presence on board the ship imposes the obligation of taking a pilot on board. Did then the payment of the fare of these two persons, whensoever made, clothe them with the character of passengers ? This question must be answered with regard to the rights of third parties in this case. When the *Lion* unlawfully injured the *York Town* by running into her, she incurred an *obligatio ex delicto*—in other words, the *York Town* had from that moment a lien upon her for reparation of the damage which she had tortiously caused. The liability which existed at that time could not, in my opinion, be got rid of by a subsequent act on the part of the wrongdoer, having for its object to convert these two persons into passengers for the purpose of placing himself under the exemption from liability, which the compulsory presence of a pilot on board his vessel at the time of the collision would have afforded. I pronounce for the damage, and that the *Lion* is not exempt from payment by reason of having a compulsory pilot on board at the time of the collision.

Attorneys—*Ellis, Parker & Clarke*, for plaintiffs.

Proctors—*Clarkson, Son & Cooper*, for defendants.

1868. }
 May 13; }
 June 9. } THE KARNAK.

*Bottomry—Notice to Owners of Cargo—
 Expenses already Incurred—Advance of
 Freight—Loan on Freight.*

*It is as much the duty of a master to
 give, or attempt to give, notice to the owners
 of cargo as to the owners of ship before exe-
 cuting a bottomry bond.*

*Though the debts which a master, in need
 of repairs in a foreign port, has incurred
 may be personal, he may borrow money
 upon bottomry of ship, freight and cargo to
 pay them from any one not his creditor.*

*In the absence of evidence to the contrary,
 it is presumed that a foreign lender makes
 advances in contemplation of bottomry; and
 this presumption is increased where the *lex
 loci* empowers the lender to arrest the ship in
 satisfaction.*

*Difference between a loan secured on
 freight and advances of freight.*

This was a cause of bottomry upon ship, freight and cargo. The amount of money borrowed under the bond was 3,228*l.* 7*s.* 2*d.*, and, no opposition having been offered to the bond by the owner of the ship, the ship had been sold and produced 512*l.* 11*s.* 9*d.* The freight amounted to the sum of 1,356*l.* 14*s.* 6*d.*, or, as it was stated by the defendants, 1,324*l.* 16*s.* The defendants in this suit, the owners of the cargo, paid into court the sum of 628*l.* 15*s.* 2*d.*, and still retained in their hands the sum of 727*l.* 19*s.* 2*d.*, which they claimed to deduct, on the following grounds: namely, the sum of 632*l.* 14*s.* 2*d.*, in respect of an alleged advance of freight made to the master of the *Karnak*, at Galveston, and the sum of 61*l.* 6*s.* 9*d.*, for the interest and insurance on the said alleged advance; and the sum of 33*l.* 18*s.* 4*d.*, as being due to the defendants for commission on the said charter-party.

The defendants also denied altogether the validity of the bond so far as it affected the cargo.

The facts of the case were as follow: The brigantine *Karnak*, of 267 tons, sailed from Galveston, in Texas, for Liverpool, on the 24th of December, 1866, laden with

270 bales of cotton, under a charter-party from Droege & Co., of Galveston, whereby the vessel was consigned to the order of Messrs. Droege & Co., of Manchester, a firm bearing the same name; and before sailing, the master received the sums of money from Messrs. Droege & Co. claimed as advances of freight.

After leaving Galveston he was compelled by bad weather, during which he lost nearly all his sails, spars and rigging, to put into Bermuda on the 17th of January, 1867. Acting on the advice of Hyland & Co., agents for the American Lloyd's, he had the ship and cargo surveyed, after which 580 bales of cotton were landed and warehoused, and the ship was put upon a slip and caulked all over. The master wrote to the managing owner of the ship, and there was a conflict of evidence as to whether or not he had also communicated with the agent for the owner of the cargo; and the Court came to the conclusion that the captain had attempted to give him notice by letter, and that, at all events, the agent was aware of the facts that the *Karnak* had met with a disaster and had put into Bermuda in distress, and that the cargo had been unshipped; that the expenses would be very great, and that there was a chance of the vessel being condemned. From the captain's evidence it further appeared that he gave orders for the repairs several days after the survey. The repairs were nearly completed in the beginning of April, and then, but not till then, Messrs. Hyland & Co. issued circulars bearing the master's signature, inviting tenders for a loan on bottomry on ship, freight and cargo. The charges were not more than the usual charges there; and after the master had communicated with the managing owner in New York, he had expected to receive money from him, and it was not till after he had written several letters and received no answer that he felt under the necessity of borrowing money on bottomry. It was then too late to get money from England, even if he had known from whom to get it; and he could not have raised the money on ship and freight only, and the vessel would have been arrested and sold for payment of the charges incurred.

Mellish and Clarkson, for plaintiffs.—The objections to the validity of the bond are:

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first, that the master did not communicate with the owner of the cargo ; and secondly, that the advances on bottomry were made after all the expenses and charges had been incurred. As to the first, the master unquestionably communicated with the owners of the ship, and expected that they would supply him with funds ; and it was not until the ship was very nearly ready for sea that he, for the first time, found that he must have recourse to bottomry ; and, taking into consideration the amount of the freight and the estimated value of the ship, he had no reason to expect that more than a small portion, if any, of the money raised would fall upon the cargo. True, the master must communicate with the owners of the cargo ; but in every case the particular circumstances are to be considered—*The Hamburg* (1). In this case the master exercised a wise discretion in not waiting for orders from the owners of the cargo, which consisted of cotton, the market for which was falling, and a fall of one halfpenny a pound would have represented altogether a loss of between 700*l.* and 800*l.* As to the second objection, it is perfectly lawful for a master, having obtained advances from A. for the necessary purposes of the ship, to borrow money from B. for the purpose of paying A.—*The Hebe* (2). In this case, moreover, it is proved that, by the local law, the persons who had done the repairs and supplied the necessaries had a lien on the ship in respect of their claims, which lien they might have enforced by seizure and sale of the ship. This of itself would have been sufficient ground for resorting to bottomry—*The Prince George* (3). As to the sum of 727*l.*, the charter-party does not provide for an advance of freight, and the master had no authority to receive any part of it—*The Salacia* (4). Moreover, the nature of the transaction appears on the face of the receipts, which shew clearly that the advance was intended to be by way of a loan to the master on the security of the freight.

The Solicitor General (Sir W. B. Brett) and *Cohen*, for the defendants.—It is clear that all the repairs had been executed and all the expenses incurred before any attempt was made to raise money by bottomry,—the bond was executed only one day before the ship sailed ; it is not pretended that the repairs were executed or the expenses incurred with a view to bottomry ; the debts were incurred, not with any one tradesman, but with several. This case is different from those in which an agent advances money in order to procure necessaries or repairs ; it may well be that the repairs were executed by the tradesmen with the belief that they could arrest the ship ; but, in fact, the master alone had pledged his credit for the repairs ; and the tradesmen certainly did not expect bottomry bonds to be executed to them, and did not execute the repairs in contemplation of bottomry. The difficult question as to whether money was advanced in contemplation of bottomry does not arise in the present case. The question here is, whether a person who advances money on bottomry of cargo to enable a master to pay off a debt already incurred for repairs completely executed, can enforce his bottomry bond in a case where the tradesman who executed the repairs might have arrested the ship. Now, in such a case, a bottomry bond on ship could not be enforced. A bottomry bond cannot be enforced for anything which is not a necessary—*The North Star* (5), *The Edmond* (6), *The Prince George* (3), *The Hersey* (7), *The Ariadne* (8), *The Osmanli* (9). As to what is necessary, *Beldon v. Campbell* (10), *The Gosfabrick* (11), *Maclachlan*, 137, 3 *Kent's Com.* 222, *Parson's Maritime Law*, 423, *The Aurora* (12). It becomes necessary for the other side to assert that money supplied for liberating a ship from arrest is a good item, or if a ship is threatened with being taken in execution, that in such cases a bottomry bond given is good ; but this is

(5) 1 Lush. 45.

(6) Ibid. 57.

(7) 3 Moore, P.C. 74.

(8) 1 W. Rob. 412.

(9) 3 W. Rob. 212 ; s. c. 14 Jur. 96.

(10) 6 Exch. Rep. 886 ; s. c. 20 Law J. Rep. (N.S.) Exch. 342.

(11) Swabey, 345 ; s. c. 31 Law J. Rep. (N.S.) Adm. 345.

(12) 1 Wheaton, 96, 104 ; s. c. 1 W. Rob. 825.

(1) Bro. & Lush. 253, 274 ; s. c. 9 Jur. N.S. 445 ; 10 Jur. N.S. 601.

(2) 2 W. Rob. 146 ; s. c. 4 N. of C. 368 ; 10 Jur. 231.

(3) 4 Moore, P.C. 21.

(4) 82 Law J. Rep. (N.S.) Adm. 45.

directly negatived by *The North Star* (5), *The Hersey* (7) and *The Laurel* (13). Even if in such case a bottomry bond on ship were good, a bottomry bond on cargo would be bad; the mere fact of the arrest of the ship is not enough—*The Osmanli* (9); it must be arrested for a debt due to a person who gave credit to the ship; why, then, should a bottomry bond on cargo be good to a person who did not give credit to the cargo and could not have arrested the cargo? The case of *The Hebe* (2) cannot be considered as an authority; it was decided without reference to the *lex loci*, by which the case should have been governed. *The Vibilia* (14) does not apply either—*The Ariadne* (8), *The Hamburgh* (1). Again, no communication was made with shipper or consignee of cargo. If this bond be held good, the owner of the cargo cannot receive this money from his indemnity; it is not general average, it is not particular average—*Rosetto v. Gurney* (15).

Clarkson, in reply.

Cur. adv. vult.

On the 9th of June judgment was given as follows:

SIR R. PHILLIMORE. — There are two questions in this case: first, whether the cargo is liable to this bond; secondly, whether the owners of the cargo are justified in retaining the sum of 727l. 19s. 2d. on the ground that they have advanced that sum as part payment of the freight. As to the first question, the legal argument urged by the defendants against the validity of this bond took a very wide range; and, during the course of it, the general and elementary principles upon which these instruments of hypothecation are founded, and many cases in which it was suggested that the decisions were not in perfect harmony, were discussed. The power of the master in bottomry arises out of his relation as agent both to the owner of the ship and of the cargo. A material distinction, indeed, exists between his authority as agent for the one and as agent for the other; but in both cases his power to hypothecate, like his

power to sell, arises out of the necessities of the case. Among them, the following are pre-eminent. The master must endeavour to raise funds on the personal credit of the owners, and if the owner be on the spot, according to the general law, the master has no authority to bottomry (*Boulay Paty*, 11, 271); and if the owner be absent, it is the duty of the master to endeavour to communicate with him before bottomry be resorted to. The money must be raised to defray the expense of necessary supplies or repairs of the ship, or to enable the ship to leave the port in which he gives the bond, and to carry the cargo to its destination. With reference to the latter, much discussion has arisen whether the liability of the ship to detention according to the *lex loci* justifies the master in giving a bottomry bond; and the authorities upon this point are supposed to be conflicting. And again, there arises a question whether this liability to detention must not be on account of necessities furnished to the ship in order to enable her to prosecute her homeward voyage; or whether this liability may arise from any other cause, such as for old debts incurred antecedently to the voyage, or for damage done to the outward cargo in unloading at the port, or in some other manner; and again, whether the liability of the master to personal detention justifies the creation of the bond. Another important principle established by the judgments is sometimes expressed in this language, that the money must have been advanced in contemplation of a bottomry security, or, in other words, upon the credit of the ship—*The Alexander* (16); this proposition appears to me to have been somewhat loosely stated, for, apart from verbal or written statement or agreement, it would seem difficult to prove whether the lender or the borrower did or did not mentally contemplate hypothecation at the time when the expenses were incurred. It must, however, be taken to be ruled law that a creditor who has furnished repairs upon a personal credit cannot afterwards convert the personal debt into a bottomry transaction. And, on the other hand, that a bond executed after advances have been made, if in pursuance of an agreement for bottomry, is valid; and that an agent who has

(13) 1 Bro. & Lush. 191; s. c. 33 Law J. Rep. (n.s.) Adm. 17.

(14) 1 W. Rob. 1; s. c. 2 Hagg. 228.

(15) 11 Com. B. Rep. 176; s. c. 20 Law J. Rep. (n.s.) C.P. 257.

(16) 1 Dodson, 279.

advanced money upon personal credit may take a bottomry bond for advances subsequently supplied. There is more difficulty as to the law in the case of a bottomry bond for money already supplied without any previous agreement at all; but I am of opinion that, in the absence of all evidence, the presumption must be that the foreign lender made the advances in contemplation of a bottomry security; and that this presumption is increased where the *lex loci* empowers the lender to arrest the ship in satisfaction of his demand. I will now endeavour to apply some of these principles of law to the circumstances of the case before me, and I will take the arguments advanced by the counsel, and the various cases adverted to, in what appears to me to be their natural order. I will address myself first to those which relate to the validity of the bond so far as it affects the ship and freight, and next as to the validity of the bond in its relation to the cargo. First, is this bond bad, because there was no necessity to raise money on bottomry, on the ground that it could have been obtained on the personal credit of the owner? I am of opinion that, according to the evidence before me, he could not have raised the necessary funds except on bottomry bond. It has not, I think, been contended that the repairs and supplies were not in themselves necessaries. Secondly, is the bond bad, because given for the purpose of raising money to pay for repairs already executed; or, as the same proposition was stated in another form, does the fact that these repairs were already executed, take them out of the category of necessaries for which it is competent to the master to bottomry his ship? I am of opinion that the bond is not bad upon this ground. The tradesmen who effected the repairs, or furnished the supplies, were not the takers of the bond. Nor is there any question in this case whether a transaction done on personal credit can be converted into bottomry. If there were, I should hold, on the authority of *The Augusta* (17), *The Vibilia* (14) and *The North Star* (5), that the bond was bad. The question here is whether the master, having failed to obtain funds from the owner, to pay for the repairs which the

necessities of the ship compelled him to order, was not warranted in raising money for this purpose from a person other than that or those who had supplied such repairs. Upon principle, it would appear to me that it must be competent for him to do so; an incalculable amount of inconvenience and injury to commerce would flow from an opposite doctrine. It was the master's duty to place his vessel upon the slips, and to cause her repairs to be begun at the earliest possible moment. How could he, or any other master in his position, foretell the exact amount of expense which such repairs would entail? Or if by survey he could have ascertained a probable estimate of the gross expense, it could only have been a probable estimate, and many items of expense must always be incurred which such an estimate cannot cover. The case of *Beldon v. Campbell* (10) was much relied upon by the defendants in this case; but I am unable to perceive the application of the point decided in it to the facts of this case, inasmuch as it only decided that where the ship had arrived at her port of destination, and the owner was residing within a distance where he might be easily communicated with, the master ought to have communicated with him before he borrowed money to pay workmen employed on the ship. The facts of the case before me are materially, indeed wholly, different. But the judgment does contain a perspicuous statement, from which it appears that the master has perfect authority to bind his principal, the owner, as to all repairs necessary for the purpose of bringing the ship to its port of destination; and he has also power, as incidental to his appointment, to borrow money, but only in cases where ready money is necessary; that is to say, where certain payments must be made in the course of the voyage, and for which ready money is required. An instance of this is the payment of port dues, which are required to be paid in cash; or lights, or any dues which require immediate cash payments. So also in the case referred to in the course of the argument, where a ship being at the termination of one voyage and about to proceed on another, money borrowed to pay the wages of seamen who would not go on the second voyage without being paid, was considered

(17) 1 Dodson, 287; s. c. 4 Moore, P.C. 369.

necessary—*Robinson v. Lyall* (18). But these instances do not apply where the owner of the vessel is living so near the spot as to be conveniently communicated with. In that case, before the master has any right to make the owner a debtor to a third person, he must consult him and see whether he is willing to be made a debtor, or whether he will refuse to pay the money—*Beldon v. Campbell* (10). The case of *The Hebe* (2), it is admitted, is a direct authority in favour of the proposition that a bottomry bond for the purpose of obtaining money for the payment of debts for necessities previously incurred on personal credit may be legally given to a person who has not supplied such necessities. It has been attempted, but I think unsuccessfully, to impugn the authority of that case; I have examined it minutely; it has been very carefully reported both in the *Notes of Cases*, vol. 4, p. 368 (A.D. 1846), and by Dr. Deane, whose accuracy is well known to us all, in the 10th vol. of the *Jurist*, p. 227; and it is not unimportant to observe that the following cases were cited in argument—*The Augusta* (17), *The Zodiac* (19), *The Hersey* (7), *The Vibilia* (14) and *The Lochiel* (20). The case appears to have been well argued and deliberately decided in the year 1846; and it derives confirmation from the decision of the same learned Judge, who, in the case of *The North Star* (5), in 1860, said, "Can personal debts incurred be the foundation of a bottomry bond? The general rule is that they cannot, except preceded by the promise of a bond; but we must bear in mind the distinctions applicable to such cases. A master entering a foreign port in need of necessities, from distress or otherwise, may incur debts for repairs or necessities. Those debts may be purely personal, but he may borrow money on bottomry, from any one not his creditor, to pay such debts. On the other hand, *The Augusta* (17) has settled that a personal debt cannot be converted into a bottomry transaction." I should observe that I have considered the case of *The Hersey*, reported in 3 *Moore*, 82, and referred to in *The Ariadne* (8); and looking to the facts of *The*

Hersey (7), I am of opinion that it in no way interferes with the decision in *The Hebe* (2). There is another fact having an important bearing upon the law of this case. It is in evidence that by the law of Bermuda those who supplied these necessities had a lien upon this ship, and could have arrested her. In 1838 Dr. Lushington decided the case of *The Vibilia* (14), and in the course of his judgment he said, "With regard to the further objection that has been urged in the argument, that it was not until *after* the responsibility had been incurred by Mr. Baldwin, that a bottomry bond was agreed upon, I am of opinion that such objection has been disposed of by the judgment of Lord Stowell in the case of *The Alexander* (16). What are the expressions used by Lord Stowell in that case? He says, 'The question is, whether, so induced, they (the consignees) did not make these advances on the credit of the ship? Against the proprietors of the cargo they had no direct demand for repairs done to the ship; and as they had no direct knowledge of the owners of the ship, it must have been that they looked to the ship itself as their security. Some of the advances were made before the master was appointed; and these, it is said, could have had no reference to a bond of hypothecation. But what could they look to but the ship? for of the owners of the ship they had no knowledge. The bond was not, perhaps, required at first; because in Pernambuco, as in other foreign states, there is no necessity for an instrument of this kind; for by the general maritime law the vessel itself is *ipso facto* liable for repairs. There was no necessity, therefore, for having recourse to a bond till the ship was coming to this country, where from peculiar motives of policy a special hypothecation is required.' It is evident, therefore, that in the opinion of Lord Stowell, it is competent for the foreign merchant, without any express agreement for a bottomry bond, to make advances on the security of the ship, that is, upon the faith of a lien given by the law of his own country; and it is not necessary for him to have a bond of bottomry, or an agreement for such a bond, until the ship is about to sail. This is the real substance of the case in *The Alexander* (16), and constitutes the important distinction between the

(18) 7 Price, 592.

(19) 1 Hagg. 320.

(20) 2 W. Rob. 34.

cases of *The Alexander* (16) and *The Augusta* (17), which applies only to the conversion of an advance on personal security into a bottomry transaction"—*The Vibilia* (14). In the case of *The Prince George* (3) it is said, "If it had been proved that the law of New York gave the lien upon the ship, as suggested, we should have thought, upon the general principle, that where the master cannot in any other way raise money which is indispensably necessary to enable the ship to continue her voyage, he may hypothecate the ship. This power would extend to a case where the ship might be arrested and sold, for a demand for which the owner would be liable. It seems immaterial whether the necessity for funds arises from such a demand, or to pay for repairs, stores or port duties." It has been said that this passage contains a mere *dictum*, that it has not been acted upon, and has, indeed, been discountenanced by the subsequent judgment of Dr. Lushington in *The Osmanli* (9). It is true that in his judgment in this case the learned Judge seems at that time to have supposed that the passage in *The Prince George* (3) was uttered *per incuriam*, and without sufficient attention to Lord Stowell's judgment in *The Augusta* (17). That case was, however, cited by counsel in the case of *The Prince George* (3), and I must consider the decision to be binding upon this Court.

The Hebe (2) was decided in 1846, four years after *The Prince George* (3), in 1842. Dr. Lushington glanced at this liability to detention in a way which indicates that he then inclined to the opinion that such liability would warrant a bottomry bond. The same inclination of opinion is to be discovered in *The North Star* (5) and in *The Laurel* (13). This inclination seems to have become much stronger and more decided, and more at variance with *The Osmanli* (9), for in that case the learned Judge says, "Now the Court, from the case of *The Augusta* (17) to the cases up to the present day, has good reason to conclude that in almost all foreign countries, if not in all, merchants who supply money to defray the necessary expenses of the ship, and tradesmen who do the necessary repairs or furnish the necessary articles, have a right of arresting the ship to satisfy the demand. If such right of arrest *per se* ren-

ders valid any bottomry bond, though there was no agreement or understanding that such bond should be required, it follows that, under such circumstances, in all cases a bond and a valid bond may be executed, though the master never made any such agreement, never contemplated the granting a bottomry bond, and, if he had suspected a bond would have been required, might have hesitated before he received such assistance, might have sought for it in other quarters, or in some cases have waited for instructions from owners or consignees." These are very serious considerations, which would make the Court pause before it gave its assent to such doctrine; still, it may be that such state of the *lex loci*, though not perhaps sufficient to bring about all the consequences attributed to it, may be an important ingredient assisting to support the validity of the bond; and the learned Judge continues: "I think that the effect of these observations is, that such *lex loci* is important as regards the intention to advance on the credit of the ship, but not conclusive that the *lex loci* alone would render a bond otherwise void valid—*The Laurel* (13); for the purposes of this case it would, I think, be sufficient to accept this modified opinion of Dr. Lushington, but I must repeat, that I consider the opinion expressed in *The Prince George* (3) as binding upon this Court." I have hitherto considered the validity of this hypothecation in relation to the ship and freight; the defendants, the owners of the cargo, having, as it was quite competent to them to do, denied even in this relation the validity of the bond. But they have more especially contested the validity of it with respect to the cargo,—maintaining that the bond may be valid as it affects the ship and freight, and yet invalid as it affects the cargo. In the recent case of *The Elise* (21), I stated at length my view of the law which has been laid down with respect to the duty of the master to communicate with the owner of the cargo before he hypothecates it. It must be observed, however, that the law does not say that the necessity of communicating with the owner of the cargo is different in kind from the necessity of communicating with the owner of the ship; but that there

(21) Not reported.

must be a separate communication, if in the circumstances it be feasible, with both. Referring to my judgment in *The Elise* (21), it is only necessary to state here that it is, generally speaking, the duty of the master to communicate, or attempt to communicate, with the owner of the cargo. The rule has been now so well determined that the difficulty consists in the application of the rule to the circumstances of the particular case, and not in the ascertainment of the rule which is to be so applied. In the present case the facts appear to me to establish the following propositions: first, that the master acted with perfect good faith throughout the whole of this transaction; secondly, that he did make an attempt to communicate with the owners of the cargo, which brings him within the principle of the cases decided by the Privy Council, to which I have adverted in my judgment in the case of *The Elise* (21); thirdly, that having failed in this attempt, he acted on behalf of the cargo as a prudent man, having in view the benefit of the owner, ought to have acted.

As to the other question for the consideration of the Court. The defendants have, as I have already observed, retained the sum of 727*l.* 19*s.* 2*d.* in their hands, due from the freight, for the following reasons set out in their answer:

9. That after the making of the charter-party in the seventh article of the petition mentioned, and whilst the *Karnak* was lying at Galveston, and before she departed on her chartered voyage, the defendants from time to time advanced to the said master, on account of the necessary disbursements, certain moneys amounting in the whole to 632*l.* 14*s.* 2*d.*, and at the respective times of the making of the said advances, as aforesaid, it was agreed between the said charterers and the said master, as follows (that is to say), that the said advances should be made and taken *pro tanto* in part payment of freight, and that the owners of the said vessel should in no case whatsoever be liable to refund to the said charterers the said advances, and further that the costs of the insurances to be effected by the said charterers, as well as interest at the rate of 10*l.* per centum per annum on the said advances, should be also deducted from and taken *pro tanto* in part payment of freight.

10. That after the greater part of the said advances (to wit), advances amounting to the sum of 596*l.* 12*s.* 6*d.*, had been made to him, the said master, indorsed on the said charter-party a receipt, of which the following is a copy:

"Received from Messrs. Droege & Co., of here, the sum of 596*l.* 12*s.* 6*d.* pounds sterling, which I promise to pay at Liverpool to Messrs. Droege & Co., of Manchester, or their order, out of the proceeds of present freight, with the addition of 10*l.* per cent. per annum, and charges for insurance for the above-named sum.

(Signed) "Geo. S. Locke."

To this receipt must be added the following document, produced by the defendants under an order for discovery issued by this Court:

"Receipt for the balance of the loan by Droege & Co. to the master of the *Karnak*, at Galveston, not included in the receipt indorsed on the charter.

"Received, Galveston, the 13th of December, 1866, of Messrs. Droege & Co., the amount of thirty-six pounds one $\frac{1}{2}$ shillings British sterling, besides the amount of five hundred and ninety-six pounds twelve $\frac{1}{8}$ shillings sterling, entered on the charter-party, thus making the total loan of Droege & Co. to me the amount of six hundred and thirty-two pounds fourteen $\frac{1}{8}$ shillings British sterling, which with 10 per cent. per annum interest from date, and the premium of insurance I promise to pay to the order of Messrs. Droege & Co., on my arrival at Liverpool, out of the proceeds of my present freight.

"596*l.* 12*s.* 6*d.* entered on charter-party.

"36*l.* 1*s.* 8*d.* paid to me to-day.

"George S. Locke."

The question is, whether this money so advanced was a loan, as the plaintiffs contend, or an advance of freight, as the defendants maintain. In the former case, the money as representing the rest of the freight must be paid into court as being liable to contribute to the payment of the bondholder; in the latter case, the defendants will be entitled to retain this sum of money, inasmuch as they have already paid that portion of the freight which it represents, and this question must be solved by the answer to another question: What did the freight consist of at the time when the

bottomry bond was granted? It is not necessary to consider whether the master, having regard to the charter-party, which provided that the freight should be paid at Liverpool, did not act *ultra vires* as agent for the owner in receiving freight in advance. The legal distinction between a loan and an advance of freight is clearly stated by Dr. Lushington in *The Salacia* (4). An advance of freight, he says, is an insurable interest, because the liability of the shipowner to repay it is dependent upon the same contingencies as the shipowner's claim to freight itself. A loan, on the other hand, is not freight, is not an insurable interest, for, whatever happens to the ship, the loan may be recovered by action against the shipowner. This difference is well shewn in *Manfield v. Maitland* (22). That was an action against underwriters for an advance which had been insured, and it appeared that the charter-party authorized an advance to be made, but was silent as to whether it should be allowed as a deduction on settlement of freight. In consequence of the absence of the latter provision the Court held, that the advance was not an insurable interest. The case of *Hicks v. Shield* (23) is an authority for shewing that the question, whether the advance be a mere loan or an advance of freight, must principally depend upon what appears upon the face of the instrument. There is some discrepancy in the evidence of the master and Bluck upon this matter; but looking to the circular issued by the master, and more especially to the language of the receipt, I am of opinion that this advance of money must be legally considered as a loan, and not as an advance of freight. I think that the freight existed at the time the bottomry bond was given, and must be considered as being duly bound by that instrument. I pronounce for the validity of this bond so far as it affects the cargo, and I direct the defendants to pay into court the sum of 727*l.* 19*s.* 3*d.* now retained by them in part satisfaction of the claim under the bond. I condemn the defendants and their bail in the sum which remains due in respect of the bond, with 4*l.* per cent. interest from the time when

it ought to have been paid, and in the costs of this suit.

Solicitors—Waltons & Bubb, for plaintiffs; Field, Roscoe & Co., agents for T. E. Paget, of Liverpool, for defendants.

1868. }
May 6; } THE FELIX.
June 9. }

Bill of Lading—Non-Delivery of Cargo—Right to Sue.

A cargo of timber was shipped to be unladen at S, "at the usual place of discharge, and according to the custom of the port." On arriving at S. the vessel at once proceeded to the South Dock in S, and was being moored there when the consignees' agent directed the master to remove her to the Gill Dock in S, which the master refused to do. Both docks were usual and customary places of discharge:—Held, that the master was not bound to lie in the river waiting for instructions, and was justified in at once mooring in the South Dock, but that having received the instructions to discharge his cargo in the Gill Dock, he was bound to obey them.

The bill of lading had been indorsed to P. & Co., who had agreed to sell the cargo to B. & Co., but the purchase-money had not been paid:—Held, that P. & Co. were proper parties to sue in respect of a breach of the contract for delivery of the cargo.

This was a cause instituted on behalf of Messrs. Peacock, merchants, of Sunderland, against the ship *Felix* and her owners, for damages in consequence of the non-delivery of the cargo of the ship by her master, according to their order, into the Gill Dock in the port of Sunderland.

The cargo consisted of fir timber used for "props" in the coal-mines of Durham, and was shipped on board the *Felix* at the port of Gothenburg, by a person of the name of Wlengel, who indorsed the bill of lading to the plaintiffs, Messrs. Peacock; and Messrs. Peacock subsequently agreed to sell the cargo to Messrs. Bell & Co., but

(22) 4 B. & Ad. 582.

(23) 7 EL. & B. 638.

the purchase-money for the cargo had not been paid, either wholly or in part, before the arrival of the *Felix*, nor had the plaintiffs indorsed or delivered the bill of lading to Messrs. Bell & Co.

The following were the material parts of the bill of lading and of the charter-party, which it was contended was incorporated in it:

Bill of Lading.

Shipped in good order and well conditioned by C. Wlengel in and upon the good ship called the *Felix*, . . . now lying in the port of Gothenburg, and bound for Sunderland, 6,719 pieces of pit-wood, . . . to be delivered in the like good order and well conditioned, at the aforesaid port of Sunderland, . . . unto order or to assigns, he or they paying freight for the said goods and other conditions as per charter-party of the 13th of September, 1867.

Charter-Party.

Capt. S. H. Buschen charters to Mr. C. Wlengel his said ship, being perfectly tight, staunch, and strong, properly manned, victualled and equipped, provided with regular ship's documents, and every way fitted for making a voyage from Gothenburg to Sunderland, where, after having duly delivered the cargo, this affreightment ceases, and the voyage is ended. The cargo is to consist of pit-props, with necessary short lengths, a full and complete cargo in the hold and upon deck. . . . The loading is to take place in this river, as near to Mr. C. Wlengel's wood-yard as the vessel can safely float, and as fast as the captain requires the cargo. And the unloading at Sunderland at the usual place of discharge, and according to the custom of the port for ships with similar cargoes, and of the same draught of water, in five working days, to be reckoned from the day after the ship has taken her berth and is ready to discharge; for every day that the vessel may be longer detained the captain is entitled to 3*l.* sterling, to be paid him by the receiver of the cargo daily as it falls due, but no demurrage is to be charged whilst the loading or discharge is prevented by natural impediments or holidays.

It appeared that the plaintiffs' water-clerk arrived at the pier, at Sunderland, and found the *Felix* being moored in the South Dock, when he explained to the master that he came from the consignees of the cargo, who wished the vessel to go to

the Gill Dock. Something was said about the expenses of entering the South Dock, but the plaintiffs made no definite offer to pay them, and eventually the master refused to discharge his cargo in the Gill Dock, and caused it to be detained for alleged demurrage and other claims not lawfully chargeable against the plaintiffs.

Aspinall and Clarkson, for the plaintiffs.

—The plaintiffs were no parties to the charter-party, and it is not incorporated in the bill of lading. According to the custom at Sunderland a vessel with no specific orders should drop anchor and wait a reasonable time, and on receiving orders should proceed to the place mentioned, supposing it to be a usual port of discharge, which the Gill Dock is. It is admitted that the master would have been bound to change docks if the proposed docks be unobjectionable and the consignee tender expenses, but the payment of expenses is not a condition precedent. The following cases were referred to—*Russell v. Niemann* (1) and *The Great Northern Railway Company v. Taylor* (2).

Manisty and Butt, for the defendants.—

The contract is to be found in the bill of lading and charter-party taken together. The plaintiffs are bound by the time and place fixed by the charter-party, which gives the right to the demurrage; the lay days do not begin to run till the ship takes up her berth at the usual place of discharge—*Brereton v. Chapman* (3). The words "at the usual place of discharge" are quite distinct from the words "according to the custom of the port." A ship is not to remain in the river as long as the consignees please, and apart from what may be reasonable or what is the custom. The reference in the contract is not to "a usual place," but to "the usual place." "The" usual place was, no doubt, in the South Dock. The Gill Dock is not within the meaning of this charter. No notice of a ship's arrival is necessary; the consignees are bound to take notice when the ship arrives—*Harmer v. Mant* (4). The usual place is a question

(1) 15 Com. B. Rep. N.S. 163; s. c. 34 Law J. Rep. (N.S.) C.P. 10.

(2) 35 Law J. Rep. (N.S.) C.P. 210; s. c. 1 Law Rep. C.P. 385.

(3) 7 Bing. 559.

(4) 4 Campb. 161.

of fact—*Kell v. Anderson* (5). A custom cannot be grafted on this contract—*Kerchener v. Venus* (6). The plaintiffs have no right to sue. By the contract with Messrs. Bell & Co. the property has passed out of the hands of the plaintiffs, but has not been vested in the former, inasmuch as the bill of lading has never been indorsed or delivered to them. Wlengel, the original shipper, alone has a *persona standi* as a suitor in this cause. Whatever may be the rights of Messrs. Bell & Co., the plaintiffs certainly cannot sue. Before the Bills of Lading Act, neither Messrs. Bell & Co. nor Messrs. Peacock & Co. could sue in this court; under that act it is not the indorsement of the bill of lading, but the vesting of the property, which gives to the consignee the rights of the original shipper—*Southwaite v. Wilkins* (7), *The St. Cloud* (8), and *The Norway* (9).

Aspinall, in reply, referred to *The Figlia Maggiore* (10).

Cur. adv. vult.

On the 9th of June judgment was given as follows:

SIR R. PHILLIMORE.—The first question, in point of order, raised in this case is whether the plaintiffs are entitled to sue. Mr. Butt, the junior counsel for the defendants, contended that, by the contract with Messrs. Bell & Co., the property passed out of the hands of Messrs. Peacock, and yet is not vested in Messrs. Bell, inasmuch as the bill of lading has never been indorsed nor delivered to them; and that the original shipper alone, Wlengel, has a *persona standi* as a suitor in this cause; but certainly the right of the original shipper to the property had, by his indorsement of the bill of lading, passed to Messrs. Peacock; and the strict consequence of this argument would be that no party could be a suitor. It was contended, and rightly, that before the passing of the 18 & 19 Vict. c. 111. s. 1. (Bills of Lading Act), neither Messrs. Bell nor Messrs. Peacock could sue in this court, and that, under the true construction of

that act, it was not the indorsement of the bill of lading, but the vesting of the property, which gave to the consignee of goods the rights of the original shipper with respect to the contract contained in the bill of lading. The cases of *Southwaite v. Wilkins* (7), *The St. Cloud* (8) and *The Norway* (9) were cited in support of this contention. I am of opinion that the interest in the bill of lading conferred by the shipper's indorsement upon Messrs. Peacock has not been divested out of them, and that, under the 6th section of the 24 Vict. c. 10. (the Admiralty Court Act, 1861), Messrs. Peacock are properly suitors in this cause. It has been maintained by one, if not both of the counsel for the plaintiffs, that they were no parties to the charter-party, and that it cannot affect them unless it be incorporated in the bill of lading, and that the reference to the charter-party in the bill of lading is too limited and partial to admit the incorporation of the words in the charter-party relating to the demurrage and "the usual place of discharge." In support of this proposition, the case of *Russell v. Niemann* (1), to which I have referred, was relied upon. I am of opinion, however, that, according to the true canons of construction, the charter-party is incorporated in the bill of lading to the extent for which the defendants contend. Whether by this incorporation the law applicable to this case is in any way materially affected, will appear hereafter. The material question is whether, in an open charter-party to deliver a cargo at Sunderland, the terms "usual place of discharge and according to the custom of the port," do or do not authorize the captain, having received no notice from the consignees, to take the ship into the South Dock, and to refuse to remove her from thence until he has been reimbursed the expenses incurred by entering the South Dock? That I understand to be the principal question upon which the judgment of this Court is sought. It is not necessary to recapitulate in detail the evidence. The fair result of it appears to be as follows: That the Gill Dock is a usual place of discharge for pit-props destined for the collieries of Lord Durham, but that it is not the usual place of discharge for this particular cargo. The purchaser of this very cargo of the *Feliz* (Mr. Coningham) admitted that the South

(5) 10 Mee. & W. 498; s. c. 12 Law [J.] Rep. (N.S.) Exch. 101.

(6) 12 Moore, P.C. 398.

(7) 31 Law J. Rep. (N.S.) C.P. 214.

(8) 1 Bro. & Lush. 4.

(9) 3 Moore, P.C. N.S. 245.

(10) *Post*, p. 52.

Dock was the place in Sunderland in which most pit-props were discharged. It was also proved that when a vessel with this cargo was expressly chartered for the Gill Dock, a larger freight was paid. I am of opinion, therefore, that the plaintiffs have not proved the Gill Dock to be the usual place of discharge. Nor do I think that they derive any advantage from the additional words "and according to the custom of the port." It may be observed that the *Felix* was a foreign vessel, under a foreign master, and not a vessel coming from Scotland with this peculiar cargo of pit-props. The custom, so far as any custom at all is established by the evidence, would appear to be one of this description, that, in cases of vessels freighted with this cargo, with an open charter, it is usual for the consignee to send his water-clerk to meet the vessel coming into the port, with directions as to the dock into which she is to be moored; that a further precaution is also sometimes taken of putting up a paper in the window of the pilot's office, containing the necessary instructions. But it is not proved to my satisfaction that, in the absence of such instructions conveyed by either mode, it is the duty of the foreign master to lie in the river for a reasonable period awaiting the arrival of such instructions. Assuming, therefore, as I think I am bound to do on the evidence, that the foreign master acted without bad faith in going into the South Dock in the first instance, I am of opinion that he was not to blame for doing so. The case of *Brereton v. Chapman* (3) (judgment of Tindal, C.J.) has established that the lay days allowed by a charter-party for a ship's discharge are to be reckoned from the time of her arrival at the usual place of discharge, and not at the port merely; though she should, for the purposes of navigation, discharge some of her cargo at the entrance of the port before arriving at the usual place of discharge. Such being the law, I should be of opinion that the "lay," or working days, had begun when the *Felix* came into the South Dock, if she had begun to discharge her cargo before she received any directions from the consignees to go to the Gill Dock; but this was not the case. While she was in the very act of mooring her master received those directions, and refused to obey them except under the con-

dition of being reimbursed the expenses which he had incurred by entering the South Dock. I understand it to have been admitted (though this statement is, perhaps, too favourable to the master, as the evidence scarcely supports the position that he ever made a *bona fide* offer to go to Gill Dock if his expenses were paid) by Mr. Manisty that, if this payment had been tendered, it would have been the duty of the master to have obeyed the orders of the consignee; though I think it was maintained by Mr. Butt, that, even if the master had been apprised before he entered the South Dock that he was to discharge in the Gill Dock, he would have been justified under the charter-party in refusing to do so. I am of a contrary opinion. Was it, then, the duty of the master to obey the order of the consignee to go into the Gill Dock and there discharge his cargo, reserving to himself the right of recovering by legal process against the consignee the expenses which he had incurred in the South Dock. Gill Dock, it must be observed, was certainly a place of discharge, and one to which the *Felix* might have safely gone. It was the dock in which Messrs. Peacock had bound themselves by the first bill that the cargo should be delivered. It was, moreover, fairly argued that these pit-props are bought to sell under an open charter-party, because purchasers do not know, at the time of the purchase, where the cargo is to be sent; whereas, when they are bought by the coal-owners for themselves, the place of discharge is usually specified in the charter. But this question ought to be determined apart from this particular consideration and upon general principles; upon which, as Lord Kingsdown says, for the sake of the public interest, questions of general mercantile law should be decided—*Kerchener v. Venus* (6). It was the duty of the master, in the circumstances stated, to have obeyed, when he did receive it, the order of the proprietor of the cargo. The charter-party being open, the place of discharge has necessarily to be supplied. It cannot, I think, be reasonably contended that a foreign master entering this port, perhaps for the first time, was entitled to select such dock as he considered to be the usual place of discharge, and to disregard the direction of the proprietor of the cargo as to the dock in which his in-

terests required that the cargo should be delivered.

Attorneys and Proctors—Rothery & Co., agents for Ranson & Son, Sunderland, for plaintiffs; Dyke & Stokes, agents for J. Eglinton, Sunderland, for defendants.

1868.
Feb. 26, 27, 28; } THE FIGLIA MAGGIORE.
April 21.

Bill of Lading—Right of Indorsee to Sue for Damage to Cargo.

Indorsees of a bill of lading of goods consigned to them for sale had made advances of money upon the bill of lading:—Held, that to entitle the indorsees to sue for damage done to the goods mentioned in the bill of lading it is not necessary that all the property in the goods should pass to them.

This was a suit in respect of damage to cargo arising from the negligence and breach of contract of the master of the ship on board of which the goods were laden.

The plaintiffs were Messrs. Simmonds, Hunt & Co., assignees of a bill of lading of 1,000 barrels of oil-cake shipped on board the *Figlia Maggiore*, of New York, by Messrs. Holgate, merchants of that city. The plaintiffs alleged that the oil-cake had been damaged by bad stowage and the want of proper ventilation; and the defendants, besides denying the damage, alleged that the vessel was under charter to Messrs. Ruger Brothers, and that the master signed the bills of lading as agent for them and not for the defendants, the shipowners, and that therefore there was no contract between the defendants and the plaintiffs. The defendants also contended that the plaintiffs were not indorsees of the bill of lading within the meaning of the statute, 18 & 19 Vict. c. 111, so as to be entitled to sue in this cause. The evidence was taken *viva voce*, from which it appeared, amongst other things, that the oil-cake had been consigned to the plaintiffs for sale, and that according to their usual custom to advance on the bills of lading of goods supplied by Messrs. Holgate & Co., a draft drawn by Messrs. Holgate on the plaintiffs had been delivered with the bill

of lading, and had been accepted and paid by the plaintiffs.

The Solicitor General and Clarkson, for the plaintiffs.—Inasmuch as the ship had been put up as a general ship by the master, and as the plaintiffs had no knowledge of the charter, the contract was between the shippers and the owner, not between the shippers and the charterer—*Sandeman v. Scurr* (1), *The St. Cloud* (2). The shipowner breaks his contract, unless he makes out that the loss has been occasioned by the perils of the sea. The indorsement being for valuable consideration passed the property to the assignee, and conferred on him the right to sue.

Milward and Lushington, for the defendants.—The words in the Bill of Lading Act, “to whom the property in the goods therein mentioned shall pass,” require that all the property shall pass to the indorsees in order to place him in the position of the original shipper or owner, and confer on him the right to sue—*Fox v. Nott* (3). In the present case the plaintiffs are only agents of the consignor, and all the property in the oil-cake does not pass to them so as to enable them to sue upon the contract. The *onus probandi* as to negligence lies upon the plaintiffs—*The Norway* (4), *The Hélène*—*Ohrloff v. Briscall* (5), *Czech v. the General Steam Navigation Company* (6).

Clarkson, in reply.

SIR R. PHILLIMORE.—With respect to the first point of law raised, that the contract in the bill of lading was between the shippers and the charterers, and not between shippers and the defendant, therefore that the defendant was not liable for a breach of the contract, it was properly admitted by the counsel for the defendant that, inasmuch as the *Figlia Maggiore* had been put up by the master as a general ship, and as the plaintiffs had no knowledge of the charter-party, the cases of *Sandeman v. Scurr* (1) and of *The St.*

(1) 36 Law J. Rep. (N.S.) Q.B. 58; s. c. 2 Law Rep. Q.B. 86.

(2) Bro. & Lush. 4.

(3) 6 Hurl. & N. 630; s. c. 30 Law J. Rep. (N.S.) Exch. 259.

(4) 3 Moore, P.C. N.S. 245.

(5) 4 Ibid. 70.

(6) 37 Law J. Rep. (N.S.) C.P. 3; s. c. 3 Law Rep. C.P. 14.

Cloud (2), decided by my predecessor, were directly opposed to his contention; and as I shall certainly follow the authority of these cases, I am of opinion that the proper defendant is before the Court in this case. I have next to consider the right of the plaintiffs to sue the defendant in this court. They claim as indorsees for valuable consideration of the bill of lading under the 6th section of 24 Vict. c. 10, to sue the defendant, first, for negligence, and, secondly, for breach of contract. I will deal first with the second ground. The defendant contends that the indorsees are not entitled to the property in the oil-cake so as to enable them to sue upon the contract. There is no doubt that previously to the 18 & 19 Vict. c. 111, the indorsement and delivery of the bill of lading transferred to the indorsees the property, but not the contract, of the shippers, and that therefore at common law, though they might have sued the owners or the master for what is technically called the conversion, they had no action against them upon the contract for non-delivery of the goods. It is true that by the 6th section of 24 Vict. c. 10, this Court has jurisdiction "over any claim by the owners or consignee or assignee of any bill of lading of any goods" carried into any port in this country for damage on the ground of negligence or breach of contract on the part of the owners, masters or crew; but my learned predecessor, in the case of *The St. Cloud*, decided that a nude assignee was not entitled under the statute to sue in this court, because the words "any claim" must be interpreted to mean "any claim lawfully existing independently of this act," and to that decision I adhere. Now, as has been stated, such a claim did not exist by the common law; but by the statute 18 & 19 Vict. c. 111. s. 1, it is enacted that "every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods shall pass, upon or by reason of such consignment or indorsement, shall have transferred or vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself." The defendant contends that the words "to whom the property in the goods therein mentioned shall

pass," require that all the property should pass to the indorsee in order to place him in the position of the original shipper or owner; and the case of *Fox v. Nott* (3) was cited in support of the proposition. But I am of opinion that that judgment only decided that the statute was not intended to deprive an owner who had made advances on the security of the bill of lading of the benefit of the original contract of the shipper to pay the freight in the case where the shipper's agent who shipped the goods had personally contracted to pay the freight. In the case I have just mentioned Baron Bramwell was of opinion that the statute had no bearing at all upon the case; the other Judges thought that the act only applied to the absolute transfer of the goods, and one of them said that the statute meant "an actual vesting of the property as by bargain and sale." In the case before me the bill of lading had been delivered to the plaintiffs with a bill of exchange which they had accepted and paid; and it appears to me that in these circumstances the consignors had intended to vest the property in the indorsees. In the case of *Lickbarrow v. Mason* (7), Buller, J., referring to the case of *Godfrey v. Furzo* (8), observes, "The Lord Chancellor says: 'when a merchant beyond sea consigns goods to a merchant in London on account of the latter, and draws bills on him for such goods, though the money be not paid, yet the property of the goods vests in the merchant in London who is credited for them, and consequently they are liable to his debts; but where a merchant beyond sea consigns goods to a factor in London, who receives them, the factor in this case being only a servant or agent for the merchant beyond sea, can have no property in such goods, neither will they be affected by his bankruptcy.'" And Buller, J., adds, "The whole of this case is clear law." And dealing with the question of the factor he says: "I agree, if he be merely a servant or agent, that part of the case is good law, and the principal may retain the property, but then it remains to be proved that a man who is in advance, or under acceptance, on account of the goods,

(7) 1 Smith's Lead. Cas. 5th edit. vol. i. pp. 681, 729.

(8) 3 P. Wms. 185.

is simply or merely a servant or agent, for which no authority has been, or as I believe can be, produced." I am of opinion that if the two statutes (18 & 19 Vict. c. 111. and 24 Vict. c. 10.) are to be construed together, and if the indorsee of the bill of lading in order to sue the owner for a breach of contract in the Admiralty Court, under the 6th section of the latter statute, must be the indorsee to whom the property in the goods has passed, according to the former statute, the plaintiffs are entitled to sue in this capacity. But if I am wrong upon this point, I am clearly of opinion that upon the other ground, namely, the negligence mentioned in the 6th section, they are entitled to sue. A question has been raised as to the party on whom the *onus probandi* is to be thrown in this case. In the case of *The Hélène* (5), which also arose under the 6th section of this act, and was decided in this court, but reversed on appeal before the Privy Council, the assignees of the bills of lading for certain casks of oil shipped on board the *Hélène* sought to recover damages for loss incurred on the voyage by the leakage of the oil, occasioned, as alleged by the assignees, by the negligence and breaches of contract and duty of the owners. In the margin of the bill of lading of the casks of oil in that case there was this memorandum: "Weight, measurement and contents unknown, and not accountable for leakage," and in that case it was ruled that the plaintiffs, in order to entitle themselves to the action, were bound to give satisfactory proof that the leakage was caused by the negligence of the shipowners. And in the subsequent case of *Czech v. the General Steam Navigation Company* (6), where the bill of lading contained an exception from liability for "breakage, leakage or damage," the same doctrine seems to have been held by Bovill, C.J.; but in both those cases it would seem—though, perhaps, the proposition is not distinctly stated—that the burden of proof was thrown upon the plaintiffs on account of the special memorandum or exception which accompanied the bill of lading. In the case of *The Norway* (4), in which it was alleged that the jettison of a portion of the cargo had been caused by the grounding of the ship in consequence of the negligence of the pilot, it was contended

that the plaintiffs were bound to establish that the injury thereby sustained by the vessel was either the *causa proxima* or *causa causans* of the jettison; but no decision appears to have been come to on this point by their Lordships. Assuming, however, that it is incumbent on the plaintiffs to establish a *prima facie* case of negligence against the master, this proposition, to borrow Willes, J.'s expression in *Czech v. the General Steam Navigation Company* (6), "does not restrict the plaintiffs as to the nature of the evidence by which such negligence shall be proved." The learned Judge, having commented at length on the facts, said, "I think it can scarcely admit of doubt that a *prima facie* case of negligence has been established by the evidence, and that that case is not displaced by the evidence produced on behalf of the defendant."

Judgment for the plaintiff, with costs.

Proctors—Clarkson, Son & Cooper, for plaintiffs;
Attorney, Kearsey, for defendants.

1868. }
May 7, 8. } THE EXCELSIOR.

Negligence—Damage by a Ship to a Breakwater—Duties of Master and Dock-Master.

A dock-master is invested with a discretion to be exercised for the benefit of all the ships in the harbour, and the master of a vessel is therefore bound to obey the dock-master, and to assist in the removal of his ship, even though, if the interests of the ship alone might be considered, the removal was injudicious.

Where a ship is moored in dock, it is generally the duty of her master to keep on board a sufficient crew to protect the vessel against ordinary risks.

A ship after having been moored in a dock was subsequently, by order of the dock-master, removed to another part, from which, by the negligence of her master and his disobedience of the dock-master's orders, she broke loose and damaged the docks:—Held, that the ship was liable for the damage.

This was an action brought by the plaintiffs, the Falmouth Docks Company, for

damage done to the western wharf of the Falmouth Harbour, on the 5th and 19th of January, 1867, by the ship *Excelsior*.

It appeared that the ship having entered the docks was moored, on the 25th of November, alongside the eastern wharf, where she lay for some time discharging cargo. While she was so lying there her master was frequently ordered by the dock-master to send down the ship's top-gallant-yards and strike the top-gallant-masts, which the master refused to do. On the 22nd of December, the ship was removed to the western wharf, and on the 5th of January, during a heavy gale from east-south-east, the ship having still her top-gallant-masts and yards aloft, parted her hawsers and commenced striking the plaintiff's wharf with great violence, shaking the piles and cutting down the edge of the wharf. On the 19th of January the ship, having her top-gallant-masts and yards still aloft, again broke away and did further damage. The company is governed by its local act, with which is incorporated the Harbours, Docks and Piers Clauses Act, 1867, and by these it was contended, on behalf of the plaintiffs, that the ship was bound to have substantial hawsers, tow-lines and fasts fixed to the dolphins, booms, buoys or mooring-posts when required, and that the master was bound when ordered by the dock-master to lower his top-gallant-yards and masts. And it was also contended, on their behalf, that the damage was occasioned by the refusal of the master to obey the orders given him by the dock-master, and by the insufficient crew left on board of the vessel, and the inadequate mooring-tackle.

On behalf of the defendants, the charges were denied, and it was also contended that the damage was caused by the improper removal of the ship from the eastern to the western wharf, or that it was the result of inevitable accident.

The Solicitor General (Sir W. B. Brett) and *V. Lushington* appeared for the plaintiffs.

Aspinall and *E. C. Clarkson*, for the defendants.

SIR R. J. PHILLIMORE.—That the damage was done to this wharf by the dashing of the *Excelsior* against it on the two occasions specified is clearly proved. The questions for the Court to decide are

whether this damage was caused by the negligence or default of the master or his servants, or by the misconduct of the dock-master in causing the vessel to be improperly moored, or whether the damage was caused partly by the misconduct of the master of the vessel and partly by that of the dock-master.—[His Lordship then reviewed the evidence in the case, and continued]—These are the principal facts of the case. The law applicable to them must be determined by a consideration of the respective duties of the master of the ship and the dock-master. It has been contended on behalf of the former that he had a right to remain in the place in which he was first moored, and that the dock-master had no right to remove him. I am of a different opinion. I think that the statutes and the regulations, as well as the necessity of the case, clothe the dock-master with the discretion upon this subject, to be exercised for the welfare of all the ships which enter the harbour, and that the master was bound to obey this order, and to assist in the removal of his ship. He might do so, indeed, under protest, and reserve to himself the right of holding the company liable for any damages done to his ship in consequence of obedience to the order; but he had a duty to perform towards his ship in this instance, the neglect of which was highly culpable. The Trinity Masters think that the ship was better protected against the easterly gale and sea caused by such gale where she was originally moored by the eastern pier, and that, if the interests of the ship alone were to be considered, it was injudicious to move the ship; but, on the other hand, it is to be remembered that it was the duty of the dock-master to consider the interests of all the shipping in the harbour, and if the injured and dismantled ship, which took the place of the *Excelsior* absolutely required a protection which the *Excelsior*, with proper care, did not require, it was not an improper exercise of discretion to order the removal of that vessel. The further question then arises, would the *Excelsior*, with proper care, have been safe in her new mooring? It appears to me that the damage done both to the pier and to the ship is mainly attributable to two causes: first, principally to the insufficiency of the crew left on board for the management of the

ship at that place in that weather. The Trinity Masters are most clearly of opinion that the crew was insufficient for the due management and care of the ship. It has been contended that it was the duty of the dock company to provide a sufficient number of hands for the ship. The proposition, however, was not put so high as this, that the captain had a right to abandon the ship altogether and devolve the whole care of it upon the company; but it was said that the few hands which he left on board were so adequate for all purposes for which he was bound to provide, that he was entitled to rely on the company for special emergencies such as happened on this occasion. The duty of a dock company generally was much discussed in the case of *Thompson v. the North-Eastern Railway Company* (1), which was argued before the Queen's Bench and the Exchequer Chamber in 1862. In that case the former decisions on the subject were reviewed and the judgment of Tindal, C.J., in *The Lancaster Canal Company v. Parnaby* (2), in error, relied upon. In that case the law is laid down to this effect and extent only, viz., that it is the duty of the dock company to take reasonable care that the dock is kept so free from obstruction that those who use it might do so without danger to their property. The respective duties of a dock company and the master of a ship must depend in some measure upon the actual condition and place of the dock, as well as upon the statutes which regulate their authority. For instance, it may possibly be that in the West or East India Docks in the river Thames, or in some of the Liverpool docks, or in some dock from its situation and construction perfectly secure in all weather, a single watchman may suffice for the protection of the ship, so far as the duty of the captain is concerned, and that he may be justified in relying for any further protection upon the dock company; in other words, that they may have expressly or tacitly bound themselves to require no further assistance from the captain. In this case the dock is certainly unfinished, and, in fact, a harbour rather than a dock in its present state. But if the western side of it

was a more exposed position than the eastern for the *Excelsior*, it was not a secret danger, of which the dock-master was cognizant and the captain ignorant: and surely that fact did not give the captain a dispensation from the care and diligence which the duty of his office ordinarily imposes upon him. I do not say that it was incumbent upon him to have kept a full crew on board, but I do say that he ought to have kept a sufficient crew on board to have protected his ship against the ordinary incidents of peril which a competent seaman would foresee and provide against, in which category I place the gales of the 5th and 20th of January in the harbour of Falmouth. The master did not sleep in his ship, neither did his chief or second mate. But the master must or ought to have known that bad weather was coming on; on the 5th he does not come down to his ship till late in the day, and until, in fact, his duty has been performed by a stranger. For the accident of the second gale, after the warning of the first, he is even more to blame. I am of opinion that he was guilty of an indefensible dereliction of his plain duty in neglecting the proper precautions for the safety and care of the ship. The second cause of this damage is the refusal of the captain to lower his top-gallant-yards and masts. I am of opinion that this refusal is clearly proved, and the Trinity Masters instruct me that it would have been the duty of a prudent captain to have taken this measure of his own accord. Upon the whole, therefore, I am led to the conclusion that the fair result from the positive evidence produced before me on behalf of the plaintiff, and from the absence of contradictory testimony from those on board the *Excelsior*—which would of course have been given if it could have been given with advantage by the defendants—is, that if the master of the *Excelsior* had done his duty to his ship, and had obeyed the lawful orders of the dock-master, this accident and the injury occasioned by it would not have happened. I must, therefore, pronounce the *Excelsior* to blame.

Proctors—Clarkson, Son & Cooper, for plaintiffs;
Alfred Ayrton, for defendants.

(1) 2 Best & S. 160; s. c. 30 Law J. Rep. (N.S.) Q.B. 67. 31 Ibid. 194.

(2) 11 Ad. & E. 223, 230; s. c. 9 Law J. Rep. (N.S.) Exch. 338.

1868. }
June 27. }

THE LEADER.

Proctor's Lien — Garnishee Order — Priority.

A plaintiff having obtained a decree for payment by the defendant of a sum of money for costs, the defendant under the authority of two garnishee orders paid part of the sum to judgment creditors of the plaintiff. No notice had been given to the plaintiff's proctor previous to the application for the garnishee orders, nor was the existence of the proctor's lien mentioned to the Judge who made the orders:—Held, that the defendant was still liable to pay the costs decreed.

In this, which was originally a suit by the plaintiff, David Leusier, as master, for his wages and disbursements, the Court had decreed a sum of 23*l.* 9*s.* 3*d.* to be paid to the plaintiff as the balance due to him, and the sum of 65*l.* 1*s.* 6*d.* for costs.

Messrs. Bell & Co., the defendant's solicitors, were also solicitors for the plaintiff's creditors, and in the latter capacity obtained two garnishee orders, attaching the moneys due from the defendant to the plaintiff, and under the authority of those orders paid to the creditors nearly the whole amount decreed in this cause. No previous notice had been given to the plaintiff's solicitors of the application for the garnishee orders and their lien had not been mentioned to the Judge before the orders were made.

The plaintiff's solicitors now moved the Court for a monition against the bail to enforce payment of the amount due to them for costs.

Clarkson, in support of the motion.—The existence of the solicitor's lien ought to have been brought to the notice of the Judge when the garnishee orders were applied for—*The Common Law Procedure Acts*, 1854 and 1860. The solicitors for the judgment creditors also instructed the defendant's proctor in this case, and therefore must have known of the lien. *The Olive* (1) was decided in 1859, before the passing of the act of 1860, which provides a special machinery applicable to these cases. A

garnishee order does not affect a solicitor's lien; unless that lien be barred the defendant remains still liable to pay the claim of the plaintiff's solicitor—*Bozon v. Bollond* (2) and *Simpson v. Prothero* (3).

Butt, contra.—This Court will not review the order of a Judge—*The Olive* (1). The defendant has already paid the debt and costs. The garnishee order clearly bars the plaintiff's own claim; and the debt is due to the plaintiff, not to the plaintiff's attorney. The defendant's attorneys certainly took advantage of knowledge that they possessed from their peculiar position, as acting both for the defendant and for the judgment creditors of the plaintiff; but in doing so they only did their duty. It is clear on the authorities that the plaintiff's solicitors had neither a lien nor charge when the garnishee order was taken out—*Hough v. Edwards* (4) and *Barker v. St. Quintin* (5). The 23 & 24 Vict. c. 127. s. 28. (The Solicitors' Act) recognizes the authority of these cases; it acknowledges no lien, but permits an application to the Court. Had the plaintiff's solicitors made an application to this Court it might have been different. But the Judge was powerless to deal with this matter till an order had been got from this Court. There is no authority in any Court for making a garnishee pay twice over.

Clarkson, in reply.

SIR R. PHILLIMORE.—The propositions which appear to be maintained by the counsel for the defendant are that the plaintiff's solicitor had not made an application to this Court, under the provisions of the 28th section of the 23 & 24 Vict. c. 127.

That the plaintiff's solicitor had no lien on this sum of money when the garnishee order was taken out, and that the garnishee was not bound to apprise the Judge of the existence of any lien if there were one. The section just alluded to is in these terms: "In every case in which an attorney or solicitor shall be employed to prosecute or defend any suit, matter or proceeding in any

(2) 4 Myl. & Cr. 354.

(3) 26 Law J. Rep. (N.S.) Chanc. 671.

(4) 26 Law J. Rep. (N.S.) Exch. 54.

(5) 12 Mee. & W. 441; s. c. 13 Law J. Rep. (N.S.) Exch. 144.

(1) Swabey, 423.

court of justice, it shall be lawful for the Court or Judge before whom any such suit, matter or proceeding has been heard or shall be depending, to declare such attorney or solicitor entitled to a charge upon the property recovered or preserved; and upon such declaration being made, such attorney or solicitor shall have a charge upon and against, and a right to payment out of the property, of whatsoever nature, tenure or kind the same may be, which shall have been recovered or preserved through the instrumentality of any such attorney or solicitor, for the taxed costs, charges and expenses of, or in reference to such suit, matter or proceeding; and it shall be lawful for such Court or Judge to make such order or orders for taxation of, and for raising and payment of such costs, charges and expenses out of the said property, as to such Court or Judge shall appear just and proper; and all conveyances and acts done to defeat, or which shall operate to defeat such charge or right, shall, unless made to a *bona fide* purchaser for value without notice, be absolutely void and of no effect as against such charge or right; provided always, that no such order shall be made by any such Court or Judge in any case in which the right to recover payment of such costs, charges and expenses is barred by any Statute of Limitations."

It was further contended that the defendant could not be made to pay twice over; and the case of *The Olive* (1) was relied upon to shew that this Court would consider a garnishee order as binding upon it. In that case the defendant had been condemned in costs, but before the proctor for the plaintiff had obtained payment of his entire bill of costs the money was attached by a garnishee order in the hands of the defendant. The Judge held that a payment under that order was a satisfaction of the judgment in this Court as against the proctor's lien. Two circumstances are to be observed, however, in that case, which distinguish it from the one now before me: first, that the order was not finally made by the Judge at common law until it had been served upon the plaintiff's proctor, who had full notice to appear and shew cause against the order, but did not choose to do so; secondly, that the cause was decided in 1859, previously, therefore, to the passing

in 1860 of 23 & 24 Vict. c. 127. But in the present case the defendant has not served the plaintiff's solicitor, as was done in *The Olive* (1), with a notice of the order, nor availed himself of the provisions of the statute, 23 & 24 Vict. c. 126. ss. 29, 30, which seems to have been framed for the express purpose of enabling the garnishee to protect himself from the lien of a third person. It has been further contended, on the authority of *Barker v. St. Quintin* (2) that the solicitor had no lien for his costs at the time that the garnishee order was made. I have considered that case, and also the case of *Simpson v. Prothero* (3), and in the latter case Wood, V.C. observed, "I think that this money having been recovered by the exertions of the plaintiffs, they are entitled to a lien upon it for their costs, and I do not see how the subsequent charging order can affect that lien. The principle upon which I apprehend the Court should proceed in these transactions is to consider how the fund has been obtained, and if you find that it has been recovered by the exertions of the party claiming the lien, it is but right that he should have his reward out of the fruits of his exertions." I am therefore of opinion that the plaintiff's solicitor in this case had a lien for his costs at the time when the garnishee order was made, and that the defendant ought to have caused notice to have been given to the solicitor, or ought to have apprised the Judge of the existence of this lien before the order was finally made. In the circumstances of this case, the payment under the garnishee order is not a valid satisfaction of the judgment of this Court, and I must order a monition against the bail to pay the amount of the taxed costs of the solicitor, together with the costs of and incident to this motion and the monition.

Attorneys—Cotterill & Sons, for plaintiff; Proctor,
H. C. Coote, for defendant.

1868. }
 July 3, 4, 13, 14. } THE GERMANIA.

Collision — Lights — Inspection and Report by Trinity Masters.

A barque's side lights were so placed in the mizen rigging that the centre of the lights did not project beyond the gunwale. They were two feet six inches within the broadest part of the vessel, and at a distance of more than 350 feet with the masts in line they could not be seen from a window forty feet above the deck of another vessel :—Held, not to be a sufficient compliance with the regulations as to lights.

The Court has power under the Admiralty Court Act, 1861, s. 18, to order an inspection of a vessel by Trinity Masters, and will direct that they be attended by the proctors, and a viewer on behalf of each party.

A collision occurred in April last, off Dungeness, between the Hamburg-American Company's steamship *Germania* and the Dutch barque *Pauline Constance Eleonore*, and the barque was so injured by the collision that she was with great difficulty kept from sinking, and subsequently beached at Hythe.

The defence was that no light was exhibited on board the barque in sufficient time to enable the *Germania* to avoid the collision, and that therefore the barque was not observed until she was distant only two ships' lengths, and there being a conflict of testimony as to the accuracy of some photographs and a model of the *Pauline* produced by the plaintiffs, the learned Judge, at the close of the evidence, called attention to the 18th section of the Admiralty Court Act of 1861 (1), and said he was ready to exercise the power conferred on him by that section of making an order for the inspection of the vessel by the Trinity Masters.

(1) "Any party in a cause in the High Court of Admiralty shall be at liberty to apply to the said Court for an order for the inspection, by the Trinity Masters, or others appointed for the trial of the said cause, or by the party himself or his witnesses, of any ship or other personal or real property the inspection of which may be material to the issue of the cause; and the Court may make such order in respect of the costs arising thereout as to it shall seem fit."

On the application of the Queen's Advocate, the Court accordingly ordered an inspection of the vessel, which was then lying in Dover harbour, by the Trinity Masters, and directed that they should be accompanied by the proctors and a viewer on each side.

The Queen's Advocate, Dr. Spinks and Searle, for the plaintiffs (the owners of the barque).

The Solicitor General (Sir W. B. Brett), Dr. Deane, Butt and Pritchard, for the defendants.

The hearing of the cause occupied three days, and the Court now gave judgment.

SIR R. PHILLIMORE.—It is admitted as a matter of law that if the barque carried proper lights, properly fixed, it was the duty of the steam-vessel to get out of her way, and as a matter of fact that the steam-vessel did not see the barque until the collision was inevitable. According to the preliminary acts and the evidence, the vessels were meeting each other, and there are two principal questions for the Court to decide. Did the barque carry proper lights? And were they so placed as to comply with the regulations in this respect? It is clear that the proper lamps were on board, and that their framework was fitted to the mizen rigging. It is agreed that the night was dark, and the presumption would be in favour of the lamps being lighted. This presumption is strengthened by the evidence of those on board the barque, and the Court has come to the conclusion that the proper lights were burning at the time of the collision. I have now to consider the second question, as to which, indeed, the chief controversy in this case has been raised, viz., were the lights so placed as to comply with the regulations? They were placed in the mizen rigging, six inches clear above the iron rail, which is four feet above the poop, and between eight feet and nine feet above the main deck. A model was put in evidence for shewing the position of the lamps, the lower sails, the relative breadths of the vessel, and the height of the lamps from the poop, though not their exact projection from the rigging, and it will presently be seen that in fact the lights did not project beyond the extreme breadth

of the ship, she being at that point twenty-six feet three inches, and at the broadest part thirty-one feet one inch wide. As the visibility of the lights depended in a great measure upon the accuracy of the measurements and upon the exact position of the lamps, I thought it expedient to put in force, for the first time, the provisions of section 18. of the Admiralty Court Act, 1861, 24 Vict. c. 10, and request the Trinity Masters to survey the ship. They have done so, and among other things they say, "We do not consider the centre of light to project one iota beyond the actual breadth of the gunwale; the lights are on each side two feet six inches within the broadest part of the vessel. At a distance of more than 350 feet, with the masts in line, the side lights could not be seen from a window forty feet above the deck of the vessel." The regulations are silent as to the place in which the lights of a ship are to be fixed. There is no doubt that both British and foreign merchantmen do carry lights in the mizen rigging; but the propriety of so doing must depend in a great measure upon the form of the vessel. The barque in this case is full-bowed, tapering away fore and aft. The presumption, I think, is that the master of the barque deliberately put up his lights where he supposed they would be seen. It was argued that his reasons for placing the lights there were that no studding-sail or square-sail is ever set on the mizen; that lights there are less exposed to spray, and that it is important in merchant vessels to place the lights where they can be best attended to by the man in charge, whose station is on the poop. It was also contended that these lights were visible beneath the square-sails, and that the Elder Brethren would not be able to judge of this from the position in which they were when they made their inspection. Entertaining, notwithstanding the report of the Trinity Masters, considerable doubt in my own mind whether the barque had not sufficiently complied with the regulations, and whether the steam-vessel, if she had had a proper look-out, would not have been apprised of the approach of the barque by her lights, I put certain questions to the Trinity Masters, and in reply they state that they were clearly of opinion that the lights so shewn

did not comply with regulations B. and C. of article 3, inasmuch as they did not shew a uniform and unbroken light over an arc of the horizon of ten points of the compass; that they could not shew an unbroken light from right ahead to two points abaft the beam; that there was, according to the evidence, a sufficient look-out on board the *Germania*; that, under the circumstances, the *Germania* was right in porting; and that her speed of eleven knots was not, under the circumstances, too great. The 29th section of the 25 & 26 Vict. c. 63. enacts that, "if in any case of collision it appears to the Court before which the case is tried that such collision was occasioned by the non-observance of any regulations made by or in pursuance of this act, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shewn to the satisfaction of the Court that the circumstances of the case made a departure from the regulations necessary." Having, therefore, regard to the decided and deliberate opinion of the Trinity Masters upon the question, the solution of which must greatly depend upon nautical science and experience, I am obliged to pronounce that the barque is alone to blame for the collision.

Decree accordingly.

Proctors—Dyke & Stokes, for plaintiffs; J. R. & G. Burchett, for defendants.

1868.

Jan. 27;

Feb. 4.

THE FERONIA.

Master's Wages and Disbursements—Master Part-Owner.

When freight has been earned, the master of the ship, though also part-owner, may sue in the Admiralty Court to recover his wages and disbursements.

Upon an appeal from the report of the registrar and merchants as to a master's claim for wages and disbursements, the following items were objected to: 1. Sums of money for which the master as well as the ship was liable, and which had not been paid; 2. Slops supplied to seamen who afterwards

deserted; 3. The amount of a dishonoured bill of exchange, drawn for ship's purposes by the master upon the managing owner; but it was doubtful whether the master had received notice of the dishonour:—Held, as to the first item, that the claim may be allowed upon proof, to the satisfaction of the registrar, that the sums have been actually paid. 2. That the items for slops were properly allowed as disbursements. 3. That, as to the amount of the bill of exchange, even if notice of dishonour had not been waived, the master had not claimed the benefit of notice, and that therefore, as he was liable for the amount, the item was properly allowed.

This was an appeal from the report of the registrar and merchants in a suit for wages and disbursements against the ship *Feronia* and her freight by the master, who was also a part-owner.

On the 11th of December, 1866, the cause was instituted in this court against the vessel *Feronia* and her freight, in the sum of 2,500*l.*, by Robert Hutchinson, part-owner and late master thereof. On the 18th, the Judge, Dr. Lushington, decreed a monition against Messrs. Bailey & Co., average adjusters, to pay into court the balance of freight of this vessel then remaining in their hands. On the 21st, an appearance was entered on behalf of the National Bank of Liverpool (Limited), mortgagees, by transfer of forty-eight shares in the vessel, and appearances were subsequently entered on behalf of three other parties, Mr. Rickarby, a part-owner and mortgagee of the homeward freight, Messrs. Swire, other mortgagees of the homeward freight, and Mr. Hughes, a part-owner. On the 7th of May, 1867, the Judge referred the plaintiff's claim to the registrar, assisted by merchants, to report the amount due thereon. On the 12th of August, the registrar made his report, to the effect that he found due to the plaintiff "Robert Hutchinson, in respect of his wages and disbursements as master of the ship or vessel *Feronia*, the sum of 1,087*l.* 8*s.* 5*d.*, together with interest thereon," and costs. From this report the National Bank of Liverpool alone, of all the defendants, appealed to the Court.

The claims objected to were: 1. Certain sums of money for which the master had made himself, as well as the ship, liable,

but which he had not paid; 2. Slops supplied to seamen who afterwards deserted; 3. The sum of 135*l.* 4*s.* 11*d.*, the amount of a dishonoured bill of exchange which the master had drawn upon the managing owner for ship's purposes.

Brett and V. Lushington appeared for the appellants; and

Aspinall and Cohen, for the respondent.

The arguments of counsel are fully stated by the learned Judge in the course of the judgment. The following were the cases cited: *Bright v. Fleming* (1), *Dickenson v. Kitchen* (2), *Bristowe v. Whitmore* (3), *The Edwin* (4), *The Chieftain* (5), *The Mary Anne* (6), *The Gananoque* (7), *The Princess Helena* (8), *The Glenanner* (9), *The Repulse* (10), *Gibson v. Small* (11), *Byles on Bills*, 9th edit., 286–291, *Williams v. Allsup* (12), *The Caledonia* (13), *The Seine* (14), 17 & 18 *Vict. c.* 104. *s.* 191.

SIR R. J. PHILLIMORE.—In this case the appellants, in the first instance, object to the entire claim of the plaintiff as master, upon the ground that he was part-owner of the ship, an objection which was not taken in the answer to the original petition before the Court; for, on the contrary, the defendants prayed that the whole claim of the plaintiff might be referred to the registrar. The Court, however, was of opinion, that it could not refrain from entertaining the objection, though it ought to have been taken on the original pleadings; inasmuch as it raised a question of law to be decided by the Court in the first instance, and, if valid, the necessary expense and delay occasioned by a reference to the registrar ought to have

- (1) Not yet reported.
- (2) 8 *El. & B.* 789.
- (3) 28 *Law J. Rep. (N.S.) Chanc.* 809; *s.c.* 31 *Law J. Rep. (N.S.) Chanc.* 467.
- (4) 4 *New Rep.* 382.
- (5) 1 *Bro. & Lush.* 104; *s.c.* 32 *Law J. Rep. (N.S.) Adm.* 106.
- (6) 35 *Law J. Rep. (N.S.) Adm.* 6; *s.c.* 1 *Law Rep. Adm.* 8.
- (7) 1 *Lush.* 448.
- (8) *Ibid.* 191.
- (9) *Swabey*, 415.
- (10) 2 *W. Rob.* 398.
- (11) 4 *H.L. Cas.* 353.
- (12) 10 *Com. B. Rep. N.S.* 417.
- (13) *Swabey*, 19.
- (14) *Ibid.*, 411.

been avoided. It has been said that the objection did not arise till the defendants were proved to be mortgagees; but that is a fact which would probably have not been denied by the plaintiff, and if it had been, might have been easily proved before the Court. The Court, however, has allowed the question to be argued at this stage of the proceedings; and, as the objection lies *in limine*, and if rightly taken renders the discussion of the other objections unnecessary, I had better deal with it in the first instance. The argument of the defendants appears to be, that the plaintiff, who is part-owner as well as master, has, by reason of his liabilities in the former character, forfeited the rights which would otherwise accrue to him in the latter. He cannot, it is said, recover in this court against himself; there is no contract with him as master; the only contract made was one on his behalf with himself; and he is really in this suit claiming as a part-owner in an account against other part-owners, which it is competent to him to do in this court under the 8th section of 24 Vict. c. 10, but not under the general law, by reason of a maritime lien upon the ship, which is his present contention. If he has not a lien of this peculiar character, unknown to the common law, which attaches to the *res*, and travels with the *res* into whatever hands it passes, then it is contended that he has no title to payment for wages or disbursements out of the fund which is now in court. During the voyage of the ship the mortgagees were not owners, but when the ship came into port in this country, and before she was arrested they became mortgagees in possession, and from that period they are to be treated as owners. Now, as such, it is argued they are not liable to any previous contracts made by the former owners, not even for necessities, according to a very recent decision of the Court of Exchequer—*Bright v. Fleming* (1); and another case, *Dickenson v. Kitchen* (2), has ruled that a mortgagee in possession, whose mortgage has been registered as required by sections 66. and 70. of the Merchant Shipping Act, 1854, has a right even against an execution creditor of the mortgagor. The legislature, it is further said, contemplated two kinds of masters: first, those that navigated their own ship; secondly, those that navigated

for wages a ship not their own. It might happen that the master was sole owner and mortgaged his ship; could he then be entitled to his wages, which might eat up the value of his mortgage? This is, I believe, a fair summary of the argument which has been addressed to me for the purpose of proving that a master who is part-owner cannot have a maritime lien, and that no other lien would give him any claim to have his wages paid out of the freight in derogation of the claim of the mortgagee in possession. Before I consider this argument it may be as well to state, in the language of the Judicial Committee of the Privy Council, the nature of a maritime lien. Their Lordships say, *Harmer v. Bell, The Bold Buccleuch* (15), "A maritime lien does not include or require possession. The word is used in maritime law not in the strict legal sense in which we understand it in courts of common law, in which case there could be no lien where there was no possession, actual or constructive; but to express, as if by analogy, the nature of claims which neither pre-suppose nor originate in possession. This was well understood in the Civil law, by which there might be a pledge with possession, and a hypothecation without possession, and by which in either case the right travelled with the thing into whosoever possession it came. Having its origin in this rule of the civil law, a maritime lien is well defined by Lord Tenterden to mean a claim or privilege upon a thing to be carried into effect by legal process; and Story, J. (16) explains that process to be a proceeding *in rem*, and adds, that wherever a lien or claim is given upon the thing, then the Admiralty enforces it by a proceeding *in rem*, and, indeed, is the only Court competent to enforce it. A maritime lien is the foundation of the proceeding *in rem*, a process to make perfect, a right inchoate from the moment the lien attaches; and whilst it must be admitted that where such a lien exists, a proceeding *in rem* may be had, it will be found to be equally true, that in all cases where a proceeding *in rem* is the proper course, there a maritime lien exists, which gives a privilege or claim upon the thing to be carried into effect by legal

(15) 9 Moo. P.C. 284.

(16) 1 Sumner, 78.

process. This claim or privilege travels with the thing into whosoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process, by a proceeding *in rem*, relates back to the period when it first attached." Upon this argument the first observation which arises is that, although there have been a great number of cases in which the master, being also part-owner, has sued for wages upon the ground of his maritime lien upon the ship, this is the first instance in which the present objection has been raised, and *The Gananogue* (7) is cited as a case in which the present objection must and would have been taken if the counsel or the Judge had considered it tenable. This observation, however, although not without its weight, does not relieve the Court from the necessity of inquiring into the validity of the objection, now that it is taken. The master of the vessel by the common law and by the practice of this Court did not possess the right which the common seamen enjoyed of suing for his wages in the High Court of Admiralty. The history of the changes effected by recent legislation on this point has been fully considered in various cases determined by my learned predecessor—*The Ocean* (17), *The Wataga* (18), *The Caledonia* (19), *The Edwin* (20), *The Mary Ann* (6). In the case of *The Mary Ann* (6), it was decided, in 1865, that, under the 10th section of the Admiralty Court Act, 1861 (24 Vict. c. 10), the master has a maritime lien both for his wages and disbursements, and that upon this ground his claim was preferable to that of a mortgagee. Under the last statute this Court has jurisdiction "over any claim by the master for wages earned by him on board the ship, and for disbursements made by him on account of the ship." The latter clause must be the subject of a distinct consideration. First, I must observe that this new right is given by this statute to "the master" generally, without limitation or qualification of any kind. No subsequent statute supplies any limitation or qualification. On what prin-

ciple of law, on what rule governing the construction of statutes, is the Court to import into this general enactment in favour of the master, the limitation "unless he be part-owner"? That the legislature contemplated two kinds of masters, and intended to confine the privilege of a maritime lien to one kind, appears to me a baseless suggestion. If I place myself in the position of the legislature at the time when these various statutes were passed, extending the protection enjoyed by the common seaman to the master, and removing gradually the injustice which the common law, perhaps out of an ancient jealousy of the Admiralty Court, had inflicted upon him, I cannot doubt that the legislature well knew that the combination of master and part-owner was a fact of frequent and increasing occurrence, and I believe it has been truly argued that, as a matter of public policy, it was desirous of encouraging this combination. As to the argument that a man cannot sue himself upon a contract, the answer is, that this is not a case of contract, properly speaking, but of lien, and that in the case already cited of *The Gananogue* (7), a master who was part-owner did recover his wages against another part-owner under the same provision of the statute which the present plaintiff has invoked on his behalf. During the course of the argument on behalf of the defendant, I put a question which was not to my mind satisfactorily answered, namely: It being admitted that the mortgagee in possession would be obliged to acknowledge the lien of an ordinary master for his wages, how is he damnified by the fact that the master happens to be also a part-owner? This very freight which the mortgagee is now claiming has been earned by the master's navigation of the vessel and her safe conduct into port; it is the produce of his exertion, energy and skill; and the case of *Bristowe v. Whitmore* (3) would warrant me, if any such authority was needed, in saying that the claim of the master upon the freight for his wages is founded upon a natural justice. The mortgagee has already possessed himself of the ship, and he now requires that the whole of the freight, without any deduction for the wages of the master who earned it, should be paid over to him. It is to be

(17) 2 W. Rob. 368.

(18) *Swabey*, 187.(19) *Swabey*, 19.

(20) 1 New Rep. 382.

observed that, if his argument be good, the master, who is also part-owner, would have no maritime lien for his wages if the ship was not mortgaged, for the mortgagee in possession is in no better condition than the owner whom he represents. I am of opinion that it is not competent to the Court to impair or take away the right which the statute has given to the master by engrafting upon it the limitation for which the defendant contends, and I pronounce that the registrar has come to a just and right conclusion in allowing the claim of the master for his wages. The next question of importance relates to the true construction of the words in the statute, "disbursements made by him." It certainly appears to me that the legislature intended to include under these words all proper expenditure made by the master upon the ship, whether the particular articles the subject of this expenditure were obtained by immediate or by promised payment, and that in each case two questions would arise: First, had the particular articles actually been applied to the use of the ship? secondly, are these articles such as the necessities of the ship justified and required? In *The Chieftain* (5) and *The Edwin* (4) Dr. Lushington put a more restricted interpretation on these words, holding that the money must have been paid in order to entitle the master to recover for disbursements in this court; that a liability to pay was not sufficient to enable him to do so. As this question was argued before my predecessor, and as he so decided, if the circumstances of this case were the same as those in *The Chieftain* (5) and *The Edwin* (4), and if the learned Judge's opinion had remained unaltered, I should have thought it my duty to have followed, however reluctantly, those precedents, leaving the plaintiff to seek redress, if he thought himself injured by my adherence to these decisions, before the Judicial Committee of the Privy Council. But, first, it is to be observed that in neither of these cases was there a fund earned by freight paid into court; secondly, in this case the course pursued by the registrar has been to allow the charge, being satisfied upon evidence that the ship had actually received the benefit of the articles which were the subjects of the charge, but at the same time

not to allow the payment to be made to the master until vouchers for the actual payment of those articles should have been filed in the registry. It is said that the Court cannot give itself jurisdiction through the act of the registrar and convert a liability into a disbursement. It is not, however, denied that if the master had borrowed the money and paid with it the bills an hour before the suit was instituted, there would have been a disbursement. In this case, before the master is paid the actual disbursement will have been made. No opinion was expressed by Dr. Lushington in *The Chieftain* (5) or *The Edwin* (4) adverse to the course adopted by the registrar in this case, nor was the point taken, for it did not arise in those cases, that the Court having a fund in its custody legally liable for all necessities, ought not to part with that fund without doing justice to all parties. The learned Judge, according to his own decision in *The Glenlanner* (9), would, if the owners had resisted the claim of the master, have directed all the accounts to have been gone into, and the mortgagee would then have intervened. A remark made by Dr. Lushington in that case is not inapplicable to the one before me. He said, "Why should the master be prejudiced by the sale or mortgage of the ship? The purchaser of a ship takes her with all liens, towage, bottomry, salvage and wages. A mortgagee cannot be in a better position than the owner"--- (*Swabey*, p. 422). I am happy to think also that in allowing this course to be taken in the particular circumstances of this case, I am not without the sanction of my learned predecessor, for though I entirely agree with the remark of the counsel for the defendant, that it is not within the province of the registrar to decide questions of law unless he be in truth compelled to do so by the particular character of the case, and that it was not competent to him to overrule the decisions in *The Chieftain* (5) and *The Edwin* (4), nevertheless, inasmuch as the circumstance which distinguished the case of *The Red Rose* from those of *The Chieftain* (5) and *The Edwin* (4) was brought under the attention of the late learned Judge, as well as the decision of the House of Lords in *Bristow v. Whitmore* (3), subsequent to those cases, and

as he confirmed that report, which allowed liabilities incurred by the master for articles expended for the benefit of the ship to be considered as disbursements, and discharged out of the freight which was in the hands of the Court, I think I am not without his authority for sanctioning the report of the registrar upon this point in the present case, and I am of opinion that the principle of the decision of the House of Lords in *Bristowe v. Whitmore* (3) is applicable to the case before me. It is a strong authority for saying that the mortgagee in possession, or the owner, ought not to be allowed to possess himself of this freight until the master has been indemnified for the labour and disbursements by which that freight was produced. I pass now to the consideration of the particular items which are objected to. The first, which is contained in the 7th paragraph of the pleading of the objections, is the ten days' double pay of 16*l.* 10*s.* I have in fact already disposed of this objection by pronouncing for the claim of the plaintiff upon the principal sum. It is a necessary consequence that I should disallow this objection. The next objection, in the 8th paragraph, for 38*l.* 1*s.* 10*d.*, for tobacco and slops supplied to seamen, who afterwards deserted,—the objection is, that these articles were furnished by the master on a private speculation of his own, and that the owner is not liable for them; but by invariable usage these articles have been considered as a part of the seamen's wages, and the master is as much entitled to be reimbursed for them as if he had advanced a portion of their wages in money. There is no doubt whatever that in an action brought by seamen for their wages against the owner he would be entitled to set off these articles as a part-payment of their wages. They fall, moreover, within the category of those deductions of which the master is required, by section 171. of the Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104, to keep an account, as well as of their wages. Nor do I think that the fact that the master may make some small profit by supplying these articles affects the justice of his claim. It must be remembered that sailors usually come on board in a destitute condition, and are proverbially reckless as to the manner in which they supply their imme-

diate wants; and it is really both for the interest of the owners of the vessel and for the sailors that this disbursement of the master should be upholden, and I shall uphold it. The only remaining objection, I think, is that which is contained in paragraph 10. in respect to item 19. It is a sum of 135*l.* 4*s.* 11*d.*, which was one of the bills drawn by the master on Mr. Klingender, the principal owner, in order to pay a commission upon a charter for the homeward conveyance of a cargo of cotton, whereby a large freight was to be earned. According to the report of the registrar the former of these two bills was duly paid, but the latter, which fell due on the 20th of August, 1866, was returned dishonoured by Mr. Klingender. It was stated by the master in his evidence that he had not received any notice of dishonour, and it was thereupon contended by the defendants that the master was no longer liable under the bill. On the other hand, a letter was produced from Messrs. Hull, Stone & Fletcher, the solicitors for the Bank of Hindustan, China and Japan (Limited), the holders of the bill, addressed to Messrs. Bateson & Co., who were then the solicitors for the master, in which they say, "We shall be glad to receive payment now, or to have some acknowledgment that the bank's claim is admitted, so that payment can be secured at some future time." In reply to which Messrs. Bateson & Co. say, "Mr. Baily is receiving all the freight, and is to hold a sum to cover all the liabilities of the master, and we trust there will be no difficulty in having all claims paid, the one you represent included." The merchants are of opinion that this letter from the master's solicitor may be taken as tantamount to a waiver of notice of dishonour, and that consequently the master would be liable under the bill; I shall therefore allow this item in the claim. The law as to the consequences of neglect to give notice is thus laid down by Byles, J., in his work upon *Bills of Exchange*, 254, 7th ed.: "The law," he says (I do not think it necessary to state the decisions from which he deduces his statement of the law), presumes that, if "the drawer has not had due notice, he is injured, because otherwise he might have immediately withdrawn his effects from the hands of the drawee. . . . The

consequence, therefore, of neglect of notice is, that the party to whom it should have been given is discharged from all liability, whether on the bill or on the consideration for which the bill was paid." It may be questionable, I think, whether the master, by reason of his having drawn upon a co-owner, may not be considered as acceptor as well as drawer, and whether on this account any notice of dishonour was necessary. Moreover, it appears clear that he had no effects at any time in the hands of the acceptor, and Byles, J. states (p. 255) the law applicable to this state of things as follows: "If the drawer had no effects at any time during the currency of the bills in the hands of the acceptor, and will have no remedy against the acceptor or any other person if he be obliged to pay the bill, he cannot, in general, have been prejudiced by want of notice, and therefore cannot set that up as a defence." Again, looking to the nice distinctions taken on this subject, I am by no means certain that the merchants were not right in their opinion that the notice of dishonour, if any were necessary in this case, has been waived. But, lastly, it appears to me that a broader ground than any of those which have been alleged may be taken for sustaining the allowance of this sum by the registrar. The whole principle of this notice of dishonour is founded upon the notion of benefiting the drawer, and it appears to me not only that he has not been injured by the absence of notice, but that he has never taken such objection or set it up as a defence; and I do not understand how it is competent to the defendants, who represent the acceptor, to set up against the will of the drawer an objection of this kind, which he refuses to put forward. As to the objection in paragraph 11, section 2, I understand it to be waived. For these

reasons, I shall confirm the report of the registrar; but, inasmuch as questions of law of great importance, as to the right solution of which considerable doubt might reasonably exist, have been discussed before me, I shall make no order as to the costs incurred by the objection to this report.

Proctors and Attorneys—Pritchard & Sons, agents for Bateson, Robinson & Morris, Liverpool, for respondent; Chester & Urquhart, agents for Lacey, Banner & Co., Liverpool, for appellants.

1868. }
Feb. 18. }

THE FAIRLIE.

Sale of Vessel at suit of Mortgagee of three-fourths of the shares.

The plaintiffs, Messrs. W. S. Gavin & Peter W. Gavin, were mortgagees of forty-eight-sixty-fourth shares of the above-named, a Scotch vessel, and Mr. John Taylor Hopeman was the owner of the other shares.

Mr. C. P. Butt, upon affidavits that the sum of 387*l.* 7*s.* 7*d.* was now due in respect of the mortgage, that there had been no appearance in the suit by the owner of those shares, and that notice of sale had been duly advertised, moved the Court to decree a sale of the vessel.

The COURT ordered that the owner of the one-fourth share should have notice of the intended sale, and upon proof of this fact to the satisfaction of the Registrar, and of no appearance that the decree of sale should issue.

Attorney—Rowland Miller for first mortgagees; Proctors—Rothery & Co., for second mortgagees.

Clarkson, Son & Cooper, for third mortgagees.

INDEX

TO THE REPORTS OF CASES

DECIDED BY THE

HIGH COURT OF ADMIRALTY.

MICHAELMAS TERM, 1867, TO MICHAELMAS TERM, 1868.

APPEAL—*from salvage award by Justices: further evidence: "sum in dispute"*—When in a claim for salvage, heard before magistrates, the sum in dispute exceeds 50*l.*, the High Court of Admiralty has jurisdiction to entertain an appeal, even though the value of the property salvaged is under 1,000*l.* *The Generous*, 37

The Court rarely admits new evidence on the hearing of an appeal from an award of magistrates. *Ibid.*

Semble—"The sum in dispute" (mentioned in the section of the Merchant Shipping Act, 1854, with reference to appeals) does not mean the sum awarded by the magistrates. *Ibid.*

— *appeal from salvage award: inadequate amount*—Unless the amount awarded by magistrates is wholly inadequate, the Court of Admiralty, upon appeal, will not disturb the award, even though the Court is of opinion that the magistrates should give a somewhat larger sum. *The Jeune Louise*, 32

BILL OF LADING—*non-delivery of cargo: right of indorsee to sue*—A cargo of timber was shipped to be unladen at S, "at the usual place of discharge, and according to the custom of the port." On arriving at S. the vessel at once proceeded to the South Dock in S, and was being moored there when the consignees' agent directed the master to remove her to the Gill Dock in S, which the master refused to do. Both docks were usual and customary places of discharge:—*Held*, that the master was not bound to lie in the river waiting for instructions, and was justified in at once mooring in the S. Dock, but that having received the instructions to discharge his cargo in the Gill Dock, he was bound to obey them. *The Felix*, 48

The bill of lading had been indorsed to P. & Co., who had agreed to sell the cargo to B. & Co., but the purchase-money had not been paid:—*Held*, that P. & Co. were proper parties to sue in respect of a breach of contract for delivery of the cargo. *Ibid.*

— *right of indorsee to sue for damage to cargo*—Indorsees of a bill of lading of goods consigned to them for sale had made advances of money upon the bill of lading:—*Held*, that to entitle the indorsee to sue for damage done to the goods mentioned in the bill of lading, it is not necessary that all the property in the goods should pass to them. *The Piglia Maggiore*, 52

BOTTOMRY—*notice to owners of cargo: expenses already incurred; advance of freight: loan on freight*—It is as much the duty of a master to give, or attempt to give, notice to the owners of cargo as to the owners of ship before executing a bottomry bond. *The Karnak*, 41

Though the debts which a master in need of repairs in a foreign port, has incurred may be personal, he may borrow money upon bottomry of ship, freight and cargo to pay them from any one not his creditor. *Ibid.*

In the absence of evidence to the contrary, it is presumed that a foreign lender makes advances in contemplation of bottomry, and this presumption is increased where the *lex loci* empowers the lender to arrest the ship in satisfaction. *Ibid.*

Difference between a loan secured on freight and advances of freight. *Ibid.*

COLLISION—*sailing ship: duty of steamer: pleading*—In a cause of collision between a sailing ship and a steamer, although the sailing ship may be found to have been guilty of misconduct, or not to have observed the sailing regulations, yet the steamer will be held culpable if it appears that it was in her power to have avoided the collision. *Inman v. Reck; The City of Antwerp; and The Friedrich*, 25

It is the duty of a steamer where there is risk of collision, whatever may be the conduct of the sailing vessel, to do everything in her power that can be done consistently with her own safety in order to avoid a collision. *Ibid.*

Where a steamer is charged for omitting to do something which she ought to have done, there

must be clear proof, first, that the thing omitted to be done was clearly within the power of the steamer; secondly, that, if done, it would in all probability have prevented the collision; and, thirdly, that it was an act which would have occurred to any officer of competent skill and experience in command of the steamer. *Ibid.*

The party against whom a judgment is given in the Admiralty Court is entitled to know from the complaint of his adversary what is the default imputed to him, in order that he may have an opportunity of meeting the case by his defence. *Ibid.*

— *damage by: compulsory pilotage: vessels carrying passengers*—The owners of a wrong-doing vessel pleaded compulsory pilotage. It appeared that the master's wife and father-in-law were on board, and the master said he treated them as passengers, but no fare was demanded of them till after the collision:—*Held*, that the vessel was not "carrying passengers," so as to render it compulsory upon her owners to employ a pilot. *The Lion*, 39

— *lights: inspection and report by Trinity Masters*—A barque's side-lights were so placed in the mizen rigging that the centre of the lights did not project beyond the gunwale. They were two feet six inches within the broadest part of the vessel, and at a distance of more than 350 feet with the masts in line, they could not be seen from a window forty feet above the deck of another vessel.—*Held*, not to be a sufficient compliance with the regulations as to lights. *The Germania*, 59

The Court has power under the Admiralty Court Act, 1861, s. 18, to order an inspection of a vessel by Trinity Masters, and will direct that they be attended by the protectors, and a viewer on behalf of each party. *Ibid.*

COMPULSORY PILOTAGE. See Collision.

CONFLICT OF LAWS—*collision in foreign waters: suit in England: compulsory pilotage*—In a cause of damage in the High Court of Admiralty in England for a collision in Dutch waters by a Dutch ship against an English ship, it appeared that the collision was caused solely by the negligence of the pilot of the English ship, whom, by the Dutch law, the owners were compelled to take on board; but that, by the Dutch law (conflicting with the English law as declared by the Merchant Shipping Act, 1854), the owners of a ship doing damage to another ship are liable to make good the damage, notwithstanding that the ship doing the damage complained of was at the time navigated by and in charge of a licensed pilot:—*Held* (by the Privy Council, overruling the judgment of the Admiralty Court, — see page 1), that an English Court of Justice will not enforce a foreign municipal law, or give a remedy in the shape of damages in respect of an act which, according to its own principles, imposes no liability on the person from whom the damage is claimed; and that the cause, being instituted in an English Court,

ought to be decided by the principles of the law of England; and that the English ship was exempt from liability. *The Liverpool, Brasil and River Plate Steam Nav. Co. v. Benham. The Halley*, 38

DAMAGE. See Bill of Lading. Collision. Negligence.

DOCKMASTER—Authority of. See Negligence.

FOREIGN LAWS. See Conflict of Laws.

FREIGHT—Loan on. See Bottomry.

JURISDICTION—*disbursements by mate*—The High Court of Admiralty has no jurisdiction to adjudicate upon a mate's claim for wages paid to the crew, and necessary disbursements in foreign ports. *The Victoria*, 12

— *personal damage: award of arbitrator and subsequent suit*—The High Court of Admiralty has jurisdiction to entertain an action and to assess the damages in respect of personal injuries done by a ship. A claim for personal injury done by a ship was referred to arbitration, with a condition reserving the claimant's rights and remedies in case the award should not be performed. The arbitrator awarded 410*l.* which had not been paid:—*Held*, that, under the circumstances, the claimant had not barred himself of his right to sue in the Admiralty Court. *The Sylph*, 14

— *wages under a special contract: foreign ship: notice to consul: protest: costs*—The Admiralty Court Act, 1861, provides by section 10, that "the High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship." The Admiralty Rules, 1859, provide by rule 10, that "in a wages cause against a foreign vessel, notice of the institution of the cause shall be given to the consul of the State to which the vessel belongs, if there be one resident in London":—*Held*, that the object of this section was to extend the jurisdiction which the Court had in the ordinary case of wages to the case of wages under a special contract, and of disbursements on account of the ship. *Held*, also, that the High Court of Admiralty has jurisdiction, under section 10. of the above statute, to entertain a suit for wages against a foreign ship, the words of the act being "any" ship; but that the Court ought not to exercise jurisdiction without first giving notice to the consul of the nation to which such ship belongs. *La Blanche v. Rangel ("The Nina")* (Privy Coun.), 17

The protest of a foreign consul does not *ipso facto* operate as a bar to the prosecution of the suit; but the Court ought to determine according to its discretion, judicially exercised, whether,

having regard to the reasons advanced by the consul, and the answers offered on behalf of a claimant, it is fit and proper that the suit should proceed or be stayed. *Ibid.*

The appellant (a British subject) having shipped on board a Portuguese ship as mate, and having signed an agreement to be bound by the law of Portugal, which required him to submit all differences between the master and seamen to the Portuguese consul, arrested the ship, and instituted a suit against the owners in the High Court of Admiralty in England for wages, whereupon the Portuguese consul entered a protest against the proceedings:—*Held*, (affirming the judgment of the Judge of the High Court of Admiralty), that the suit ought to be dismissed and the ship released, but without costs. *Ibid.*

LIEN—garnishee order: priority—Plaintiff having obtained a decree for payment by defendant of a sum of money for costs, the defendant, under the authority of two garnishee orders, paid part of the sum to judgment creditors of the plaintiff. No notice had been given to the plaintiff's proctor previous to the application for the garnishee orders, nor was the existence of the proctor's lien mentioned to the Judge who made the orders:—*Held*, that the defendant was still liable to pay the costs decreed. *The Leader*, 57

MORTGAGE—Sale of vessel at suit of mortgagee of three-fourths of the shares. *The Fairlie*, 66

NEGLECT—damage done by a ship to a break-water: duties of master and dockmaster—A dockmaster is invested with a discretion to be exercised for the benefit of all the ships in the harbour, and the master of a vessel is therefore bound to obey the dockmaster, and to assist in the removal of his ship, even though if the interests of the ship alone might be considered the removal was injudicious. *The Excelsior*, 54
A ship after having been moored in a dock, was subsequently, by order of the dockmaster, removed to another part from which, by the negligence of her master and his disobedience of the dockmaster's orders, she broke loose and damaged the docks:—*Held*, that the ship was liable for the damage. *Ibid.*

PRACTICE—Hearing new evidence on appeal from salvage award. See Appeal.

SALVAGE—collision: assistance to wrong-doer by

tug of innocent vessel—Two vessels having come into collision, a tug towing the innocent vessel rendered assistance to the wrong-doer:—*Held*, that the tug was entitled to salvage remuneration. *The Queen*, 12

— *refusal to allow the crew of the salvaged vessel to assist in the salvage*—The Court will not lay down any general rule, but will be guided by the circumstances of each case in determining whether or not the master of the salvors' vessel is justified in refusing to allow the crew of the salvaged vessel to return to their own ship before the completion of the salvage. *The Cleopatra*, 81

— **Salvage award by Justices.** See Appeal.

TRINITY MASTERS—Inspection by. See Collision.

WAGES — priority — Bottomry bond on ship, freight and cargo; proceeds of ship and freight insufficient:—*Held*, that though the master bound himself by the bond, and was also a part-owner of the vessel, the owners of part of the cargo cannot oppose his right to be paid his wages and disbursements in priority to the bondholder. *The Daring*, 29

— *master's wages and disbursements: master part owner*—When freight has been earned, the master of the ship, though also part owner, may sue in the Admiralty Court to recover his wages and disbursements. *The Peronia*, 60

Upon an appeal from the report of the Registrar and Merchants as to a master's claim for wages and disbursements, the following items were objected to: 1. Sums of money for which the master as well as the ship was liable, but which he had not paid; 2. Slops supplied to seamen, who afterwards deserted; 3. The amount of a dishonoured bill of exchange drawn for ship's purposes by the master upon the managing owner, but it was doubtful whether the master had received notice of the dishonour:—*Held*, as to the first item that the claim may be allowed upon proof to the satisfaction of the Registrar that the sums are actually paid; 2. That the items for slops were properly allowed as disbursements; 3. That as to the amount of the bill of exchange even if notice of dishonour had not been waived, the master had not claimed the benefit of notice, and that therefore as he was liable for the amount, the item was properly allowed. *Ibid.*

— See Jurisdiction.

TABLE OF CASES.

City of Antwerp, The, 25	Jeune Louise, The, 32
Cleopatra, The, 31	Karnac, The, 41
Daring, The, 29	La Blanche v. Rangel, 17
Excelsior, The, 54	Leader, The, 57
Fairlie, The, 66	Lion, The, 39
Feronia, The, 60	Liverpool, Brazil and River Plate Steam Navigation Co. v. Benham (Priv. Coun.), 33
Felix, The, 48	Nina, The 17
Figlia Maggiore, The, 52	Queen, The, 12
Friedrich, The, 25	Sylph, The, 14
Generous, The, 37	Uhla, The (note), 16
Germania, The, 59	Victoria, The, 12
Halley, The, 1; Priv. Coun., 33	
Inman v. Reck, 25	

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LAW JOURNAL REPORTS

FOR
THE YEAR 1868

CASES

DECIDED IN THE

Ecclesiastical Courts,

REPORTED BY

JOHN GEORGE MIDDLETON, Esq. LL.D.

AND ON APPEAL THEREFROM

TO THE

Privy Council,

REPORTED BY

EDWARD BULLOCK, Esq. BARRISTER-AT-LAW.

MICHAELMAS TERM, 1867, to MICHAELMAS TERM, 1868.

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CASES ARGUED AND DETERMINED

IN THE

Ecclesiastical Courts,

AND ON APPEAL THEREFROM

TO THE

Privy Council,

COMMENCING WITH

MICHAELMAS TERM, 31 VICTORIÆ.

[IN THE COURT OF ARCHES.]

1867. } DAUNT v. CROCKER AND
Nov. 2. } OTHERS.

Criminal Suit—Bell Ringing—Consent of Incumbent—Pleading—Practice—Notice of Objection.

The control of the church bells belongs to the incumbent; but to constitute an ecclesiastical offence, it is not sufficient to allege that the ringing complained of took place without his consent; it must be against his wishes, expressed either in a general or particular prohibition.

When it is intended to oppose the admission of a pleading in the Court of Arches, a notice must be filed stating the grounds of the objection.

This was a suit brought in the Court of Arches by letters of request from the Chancellor of the diocese of Exeter, and instituted by the Rev. Edward Synger Townsend Daunt, clerk, incumbent of the perpetual curacy of St. Stephen-by-Launceston, in the county of Cornwall and diocese of Exeter, against William Crocker, carpenter, William Stapleton, blacksmith, Thomas Reed, labourer, Thomas Walters, carpenter, Thomas Benoy, domestic servant, John Benoy, wheelwright, William Jackson, labourer, Thomas Stripling, carpenter, Matthew Masters, carpenter, all of the parish of St. Stephen-by-Launceston, and against Charles Reed, labourer, of the parish of St. Thomas-near-Launceston. The

decree or citation set out the offence charged upon the defendants as follows: "For that they, some or one of them, on or about the 9th of September, 1866, unlawfully broke into the belfry of the parish church of St. Stephen-by-Launceston, and without lawful authority, and contrary to the express wish of the said Edward Synger Townsend Daunt, as perpetual curate of the said parish, rang the bells of the said church; and also at or about the same time removed the lock from the door of the said belfry of the said church"; and that thereby they had offended against the laws ecclesiastical.

The articles commenced by stating, that by the laws ecclesiastical and constitutions ecclesiastical of the realm, the custody of the keys of the church and belfry is in the ecclesiastical rector, vicar, perpetual curate, minister or incumbent of the church and parish; and that it is unlawful for any parishioner or other person to take the lock off the door of the belfry of the parish church, or otherwise to break into the belfry of, or to ring the bells belonging to, such church without the leave or sanction of the minister thereof. The articles objected to were: "4. That, notwithstanding the premises, on or about the 8th of September, 1866, the said defendants, namely, &c., all or some one or more of them, surreptitiously, and without the leave or sanction of the said Rev. E. S. T. Daunt, obtained possession of the keys of the said parish church of St. Stephen-by-Launceston;

B

and thereupon, on the 8th of September, or on the following morning, without the leave or knowledge of the said Rev. E. S. T. Daunt, all or some one or more of them, aided and abetted by the others, entered the said church, and proceeded through the same to the outer door thereof leading to the tower or belfry of the said church, and thereupon, without the knowledge or leave of the said Rev. E. S. T. Daunt, and without any just cause or lawful authority, forcibly removed the lock from off the said door leading to the said belfry or tower of the said church, in manifest breach and violation of the laws and canons ecclesiastical which they were and are obliged to observe and obey. 5. That on the 9th of September, 1866 (Sunday), the said defendants, after having entered the belfry of the said church, they, or some one or more of them, without good cause allowed by the said Rev. E. S. T. Daunt, and without his consent, rang the bells belonging to the said church, or some one or more of the said bells, in manifest breach and violation of the laws and canons ecclesiastical, which they were and are bound to observe and obey." The articles concluded with the usual prayer, that the defendants should be admonished to refrain from like behaviour for the future, and be condemned in the costs incurred and to be incurred in the cause.

[Before the argument commenced, the Dean of the Arches (SIR R. PHILLIMORE) stated, that for the future he should require that a notice under rules 7. and 11 (*Rules and Regulations*, 1867) (1) shall contain the grounds of objection intended to be taken against the admission of the pleading before the Court. He considered such a course would be the most convenient for all the parties.]

Dr. Swabey, for the defendants, opposed the admission of the 4th and 5th articles.—As regards the 4th, he objected that it

(1) 7. "The proctor for the party cited shall declare by notice in writing to be left in the registry within eight days after his being furnished with a copy of the articles, libel or plea whether or not he opposes the admission thereof."

11. "The same time shall be allowed for the other proctor to declare whether the responsive plea is admitted or opposed."

was not an ecclesiastical offence to obtain the keys of the church *surreptitiously*, and that if it were, no such offence was laid in the letters of request or citation. Moreover, it being a criminal suit, the charge of breaking into the belfry should be attributed to some individual, and not to some one or more of ten individuals. That, as to the 5th article, there should be an allegation, in accordance with the citation, that the ringing of the bells was *against the express wish* of the incumbent; otherwise no ecclesiastical offence is set out. For it cannot be contended that the bell-ringers should be required on every occasion to obtain the sanction of the incumbent before they commenced to ring. *Non constat* that there was not a custom in the parish to ring the bells on certain occasions—*Burn's Eccl. Law* (by Phillimore), 'Bells,' vol. 1, p. 135. Canon 88, which directs the churchwardens not to allow the bells to be rung superstitiously, nor without good cause, to be allowed by the minister of the place and by themselves, does not make it an ecclesiastical offence the not obtaining the sanction of the minister of the parish and the churchwardens on every occasion.

[SIR R. PHILLIMORE.—Surely, on the other hand, the minister is not required to express a dissent on each occasion. It would certainly be sufficient if he had given a general dissent; if, for instance, he had announced that he would not allow the bells to be rung without his special authority.]

Dr. Swabey.—In all the cases which have been before this Court there had been a request made to the ringers to desist, which they had refused to obey.—He cited *Nolan v. Bragg and Dowsett* (the *Prattwell* case), Sept. 1840 (2), *Redhead v. Wait* (3) and *Lee v. Mathews* (4).

Dr. Spinks (*Dr. Tristram* with him), for the promoter, said it was not intended to allege that the surreptitiously obtaining possession of the key was a distinct offence; those words were only inserted historically, to shew in what way the defendants reached the belfry. That, as to the 5th article, it was sufficient to state, as they had done, that the ringing was without good cause

(2) Not reported.

(3) 6 Law Times, N.S. 580.

(4) 3 Hagg. Eccl. 173.

allowed by the incumbent, and without his consent.—He referred to *Harrison v. Forbes and Sisson* (5).

SIR R. PHILLIMORE ordered the words "*surreptitiously and*" in the 4th article to be struck out; and, in the 5th, the words "*against his express wish*" to be introduced before the words "*rang the bells belonging to the said church.*" He thought it his duty to remind the defendants that, if they were proved to have been guilty of the offence alleged, he would be compelled to admonish them to abstain for the future, and to condemn them in the costs. If they had no good defence, they had better at once take steps to stop the proceedings in the suit.

Proctors—G. H. Brooks, for promotor; C. Waddlove, for defendants.

[IN THE COURT OF ARCHES.]

1867.

Nov. 2, 21. } ADLAM v. COLTHURST.

Churchyard—Removal of Human Remains to a Field adjoining—Monition to restore—Field not in Occupation of Defendant—Contempt—Practice.

The Court having determined that the defendant had offended against the laws ecclesiastical by removing without lawful authority human bones from the churchyard of his parish to an adjoining field, issued a monition to him to replace such bones and the earth with them in the burial-ground before a certain day. The defendant failed to comply with this monition, alleging as a reason that the field in which such bones and earth had been placed was no longer in his occupation or possession:—Held, that his conduct amounted to a contempt of the Court, and that unless he obeyed the monition within six days and certified the same, the Court would pronounce him to be in contempt, and signify the contempt to the Court of Chancery.

This suit was instituted, by William Adlam, against John Colthurst, an inhabit-

ant and parishioner and one of the churchwardens of the parish of Chew Magna, in the county of Somerset and diocese of Bath and Wells, and was brought by letters of request from the Consistorial Court of that diocese. The charge against the defendant and the pleadings are set out in 36 *Law J. Rep.* (N.S.) Eccles. Cas. 14.

On the 15th and 16th of May, 1867, the witnesses were examined, and on the latter day the Dean of the Arches (Dr. Lushington) decreed that the promotor had sufficiently proved the articles admitted in the cause, and that the said John Colthurst, the defendant, had offended against the laws ecclesiastical by removing or causing to be removed earth and bones from the burial-ground of Chew Magna aforesaid, and did admonish him to refrain therefrom, and ordered the said John Colthurst to replace or cause to be replaced within the said burial-ground the earth and bones so removed as aforesaid, and condemned him in the sum of 100*l.* *nomine expensarum*. On the 15th of June Dr. Lushington further ordered a monition to issue against the said John Colthurst, admonishing him to obey such order or decree of the Court, and to file in the registry a certificate that he had so done on or before the 7th of July. This monition was personally served upon the defendant on the 25th of June.

He was subsequently permitted to file an answer to such monition, which answer was to the following effect: "That the said John Colthurst is ready and willing to obey the orders of the honourable Judge so far as he can so do, but that he is prevented from obeying all those orders, namely, to replace or cause to be replaced within the said burial-ground such earth and bones and other remains as may have been removed by him from the said burial-ground, and to pay the sum of 100*l.*, for the following reasons: First, that the field or meadow in which the earth from the said churchyard was placed has ceased to be the property, or in the occupation, or under the control of the said John Colthurst; that shortly previous to the marriage of a daughter of the said John Colthurst with Henry Bromfield, to wit, on the 3rd of October, 1866, the whole of the interest of the said John Colthurst in the

said field or meadow was transferred by him to trustees for the use and benefit of his said daughter and the said Henry Bromfield, and the field or meadow has become and is now vested in the said trustees for the uses of the said settlement. Secondly, that on the order or decree made by the honourable Judge on the 16th of May last becoming known to the said Henry Bromfield, he, as the agent of such trustees, and without any communication with the defendant, wrote to Mungo Munro, the bailiff of the farm, a letter, dated the 17th of May, 1867, in which, referring to such order, he said, 'I wish it to be distinctly understood, that none of my horses or carts shall be employed in bringing it (the earth and bones alluded to in the order) back; nor will I, so far as I have legal power to prevent them, allow any one to go into the Ham, at any rate before the grass is mown, to take the earth away;' that on the receipt of that letter, Mr. Munro communicated the contents to the defendant, and put up a board in the field called the Ham, and also in an adjacent field, through which there is a considerable thoroughfare, containing a notice that trespassers off the public path would be prosecuted. Thirdly, that since the service of the monition, the defendant has applied to Mr. Bromfield for permission to obey it so far as he can; but by a letter dated the 3rd of July, 1867, Mr. Bromfield refused such permission, and further gave the defendant a formal notice not to enter on the field for the purpose of interfering therewith or removing therefrom any of the soil. Fourthly, that the defendant, by reason of his having become chairman to and connected with a certain railway, namely, the Bristol and North Somerset Railway Company, was adjudicated a bankrupt at the Court of Bankruptcy for the Bristol district on the 25th of February, 1867, and still continues to be a bankrupt under the protection of that Court, and has thereby been deprived of the whole of his property of every description, and is consequently without funds."

A reply to this statement was also filed, which alleged that Mr. Colthurst still resided at Chew Court with an unmarried daughter and servants, and is apparently in the possession and occupation of the

farm and lands (including the field or meadow called the Ham in which the earth from the churchyard was placed) belonging to and forming part of the Chew Court estate, and that his son-in-law, Mr. Bromfield, is not in occupation of the said house or farm, but resides at Stratford-on-Avon; that Mr. Colthurst, at the time of the execution of the settlement made on the marriage of his daughter, reserved to himself an interest in Chew Court and farm and the lands belonging thereto, and that his name still remains on the list of voters for the county in respect of the Chew Court estate; that as regards his bankruptcy, the adjudication on the 25th of February, 1867, could not discharge the defendant from his liability to pay the sum of 100*l.* *nomen expensarum*, as ordered by the decree and monition of the Court.

A rejoinder by the defendant stated that he only resided at Chew Court by the permission of Mr. Bromfield, who has a lease from the trustees of the house, farm and lands belonging thereto, which are at present managed by his bailiff, and that Mr. Bromfield, as the tenant, pays the rates and taxes for the same; that the defendant made no reservation in the settlement, save a certain reversion for life in the produce in the event only of the sale of the said estate.

Affidavits were filed on both sides, and Mr. Bromfield stated in his that being extremely desirous under the circumstances to stop the proceedings in this suit, in April, 1867, he had an interview with Mr. Adlam, and offered, on his own responsibility, to take back from the field or meadow into which the soil from the churchyard had been removed a certain quantity of the soil to the churchyard, saying at the same time it was impossible to guarantee it being the very same as was removed, by reason that it must have got mixed with the original soil of the field; that after considerable discussion, no agreement was come to, because Mr. Adlam declined any terms unless Mr. Bromfield would guarantee the payment of all the costs incurred in the suit. Mr. Bromfield told Mr. Adlam at that interview that the field was in his occupation.

Dr. Deane, for Mr. Colthurst, contended that under the circumstances of the case

the Court would not enforce its monition. Before the commencement of the proceedings in this suit, namely, in October, 1866, Mr. Colthurst transferred all his interest in the estate of which the field (into which the bones and earth had been removed from the churchyard) formed part to trustees, and had ceased to have any right thereto, or any control over it, and the tenant had given him formal notice that he would not allow the meadow to be disturbed. The Court will not order the defendant to enter another man's close and break the soil of a person not a party to the suit against his wishes—*Lex non cogit ad impossibilia*. On this point he referred to *Sieveling v. Kingsford* (1). As regards the costs, on the 25th of February, 1867, Mr. Colthurst became a bankrupt, and obtained an interim protection order, whereby he is protected from arrest for the costs of this suit—*Wallinger v. Gurney* (2), *Dickens v. Dickens* (3), and *Griffiths's Law and Practice in Bankruptcy*, 206.

[SIR R. PHILLIMORE wished to know whether the argument went so far as this, that if a person removed all the bones in the churchyard to another man's field, therefore this Court could not order the offender to restore them to the churchyard.]

Dr. Deane said that was his argument.

Dr. Spinks and Dr. Swabey, for Mr. Adam.—The duty of the Court is merely ministerial. All the facts were before Dr. Lushington, and with the full knowledge of them he ordered the monition to issue. The Court will not reverse Dr. Lushington's decision. When Mr. Colthurst transferred the meadow to trustees, he had no right to and could not transfer the bones and soil removed from the churchyard. As to the costs, as Mr. Colthurst after his bankruptcy continued to defend the suit without reasonable cause, he was probably not protected by the interim order. At any rate, the Court will not decide that question, but pronounce him in contempt for non-obedience to its order.—They referred to 24 & 25 Vict. c. 134. s. 159.

[SIR R. PHILLIMORE.—I wish I could assent to the proposition laid down by Dr. Spinks, that the duty of the Court is only ministerial. I cannot take that view. The late learned Judge ordered the defendant to file a statement of the grounds of his objections to the enforcement of the monition, thereby admitting that some objection might be taken. It is my duty to consider what has been proved on one side or the other. I will not now give judgment. I think it due to the case itself and to the argument that I should take time to consider my decision.]

SIR R. PHILLIMORE (Nov. 21).—This cause was argued before me on the 2nd of November, and my judgment would have been given shortly afterwards, had I not been requested to delay it for a few days, on the ground that there was a prospect of the matter being arranged out of court. That prospect has disappeared, and I can no longer delay my decision. The reasons assigned by the defendant for non-compliance with the order of the Court, both as to the payment of the costs and the restoring the bones and earth which had been so improperly removed, are these; that he is a bankrupt, and cannot pay the 100*l.*; and, secondly, that the field into which he has removed the bones and earth out of the churchyard is no longer his, for he has transferred it to trustees on the marriage of his daughter, and that he cannot lawfully enter upon it for the purpose of obeying the order of the Court. Looking at the whole of the circumstances of this case, as set forth in the judgment of my predecessor, and the date and character of the pleadings before him, and the minutes of the Court, I have no doubt whatever that one, if not both, of these excuses have been resorted to with the deliberate intention of rendering nugatory and treating with contempt the decree of the Court. With regard to the bankruptcy, it is alleged that the defendant became bankrupt before the decree of this Court was made; that he had a protecting order from the Bankruptcy Court, which protects him from the process of this Court. The case cited, *Wallinger v. Gurney* (2), shews that the production of an interim order under the 5 & 6 Vict. c. 116. s. 1. justifies the sheriff in discharging an insolvent out

(1) 36 Law J. Rep. (N.S.) Eccles. 1.

(2) 31 Law J. Rep. (N.S.) C.P. 55.

(3) 2 Sw. & Tr. 645; s.c. 31 Law J. Rep. (N.S.) Pr. M. & A. 183.

of his custody under a writ of execution, although the debt for which the execution creditor had recovered judgment did not exist until the insolvent's petition had been filed. Therefore, if it be true that the order which Mr. Colthurst has obtained be of this kind, and protects him from debts incurred subsequently to that order, he will, under the authority of this case, be entitled to be discharged by the sheriff on the production of that order, though he is arrested under the writ issuing in consequence of the decree of this Court. It may, however, be that these costs are not a debt provable under the defendant's present petition in Bankruptcy. It may also be,—looking to the date of the defensive allegation given in by Mr. Colthurst in this case, namely, the 21st of February, which allegation was the cause, according to Dr. Lushington, of most unnecessary expense, and the date of the bankruptcy, namely, the 25th of February, and also to the fact that Mr. Colthurst persisted in carrying on a defence which entirely failed, and in which his creditors could in no event have had the slightest interest,—it may be, I think, that Mr. Colthurst will not obtain an extended or fresh order of protection by which he will be enabled to evade this part of the sentence of the Court. At all events, I think the promoter has a right to call upon the Court to endeavour to enforce the decree for costs which he has obtained in his favour. Let me say a word upon the character of the offence of which Mr. Colthurst has been proved guilty. I cannot consider it as one of a trivial character. To remove the bones of parishioners from a churchyard into a field, where they are to serve the purpose of manure, is a great affront to the feelings of Christian men, a grave violation of the rights of parishioners, as well as plainly contrary to the law of the land. The act is not less liable to this censure if it be done by a churchwarden, and, as in this case, after he has been apprised of its illegality. Mr. Colthurst may be guiltless, as I have no doubt he was, of any deliberate intention to hurt the feelings of any one, and may have persuaded himself that no regard for the remains of bodies ought to prevent the making of an improved pathway to the church. This feeling, however, of respect and pious care for the dead

bodies of Christian men is deeply rooted in the inhabitants of this country; it is hallowed by many associations, religious and moral, which the law recognizes, and which it is the desire of our Church to cherish and promote. The language of the prayer by which a churchyard is consecrated, while it expresses the mind of the Church, is in harmony with the feelings of the poor as well as the rich parishioner. "O God, who has taught us, . . . by the example of thy holy servants in all ages, to assign peculiar places where the bodies of thy saints may rest in peace, and be preserved from all indignities while their souls are safely kept in the hand of their Redeemer," &c. The rest of the prayer breathes the same spirit. A great indignity, however unintentional, has been inflicted on the bones of parishioners in this case, and it is within the especial duty and province of this Court to take care that the indignity, as far as possible, may be repaired. It is contended, however, by the counsel for Mr. Colthurst, that as he has transferred the field in which he placed the bones and soil to trustees on behalf of Mr. Bromfield, his son-in-law, and that Mr. Bromfield will not permit him to enter such field for the purpose of executing the order of the Court, therefore the Court should decline to enforce its order, and the case of *Seecching v. Kingsford* (1) was referred to on this point. In the case of *Seecching v. Kingsford* (1) the monition to replace, among other things, certain chairs, was not enforced by consent of the Court and the promoter of its office, because it was admitted they had been sold and could not be traced; that case, therefore, is totally different from this. Before noticing the general argument, I think it advisable to call attention to certain dates and facts as they appear in the evidence. On the 6th of September, 1866, Mr. Colthurst was warned by Mr. Adam that he was doing an illegal act in removing the bones and soil from the churchyard into the field, yet he persisted in doing so. On the 3rd of October he transferred, by deed, the field, with other property, to trustees for the use of his daughter and his son-in-law, Mr. Bromfield. And here I will ask, what right had Mr. Colthurst to transfer to any one these bones and the earth from the churchyard?

On the 10th of December the proceedings commenced in this court, by the issuing of a decree. The articles were filed on the 9th of January, and on the 10th the trustees leased to Mr. Bromfield, the son-in-law and one of the *cotuis que trust*, the field about which so much has been said. It is to be observed that the trustees make no opposition to the order of the Court, but merely state they have leased the land to Mr. Bromfield. On the 16th of May the Court made the order against Mr. Colthurst. On the 17th of May Mr. Bromfield writes the letter to his bailiff, shewing clearly the concert between him and his father-in-law to set the Court at defiance. The monition is served on the 25th of June, and on the 3rd of July what I must call a *farce* is enacted between Mr. Colthurst and Mr. Bromfield, who, living in the same house, write letters to each other, evidently for the purpose of being used in this court, the father-in-law asking for leave to enter the field and remove the bones, and the son-in-law refusing it. The Court must be blind indeed to be deceived by such devices as these. Moreover, it appears that at one time Mr. Bromfield did offer to allow the bones to be removed, if costs were not pressed against Mr. Colthurst, and even during the last few days he has again offered to allow a certain portion, but a certain portion only, of the soil and bones to be removed. This has been done, it is said, in consequence of a suggestion from me, that I hoped this matter might be arranged out of court. Apart from the considerations applicable to this particular case, let me consider the general argument addressed to the Court by the counsel for Mr. Colthurst. The object of it was to shew that this Court has no longer any jurisdiction. This argument carried to its legitimate extent, as admitted by Dr. Deane, would amount to this, that if a man illegally removes from consecrated soil all the bones therein interred, even those that only a few hours before had been reverently placed there by the pious care of the sorrowing survivors, and before the law can be put in motion against him, transfers to a relative, as in this case, or to any purchaser, the land which had received the sacred deposit, the parishioners can have no redress for the wrong

inflicted upon them, perhaps by the churchwarden, whose solemn duty it was to protect them. The case is without remedy, and this Court, in whose custody the law has placed the church and churchyard, is powerless to enforce the law, to redress the wrong, and to punish the wrongdoer. I do not believe in this doctrine, and, until better informed, I will not recognize it as law. I adopt the language of Dr. Lushington when the case was last before him: "It was hinted that by possibility an impediment might be raised because the property is not now Mr. Colthurst's. I will not believe that the order of the Court will be so contumaciously resisted. Be that as it may, I shall not be alarmed by that intimation." Nor will I be so alarmed or deterred from the endeavour to execute this judgment by being told that the wrongdoer has, since the wrong done, deliberately put it out of his power to redress it. I am not satisfied it was competent to Mr. Colthurst to transfer to trustees for the benefit of his son-in-law and his daughter the consecrated earth. He could only transfer what was his property: this soil and these bones were never his property. But if so, he must take the consequences of his act. The Court has ordered him to replace the bones of the parishioners and the soil, as far as practicable, in the churchyard, and he refuses to do so. It only remains for me to enforce, to the best of my power, the lawful order made by my predecessor, to pronounce Mr. Colthurst in contempt, and to order the same to be signified to the Court of Chancery in the usual manner.

Having discharged my duty in delivering this judgment, I have still two remarks to which I desire to draw the attention of counsel. First, upon the general subject of alterations in churches and churchyards. If a faculty had been applied for, as it ought to have been in this instance, the objections of the parishioners would have been heard, the law would have been explained, the Ordinary would have given proper directions with respect to the decent arrangement of the bones and the earth, all the expenses of this suit would have been saved, and all the strife in the parish avoided. Secondly, with respect to this particular case, I still think it possible that the necessity for sending Mr. Colthurst to prison for con-

tempt may be avoided. It has occurred to me that if both parties were to consent that the archdeacon or rural dean should superintend the removal of the earth and bones back into the churchyard, any difficulties respecting the question of earth to be replaced together with the bones might be avoided, and also by the intervention of a third person clothed with an official character all feelings of bitterness between the parties might be removed, and the peace of the parish restored; and in that case the archdeacon or rural dean might certify to the Court generally that, in his opinion, the order of the Court had been sufficiently complied with. I earnestly press this suggestion upon both parties. If I receive a proper intimation that it will be complied with, I will not decree the contumacy and contempt of the defendant to be formally recorded upon the minutes of the Court; and on receiving the certificate of the archdeacon or rural dean, I will dismiss the suit (4). In the hopes that this suggestion may be adopted, I will suspend for six days the formal pronouncing of the defendant to have been guilty of contumacy and contempt; but after the lapse of that time, if I receive no such intimation, I shall, without further discussion, pronounce the defendant contumacious and in contempt, and signify the same to the High Court of Chancery.

Proctors—Tebbs & Son, for promotor; Toller & Sons, for defendant.

[IN THE CHANCERY COURT OF YORK.]

1867. }
Aug. 6. } MOUNCEY v. ROBINSON.*

*Articles under Church Discipline Act—
Advocate practising at Doctors' Commons—
Practice—3 & 4 Vict. c. 86. s. 7.*

*The Church Discipline Act requires that
when the bishop of the diocese in which
an offending clergyman holds preferment, or*

(4) This suggestion was acted upon. Within the time limited a proper certificate was filed, and the suit was dismissed.

* Before Granville Harcourt Vernon, Esq., Vicar General and Official Principal of the Archbishop of York.

the party complaining, after the report of the Commissioners appointed under the act, shall think fit to proceed against the party accused, articles shall be drawn up, and shall be approved and signed by an advocate practising in Doctors' Commons:—Held, that the approval and signature of any barrister practising in the Arches Court of Canterbury will satisfy the statute.

This suit was instituted, under the Church Discipline Act, 3 & 4 Vict. c. 86, against the Rev. John Robinson, the rector of the parish church of Bowness, in the county of Cumberland and diocese of Carlisle. The offences charged were alleged to have been committed when the defendant was employed as assistant curate in a parish in the diocese of Oxford. The Bishop of Oxford, on the application of the Bishop of Carlisle, having issued a commission to inquire into the matters charged against the defendant, the Commissioners reported that there was *prima facie* ground for instituting further proceedings. Ultimately, the suit was sent by letters of request to the Chancery Court of York; and articles were exhibited in that Court against the defendant. These articles were approved and signed by Mr. Shepherd, a barrister-at-law, who is not a member of the College of Advocates at Doctors' Commons.

Dr. Deane opposed the admission of the articles.—The suit being a criminal suit, the requirements of the statute must be strictly complied with. The articles have not been signed and approved by an advocate practising at Doctors' Commons, as required by the 7th section of the Church Discipline Act, and cannot be admitted.

Bayford, for the promotor, contended that the clause in the 7th section must be taken to mean that the articles must be approved and signed by a person practising as an advocate in the Arches Court of Canterbury; and that such reading now includes the whole Bar.

The COURT admitted the articles.

Proctors—George Sutton, agent for Mounsey & Co., Carlisle, for promotor; G. Lawton, sen., and W. Lawton, agents for E. Hough, Carlisle, for defendant.

[IN THE CONSISTORY COURT OF LONDON.]

1867.
Dec. 23; } JACSON v. SINGER AND
1868. } CARSON.
Jan. 10.

Faculty to erect a Pulpit—Opposition of the Parishioners—Conditional Grant.

At the time of the erection of a new church, which on consecration became the parish church of A, the foundations were laid and the designs prepared for a stone pulpit, but, from want of funds at the time, a temporary wooden pulpit was placed in the church. Some years afterwards, certain persons connected with the parish gave directions for the execution of the new pulpit, and, having raised a portion of the estimated cost of it by voluntary contributions, and given security for the rest, so that the parish could not incur any liability in the matter, they applied to the proper Court for leave to fix it in the church. The defendants, acting on a resolution of the vestry of the parish, refused to consent to the erection of the new pulpit until the debt for the building of the church itself had been paid off. No objection was made to the character or ornamentation of the proposed new pulpit:—Held, that, as the parish had already provided a substantial pulpit, which continued in good order and was in no way dilapidated, the Court could not, against the expressed objection of the vestry, order the removal of such temporary pulpit, and that it should be replaced by a new one; but it might allow a faculty to issue on the terms proposed by the vestry.

This was an application for a faculty to erect a stone pulpit in the parish church of St. Mary, Stoke Newington, Middlesex, promoted by the Rev. Thomas Jackson, clerk; the rector of that parish, against Messrs. Singer and Carson, two of the parishioners of the same.

Dr. Deane and H. Shephard appeared for the rector.

Dr. Spinks and Pritchard, for Messrs. Singer and Carson.

SIR T. TWISS (Jan. 10).—This is an application on the part of the rector of the parish church of St. Mary, Stoke Newington.

NEW SERIES, 37.—ECCLES.

ton, for a faculty authorizing the erection of a permanent pulpit in the said church, in place of the temporary pulpit now placed there. The petition of the rector recites that at the time when the said church was erected, a proper foundation was laid for a pulpit of the dimensions and character suitable to the size and construction of the church; that a temporary pulpit was then placed therein, which has now become dilapidated; that the architect of the church has furnished designs for a permanent pulpit, the estimated cost of which is about 200*l.*, which will be defrayed by subscriptions raised for the express purpose, and which at present amount to 170*l.*; that the subject having been brought before a vestry meeting, held on the 26th of December, 1865, duly convened for that purpose, the proposition for the erection of such pulpit was negatived by a majority, on the ground that the subsisting debt for the erection of the church should be first provided for. The decree having been duly served, an appearance was given on behalf of the churchwardens of the parish and others of the parishioners, and they prayed to be heard in objection to the grant of the proposed faculty. Their petition, which consists of thirteen articles, after going into various questions connected with the past history of the building and furnishing of the church, and the various collections of money made from time to time in furtherance of the same, alleges that the existing pulpit is in no way dilapidated, and is well suited and sufficient for the purpose; that the moneys necessary to defray the cost of erecting the proposed new pulpit are not yet collected, and the parishioners will, in breach of a previous agreement, be called upon to contribute to a fund to defray the expenses of erecting it; and that at the vestry meeting, held on the 26th of November, 1865, a resolution was duly proposed and seconded, and was carried by a large majority of the parishioners there assembled, in the following words, "That having heard with regret that it is intended to incur further expenses in enlarging the organ, and also in the erection of a new pulpit, without first making provision for the discharge of the debt incurred in the erection of the church, this vestry strongly deprecates such a proceeding." No

objection has been raised by the parishioners in vestry assembled to the style or character of the proposed pulpit; and the Court has reason to believe, from the drawing submitted to it, that it is perfectly unobjectionable in its design and ornamentation, and that it will be, in an architectural point of view, a suitable completion to the furniture of the church. It further appears from the affidavit of Mr. Singer, the vestry clerk of the parish, that after service of the decree in this cause on the 22nd of February, 1867, at a meeting of the parishioners in vestry assembled, it was resolved unanimously that the vestry clerk should be instructed to enter an appearance to the citation, and to offer no opposition to the issue of the faculty for the erection of the said pulpit, provided it be shewn, to the satisfaction of the Court, that the costs of such pulpit are fully defrayed by voluntary contributions, and that the debt incurred in the erection of the church is first paid off. Under these circumstances, and on an occasion of this kind, where both the parties are actuated by such praiseworthy motives, the rector being desirous to promote the good work of completing the furniture of the parish church in a suitable manner, the vestry on the other hand preferring to remove from the parish church the burden of an existing debt, and jealous of allowing any further debt to be incurred, the Court was anxious that an understanding or arrangement might have been arrived at between the parties, whereby the objects which both parties have in view might be attained, and that harmony restored in this parish which seems at one time to have been a distinguishing feature of the relations between the present rector and his parishioners. The counsel for the rector, in the course of his address to the Court, stated that the whole of the funds necessary for defraying the expenses of the proposed new pulpit have been now collected, and the Court has been furnished with an affidavit since the hearing of the cause, from which it appears that the architects have acknowledged the payment of the money due to them for the execution of the pulpit. So far, then, one of the grounds upon which the vestry clerk was instructed to oppose the grant of this faculty, may be held to be removed. It remains to be considered whe-

ther, under this altered state of circumstances, the opposition of the parishioners ought to be overlooked by the Court. If the proposed new pulpit were a necessary article of church furniture, which the churchwardens were bound by the requirements of the laws ecclesiastical to supply at the common charge of the parishioners, and, the parishioners having neglected to perform their duty in that respect, the rector was proposing to make good their neglect by the voluntary aid of certain loyal parishioners, and prayed a faculty to authorize the erection of a pulpit at their private expense, the Court would have little difficulty in authorizing the rector to discharge the duty which ought to have been fulfilled by the churchwardens; but in the present case I find in the affidavit made by the vestry clerk that the present pulpit in the said church is a sufficiently substantial erection, in good order, and not in any way dilapidated, and although a counter affidavit on behalf of the rector and two of the parishioners states that the present pulpit is not a substantial erection, but is made of common stained deal, slightly put together and cannot properly be fixed to the fabric as a permanent structure, there is no affidavit in support of the original statement in the rector's petition that the present pulpit has become dilapidated, which is set out in the citation as one of the grounds upon which the faculty is prayed. The evidence, therefore, so far fails in an important respect, and there is no neglect of duty shewn on the part of the churchwardens and the parishioners in supplying a pulpit which satisfies the 83rd canon ordering the churchwardens or questmen, at the common charge of the parishioners, in every church to provide a comely and decent pulpit; and when I am called upon to grant the present faculty, I must bear in mind that I am called upon to authorize the rector to remove from the church the present pulpit, which is parish property and in no way unfit for use, against the strong remonstrances of the parishioners assembled in vestry. I am not disposed to overrule their opposition, for I think that they have a legal right to object to the issuing of the faculty, and that the conditions upon which they instructed the vestry clerk to forego any further opposition were reasonable

conditions. I shall decree the faculty, but I shall instruct the Registrar not to allow it to issue until a certificate is lodged in the registry that the balance of the debt incurred in the erection of the church has been paid off. I consider that the exhibition of that certificate will satisfy the condition upon which the vestry clerk was instructed on behalf of the parishioners to make no further opposition. I trust that all parties will co-operate to bring about this result as speedily as possible. I shall make no order as to the costs of these proceedings.

Proctors—Shepherd & Skipwith, for the rector;
Pritchard & Sons, for Messrs. Singer and Carson.

[IN THE COURT OF ARCHES.]

1868. } THE BISHOP OF WINCHESTER
Feb. 5. } v. RUGG.

Church Discipline Act—Neglect to Perform Divine Services—Consecrated Building in the Parish—1 & 2 Vict. c. 106. ss. 77, 109.—Jurisdiction—Protest.

The 109th section of the 1 & 2 Vict. c. 106, which enacts that in every case in which jurisdiction is given by the act to the bishop of the diocese for the purposes thereof, and the enforcing the due execution of the provisions thereof, all other and concurrent jurisdiction in respect thereof shall wholly cease, will not apply to prevent the bishop instituting proceedings against a beneficed clergyman, under the Church Discipline Act, for omitting to perform, or provide for the performance of public divine service in a consecrated building within his parish; the provisions of the statute 1 & 2 Vict. c. 106. sec. 77. only applying to cases where the services of any benefice have been inadequately performed, not where they have been omitted altogether.

Although an incumbent of a parish has a right to object to the consecration of a building within his parish, if the bishop overrules such objection, and proceeds to consecrate the building, such consecration will not be invalid by reason of the dissent of the incumbent.

This was a cause of the office of the Judge promoted by the Bishop of Winches-

ter against the Rev. Lewis Rugg, clerk, the incumbent of the perpetual curacy of Ecchinswell-cum-Sydmonton, in the county of Southampton and diocese of Winchester, under the Church Discipline Act, and brought into the Court of Arches by letters of request. The offence, as stated in the letters of request and citation, was as follows: "That the Rev. Lewis Rugg has offended against the laws ecclesiastical by having omitted to perform, or to provide for the performance of public divine service as prescribed in the Book of Common Prayer, and administration of the Sacraments, and other rites and ceremonies, according to the use of the Church of England, in the church of St. Mary, Sydmonton, within the said perpetual curacy of Ecchinswell-cum-Sydmonton, on Sunday the 12th of May, on Sunday the 19th of May, on Sunday the 26th of May, and on Sunday the 2nd of June, 1867."

On the 20th of July, 1867, *Brooks*, for the Rev. Lewis Rugg, appeared under protest, and on the 26th of July brought in an act on petition, setting out his grounds of protest, the principal points in which were—First, that by virtue of divers provisions contained in the 1 & 2 Vict. c. 106, and more particularly by sections 77. and 109, the Court of Arches has no jurisdiction to administer articles to the defendant for the alleged offences for which he is cited by the decree of the Court served upon him, and dated the 2nd of July, 1867. Secondly, that the building in the said decree called the Church of St. Mary, Sydmonton, is not a church, as falsely therein suggested. . . . That in the year 1865 Mr. Kingsmill, for his own private ends and purposes, and without notice to the said Rev. Lewis Rugg as incumbent, to the churchwardens and other parishioners of the said parish, petitioned the Lord Bishop of Winchester to consecrate the said building. That the said Rev. Lewis Rugg, on receiving notice from the said Lord Bishop of Winchester of his intention, at the private request of Mr. Kingsmill, to consecrate the said building, wrote that he objected to the consecration, on the ground of there being no sufficient endowment for the said proposed church, the emoluments received by the incumbent of Ecchinswell-cum-Sydmonton arising from

the said district of Sydmonton amounting only to 40*l.* per annum, and the income of the incumbency amounting altogether to only 170*l.* per annum; and, further, he objected that the land abutting all round on the outside of the building was the private property of Mr. Kingsmill, and, consequently, that there was no right of access outside the said building for the purposes of repair, &c. The petition then further stated, that notwithstanding Mr. Rugg's objections, and although he locked up the church, the Bishop of Winchester ordered the door to be forced open, and proceeded with the ceremony of consecration. Thirdly, that on the Sundays mentioned in the decree on which it is alleged that the Rev. Lewis Rugg omitted to perform, or to provide for the performance of public divine service at Sydmonton, the defendant performed two full services in the parish church of Ecchinswell-cum-Sydmonton, which is only distant about two miles from the said building; and that by reason of the premises, the Court of Arches has no jurisdiction to entertain the suit.

The answer, as regards the first point, alleged that the provisions of the 1 & 2 Vict. c. 106, ss. 77, 109, do not in any way interfere with the jurisdiction of the Court; for the 77th section applies only to such inadequate performance or neglect of duty as does not constitute an ecclesiastical offence, and is not intended to be treated as an offence; and the said 109th section does not prevent the Bishop of Winchester from taking proceedings under the 3 & 4 Vict. c. 86. against the said defendant for the ecclesiastical offence as set forth in the citation (the said offence being a breach of the statute 13 & 14 Car. c. 4). That the said statute 3 & 4 Vict. c. 86. is the only act under which the bishop can proceed against the said defendant for the said offence committed, by law. That the said 77th section of 1 & 2 Vict. c. 106. applies to cases where a service may happen to be inadequately performed in a church about the character of which, as a public consecrated building, there is no dispute, and not to the case where the question is whether the clerk proceeded against is free from all obligation to perform public divine service in a particular building by reason of its being, as alleged, a private and uncon-

secrated building, and that such question is in dispute in the present case. The rest of the answer merely corrected some statements made by Mr. Rugg as to the history of the consecration of the church of Sydmonton, but did not contradict his averment that such consecration was performed in spite of his express dissent.

The 77th section of 1 & 2 Vict. c. 106. enacts, that whenever the bishop shall see reason to believe that the ecclesiastical duties of any benefice are *inadequately* performed, it shall be lawful for him to issue a commission to four beneficed clergymen to inquire into the matter; and if their report be in the affirmative, it enables the bishop to appoint a curate, and secure to him a salary. Section 109. is as follows: "In every case in which jurisdiction is given to the bishop of the diocese, or to any archbishop, under the provisions of this act, and for the purposes thereof, and the enforcing the due execution of the provisions thereof, all other and concurrent jurisdiction in respect thereof shall, except as herein otherwise provided, wholly cease, and no other jurisdiction in relation to the provisions of this act shall be used, exercised or enforced, save and except such jurisdiction of the bishop and archbishop under this act."

Mr. Rugg, in person, contended against the jurisdiction of the Court—First, as he had on the days indicated performed two full services at Ecchinswell, he had not violated the 13 & 14 Car. 2. c. 4. s. 2, or committed an ecclesiastical offence; secondly, that the bishop had mistaken his way; he ought to have proceeded under 1 & 2 Vict. c. 106. s. 77, and was precluded from instituting a suit on this ground under 3 & 4 Vict. c. 86; thirdly, the Court has no jurisdiction, inasmuch as the church at Sydmonton has never been legally consecrated. The bishop had no right to consecrate a church on the rector's freehold without his sanction, and the form gone through was a mere nullity after *Mr. Rugg* had signified his dissent. — He referred to *Battiscombe v. Eve* (1) and *Griffin v. Dighton* (2).

(1) 9 Jur. N.S. 210.

(2) 38 Law J. Rep. (N.S.) Q.B. 29.

Dr. Deane and *Dr. Swabey*, for the promoter, were not called upon.

SIR R. J. PHILLIMORE. — This case is brought before me by letters of request, and it is a suit instituted under 3 & 4 Vict. c. 86, against the Rev. Lewis Rugg, for having offended against the laws ecclesiastical, by having omitted to perform, or to provide for the performance of public divine service, as prescribed in the Book of Common Prayer, in the church of St. Mary, Sydmonton, within his perpetual curacy or parish, on four consecutive Sundays last year. Mr. Rugg has appeared under protest, and denies the jurisdiction of the Court, on three grounds. First, he says that his refusal to perform service in Sydmonton church, under the circumstances he has stated, is not an ecclesiastical offence; but I am of opinion that it is, and that he is properly charged here with an ecclesiastical offence under 3 & 4 Vict. c. 86. Secondly, he urges another reason why these proceedings are not applicable to him. He says that they ought to have been taken under 1 & 2 Vict. c. 106. The 77th section of that act authorizes the bishop to appoint a curate where he considers that the ecclesiastical duties of a benefice are inadequately performed, and he urges that that course ought to have been taken in his case, and that he ought not to have been cited into this Court under the letters of request. I am of opinion that the section in no way binds the bishop to take the course therein mentioned, but that it is left to his discretion to do so; and, moreover, that so far as I can judge of the charge as laid in the decree, it would not have been proper for him to have taken proceedings under 1 & 2 Vict. c. 106. s. 77. against Mr. Rugg, because the charge is not that the services have been inadequately performed, but that they have not been performed at all. I am of opinion, therefore, that so far the suit is properly before the Court under the letters of request and the provisions of the Church Discipline Act. Thirdly, he objects to the jurisdiction of the Court, that the building called St. Mary's, Sydmonton, is not a church. Assuming for this purpose that the statements made by the defendant are true, it seems somewhat inconsistent with this objection, that in his argument

Mr. Rugg claims the ground as his freehold (which it could not be unless it were consecrated), and therefore that the consecration of the church was illegal, being performed without his consent. The question, however, is, whether the consecration so performed, in spite of the dissent of Mr. Rugg, was or was not legal. If legal, the authority of the Ordinary was founded *ratione loci*, and the cause was properly sent to this Court by letters of request. In my opinion, although it was quite reasonable for Mr. Rugg to put before the bishop his objections, it was also competent for the bishop to overrule them, and proceed with the consecration. As I entertain that opinion, I must also hold that the bishop had jurisdiction in this case, and that the non-performance of divine services in a duly consecrated church is an ecclesiastical offence. I overrule the protest, and order Mr. Rugg to appear absolutely. The costs to be costs in the cause.

Proctors—Moore & Currey, for promoter; Brooks & Du Bois, for defendant.

[IN THE PRIVY COUNCIL.]

1867.	}	RUGG v. KINGSMILL.*
Dec. 17, 18.		
1868.		
March 11.		

Faculty—Vault—Entrance not on Consecrated Ground—Appeal—Variation from former Decree.

A. applied for a faculty to secure to himself and his family whilst resident in a particular house the exclusive use of a vault which had been constructed under the chancel of a consecrated church, but the sole entrance to which was in his own garden, on unconsecrated ground. The faculty was ordered to issue by the local Ordinary. On appeal, it was determined that such order must be varied by adding a condition that before the faculty issues a sufficient space of ground around the aperture of the vault be

* Before The Master of the Rolls, Sir James W. Colvile, Sir Edward Vaughan Williams, Sir Richard T. Kindersley and the Judge of the Admiralty Court.

consecrated and so placed under the jurisdiction and control of the Ordinary.

It is only under very exceptional circumstances that the Ordinary should grant permission for burials to take place under the chancels or the bodies of churches.

This was an appeal from an order or decree made, on the 4th of May, 1867, by Dr. Lushington, the late Dean of the Arches, whereby he confirmed an order or decree made by Charles Sumner, Esq., barrister-at-law, the Chancellor of the diocese of Winchester, directing that a faculty should be issued out of the Consistorial Court of Winchester, as also from the order or decree of the said Chancellor of the diocese of Winchester. It was brought by the Rev. Lewis Rugg, the incumbent of the parish of Echchinswell-with-Sydmonton, in the county of Southampton, against William Howley Kingsmill, the principal landowner and owner and occupier of a mansion-house called Sydmonton Court in such parish, and the possessor of the great tithes of the parish. The faculty was for the purpose of appropriating and confirming a certain family vault or burying-place under the chancel of the church of Sydmonton to Mr. Kingsmill, his family and successors, being proprietors of the mansion-house and estate of Sydmonton Court. The judgments of Mr. Sumner and of Dr. Lushington, from which Mr. Rugg appealed, will be found in 36 *Law J. Rep.* (N.S.) Eccl. Cas. 17. The grounds of appeal were the following: First, that where the inhabitants of a district have no common law right of burial in such district, an ecclesiastical Court has no jurisdiction to grant to one family of that district a faculty for the privilege of burial, or for the exclusive privilege of burial in a public chapel of such district. Secondly, that assuming that an Ecclesiastical Court has jurisdiction to grant such a faculty, the granting of faculties for vaults in a church or public chapel has for a long time past been discouraged by the legislature and public authorities, as injurious to the public health; and faculties for such vaults have not been granted, except in cases free from other objections, and where all parties interested have been consentient; and that this not being such a case, the faculty ought not to have been

granted. Thirdly, that assuming that the Consistory Court of Winchester had jurisdiction to grant a faculty to the respondent, and that this was a proper case for such a faculty, yet that it ought not to issue in the terms decreed, but ought to be varied by the insertion of a proviso that the respondent appropriate to the church such a piece of land round the church for the purpose of consecration as to place the entrance of the vault, where the whole or a part of the public service for the burial of the dead must at every burial in the vault, of necessity, be performed, on consecrated ground, and under ecclesiastical jurisdiction; and to secure to all persons desirous of being present at such burials the right of attending, without a liability of being treated as trespassers.

Mr. Rugg conducted his appeal in person.

Dr. Deane and *Dr. Swabey* appeared for Mr. Kingsmill.

SIR R. PHILLIMORE (March 11).—This is an appeal from a decree pronounced by the late Judge of the Arches Court of Canterbury, whereby he affirmed the sentence of the Consistorial Court of Winchester, which decreed a faculty to issue to Mr. Kingsmill authorizing the appropriation to that gentleman of a vault under the chancel of Sydmonton Church. This church is situate in the parish of Sydmonton, in the county of Southampton. It appears that the whole property, as well as the principal house in the parish, belongs to Mr. Kingsmill, and that with the exception of the consecrated ground upon which the church is built, he is proprietor of all the land up to the very walls of the church, which has no burial-ground attached to it. In the year 1849 there was a chapel which occupied the site of the present building. Under the chancel of the former chapel the father of Mr. Kingsmill possessed a vault. In the year 1849 the chapel was pulled down. In 1852 Sydmonton-and-Echchinswell, which formerly formed part of the parish of Kingsclere, were formed under an Order in Council, bearing date the 19th of August, 1852, into a distinct and separate parish for ecclesiastical purposes, by the name of Echchinswell-with-Sydmonton, and Mr. Rugg, the appellant, was instituted incumbent thereof. In 1853 the present

church was built by Mr. Kingsmill's father at his sole cost and expense. In August, 1864, the church was consecrated. In August, 1865, the faculty now in question was granted by the Chancellor of Winchester. Before a faculty, either to the parishioners in general, or to a private inhabitant of the parish, can be decreed, the ecclesiastical law requires that all persons interested in opposing the grant shall have an opportunity of being heard before the Ordinary. The faculty which has been decreed in this case is, as has been stated, for a burial vault underneath the chancel. The objector to the grant of the faculty is the incumbent, who is either vicar or perpetual curate. The applicant for the faculty is the improper rector, who resides in the parish, and whose father appears to have rebuilt and partially endowed at his own cost the church. The vicar or perpetual curate, although entitled to officiate in, and have free access to, the chancel, has no right, strictly speaking, to fees for the erection of monumental tablets, or for the construction of vaults (in the very rare instances in which they should be allowed) in the chancel; but he has certainly a *persona standi*, by reason of his general spiritual position as incumbent, to oppose the grant of such a faculty as the present. The objections of the appellant to the judgments from which he appeals are various. First, he contends that the ecclesiastical Court has no jurisdiction to grant this faculty. He supports this objection by reference to the fact that there is no burial-ground attached to this chapel; that no funeral has ever taken place there; that the inhabitants of the district have consequently no general right of burial connected with the chapel. And his argument appeared to extend so far as to question the validity of the consecration of the chapel itself by the Bishop. Their Lordships, however, see no reason to doubt that the Bishop had full authority to consecrate this building; and they are of opinion that the objection founded on the absence of any burial-ground, and of any general right of burial on the part of the parishioners, did not render unlawful the act of the Ordinary, though it imposed upon him the duty of exercising with much caution the discretion which the law has vested in him as to granting a faculty of this kind. The appel-

lant further contended that the grant of the faculty was bad upon the ground that the proper forms prescribed by the practice of the Ecclesiastical Court had not been complied with. Their Lordships, however, are of opinion that the case was regularly and properly conducted in the diocesan court of Winchester, and that the objection cannot be sustained. The appellant contends that this faculty could not be granted without his consent, but that contention is not supported by authority or practice. The vicar or perpetual curate, as has been stated, is entitled to be heard against the grant of a faculty, and his objections ought, of course, to be considered by the Ordinary; but the discretion of the Ordinary is not fettered or taken away by the dissent of the vicar. There are objections, however, urged by the appellant, which are of a more serious character. They may be all arranged under one general head,—that the discretion of the Ordinary was unwisely exercised in the grant of this faculty. From the decision of the Ordinary an appeal lies to the Archbishop, and ultimately to the Crown, under the advice of the Judicial Committee of the Privy Council. If we think that the grant of the faculty, though not absolutely illegal, was, as it at present stands, indiscreet and likely to give rise to future trouble and difficulty in the church and district of Sydmonton, which was not duly considered in the Ecclesiastical Courts, we ought to advise Her Majesty accordingly. The appellant has pointed out to their Lordships that the ground upon which the church stands alone is consecrated; that the jurisdiction of the Ordinary depends upon the consecration of the ground, and does not extend over any part of the ground which comes up to the very walls of the church. The legal consequences of this circumstance, upon which the appellant insists, will presently be noticed. Their Lordships, having regard to the peculiar circumstances of this church and parish, are not disposed to dissent from the opinion expressed by the Judge of the Arches Court, that the judicial discretion of the local Ordinary was lawfully exercised in granting permission to Mr. Kingsmill to retain for the use of himself and his family, so long as they shall remain proprietors of Sydmonton Court (for this must, of course, be a provision contained in the

instrument), the vault which has been constructed underneath the chancel. Their Lordships desire that it should be understood that they do not mean to express any approbation of a general practice of granting faculties for interments in chancels or in the bodies of churches. On the contrary, they are of opinion that very exceptional circumstances can alone justify such an exercise by the Ordinary of the discretion which the law has vested in him. With respect to the particular faculty the consideration of which is now before their Lordships, they have come to the conclusion that it ought not to be issued at the present time in the manner proposed. Their Lordships are extremely reluctant to interfere with the exercise of the discretion in those matters by the local Ordinary, and they fully recognize the expediency of the rule of practice which discountenances such interference. But their Lordships think that the objection to the immediate issue of this faculty, while the only entrance to the vault is in the private and unconsecrated ground of Mr. Kingsmill, is deserving of great consideration. In the first place, it is clear that the Ordinary could not compel the incumbent, by ecclesiastical censures, to perform the burial service in the unconsecrated ground in which the only entrance to the vault is to be found. It has not been argued that the Ordinary could so compel the incumbent; indeed, it has been very properly admitted by counsel that no authority can be found for such a practice. In the next place, it appears to their Lordships to be inexpedient that the spot on which a portion at least of the burial service is usually performed by the minister should be exempt from the jurisdiction of the Ordinary. It is true that the Ordinary would have jurisdiction over the vault itself, and that the whole service might lawfully, their Lordships think, in the peculiar circumstances of this case, be performed in the church, and the corpse afterwards taken into the garden and deposited in the vault; and their Lordships do not mean to say that the Ordinary might not be enabled to punish any unlawful proceedings which might precede or accompany the act of burial; but it is also true that the absence of any ecclesiastical jurisdiction over this spot of ground might afford an apparent impunity to evade

the law, and thereby possibly cause a scandal in the parish. If in the present state of circumstances the grantee of this faculty, or his successors in the mansion to which it is in fact attached, were hereafter, either perhaps on account of their having ceased to be members of the Church, or on account of some quarrel with the incumbent, or for any other motive, to cause a service different from that which is enjoined in the Prayer Book to be read over the corpse, or if they were to place the body in the vault without the previous performance over it of any religious service, in any such case the Ordinary might be considerably embarrassed in the exercise of his proper jurisdiction to remove the scandal, or to punish the authors of it. Their Lordships think that it is the duty of the Ordinary, when granting a *privilegium* of this kind, to take every precaution in his power against the possibility of a misuse by the grantee, or his representative, of the special favour which is conceded to him. They see no reason why the grant of the faculty to Mr. Kingsmill should not be made conditional upon his consenting to allow a sufficient piece of ground near the aperture to the vault to be first duly consecrated for the sole and special purpose of burials in this vault. The jurisdiction of the Ordinary, *ratione loci*, would then be unquestionable, and any impropriety with relation to the performance of the burial service would be subject to his correction and control. Their Lordships therefore think that this cause should be remitted to the Court of Arches, with directions to issue the faculty in question whenever it has been duly certified to that Court that the consecration of the additional portion of ground has taken place, and with power, if it should be deemed necessary, to vary the terms of the faculty by a reference to a recital of the fact of such consecration having been effected. Their Lordships think that both parties ought to bear their own costs incurred in this court and in the Court of Arches. Their Lordships will humbly advise Her Majesty in accordance with the opinion they have now expressed.

Proctors — Brooks & Du Bois, for Mr. Ragg;
Rothery & Co., for Mr. Kingsmill.

[IN THE COURT OF ARCHES.]

1867.	} MARTIN v. MACKONOCHE.
Dec. 4, 5, 6, 7.	
1868.	
Jan. 9, 10, 11,	
13, 14, 15, 16,	
17, 18;	
March 28.	

Church Discipline Act—Rites and Ceremonies in the Church of England—Retained—Not forbidden—Elevation of Paten and Cup—Lighted Candles—Incense—Water mixed with the Wine.

There is a legal distinction between a rite and a ceremony. The former consists in services expressed in words; the latter, in gestures or acts preceding, accompanying, or following the utterance of those words.

As regards ceremonies, no sound argument against their lawfulness can be deduced merely from their identity with those in use before the Reformation, nor from their disuse since. The real test is, are they, on a fair construction, necessarily connected with those novelties which the Church of England rejected at the Reformation?

Whatever is expressly prohibited in the Rubric is prohibited altogether, and may not be evaded by any contrivance which, under a different name and appearance, attains the same end.

Whatever is expressly ordered by the Rubric must not be evaded by an illusory or partial compliance; and any ceremony which is subsidiary to what is ordered, is in accordance with primitive and catholic use, and not necessarily connected with novelties which were rejected at the Reformation, is lawful. But the doing or use of such ceremony must be governed by the discretion of some person in authority, who may enforce his order in the matter, by monition and the penalty of contumacy.

Elevation, that is, the raising the paten and also the cup respectively, after the consecration of the bread and wine, for an appreciable time, after which there is a pause before the service is continued, is a ceremony so connected with the repudiated doctrine of transubstantiation, that it is not permissible in the Church of England.

The amount of kneeling to be employed by the officiating minister is a matter to be regu-

lated by the Bishop, in accordance with his discretion.

The use of incense during the celebration of the Communion is a distinct ceremony, additional to and not even indirectly incident to the ceremony ordered by the Book of Common Prayer, and therefore unlawful.

As the mention of water and the mixing of water with the wine, which was introduced into the first Prayer Book, is omitted in the subsequent Prayer Books, it must be held that such mixing is prohibited during the celebration of the Communion.

Two lights are ordered by the Injunctions of Edw. 6. A.D. 1547, to be placed on the Holy Table during the administration of the Communion. As the Injunctions, whether authorized or not by 31 Hen. 8. c. 8. have always been recognized as valid, and as the use of such lights is primitive and catholic in its origin, and not connected with any rite or ceremony rejected by the Church of England at the time of the Reformation, the lawfulness thereof is established.

This was a proceeding, under the Church Discipline Act (3 & 4 Vict. c. 86), brought by letters of request from the Bishop of London into the Court of Arches. It was promoted by John Martin, of Baldwin's Gardens, in the district of St. Alban's, High Holborn, in the county of Middlesex, against the Rev. Alexander Heriot Mackonochie, clerk, the perpetual curate of such district. The articles are set out at length, 36 *Law J. Rep.* (N.S.) Eccles. 25; but their contents may be stated shortly, as follows: First, according to the statute law and the canons and constitutions ecclesiastical, all clerks shall use and observe in the celebration of divine service the orders, rites and ceremonies prescribed in the Book of Common Prayer, and in the Act of Uniformity printed therewith, without diminishing in regard of preaching, or in any other respect, or adding anything in the matter or form thereof; and any clerk offending against such statute law, constitutions and canons ought to be punished. Thirdly, that the defendant on certain days, within the last two years, in the church of St. Albans, during the prayer of consecration in the order for the administration of the Holy Communion, elevated the paten in a greater degree and otherwise than by

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merely taking the same into his hands as prescribed by the Book of Common Prayer, and in a greater degree than is necessary to conform with the requirements of such book, and has permitted and sanctioned such elevation, and has taken into his hands and elevated the cup during the prayer of consecration aforesaid, in a manner contrary to the statute law and the said Book of Common Prayer, and has permitted and sanctioned the cup to be so taken and elevated, and has knelt or prostrated himself before the consecrated elements during the prayer of consecration, and has permitted and sanctioned such kneeling or prostration by other clerks in holy orders. Fifthly, that at the same times and place the defendant used lighted candles on the communion-table of the church of his parish during the celebration of the Holy Communion at times when such lighted candles were not wanted for the purpose of giving light, and has permitted and sanctioned such use of lighted candles. Seventhly and eighthly, also at the same times and place he used incense for censuring persons and things in and during the celebration of the Holy Communion, and has permitted and sanctioned such use of incense. Tenthly, also at the same times and place he, during the celebration of the Holy Communion, mixed water with the wine in the said parish church, and has permitted and sanctioned such mixing and the administration to the communicants of the wine and water so mixed. And as regards the elevation, prostration, the use of lighted candles or incense, and the mixing of water with the wine, it was alleged that each was an unlawful addition to and a variation from the form and order prescribed and appointed by the statute law and by the Book of Common Prayer, and is contrary to the statute law and the constitutions and canons ecclesiastical.

In answer to the articles, the defendant filed an allegation in which he referred in detail to the spiritual destitution of the district attached to St. Albans before he was licensed and admitted to the incumbency of such district, and to the numerous services he had established for the benefit of the inhabitants of such district, and to the satisfactory results

arising therefrom, more especially amongst the poorer inhabitants. The allegation then stated that ever since he (Mr. Mackonochie) has been admitted incumbent of the said parish he has resided therein, and has, with the most unwearied zeal and self-devotion, faithfully and diligently discharged his duty as minister thereof, in accordance with and in conformity to the laws, canons and constitutions of the Church of England, and has conducted himself and his services without any complaint on the part of and to the great satisfaction of the majority of the inhabitants of the said district, amongst whom he is held in high esteem and regard, as well for the manner in which he, with the co-operation of his curates, performs his public ministrations, as for his attention to the schools, and also to the poor and sick of the said district, and that such esteem, satisfaction and regard continue undiminished up to the present time. That from the time he became incumbent of the said district up to the present time, neither of the two churchwardens of the parish, one of whom is appointed by Mr. Mackonochie, and the other by the inhabitants in vestry assembled, has presented or made any complaint against Mr. Mackonochie to the bishop at his visitation; or to the archdeacon for having in any way violated or infringed, or for neglecting to conform to any of the laws, canons and constitutions of the Church of England. Thirdly, in answer to the third paragraph of the articles, he alleged that, although he admits that he did on the said two Sundays and on the said Christmas-day during the prayer of consecration, kneel, and sanction the kneeling by other clerks before the Lord's table, yet he denies that he did on those days kneel or prostrate himself before the consecrated elements, or permit and sanction such kneeling or prostration by other clerks in holy orders; and he further alleged that whilst he did on those days elevate and sanction the elevation by other clerks of the paten and cup above his head, as is in the third article pleaded, yet that such elevation of the paten and cup has been wholly discontinued by him since the 30th day of December, 1866, and long prior to the institution of this suit. That such practice was discontinued in consequence of

legal advice, and in compliance with the expressed wish of the Lord Bishop of the diocese, and with a resolution of Convocation, as was well known to the promoter of this suit before he instituted the same. Fourthly, he denies that the elevation of the paten and the taking and elevation of the cup, so discontinued as aforesaid, and the kneeling and prostrating charged in the third article are severally unlawful additions to and variations from the form and order prescribed and appointed by the said statutes and the Book of Common Prayer, or that they are contrary to the said statutes and to the 14th, 36th and 38th of the Constitutions and Canons Ecclesiastical, and also to an act of parliament, 13 Eliz. c. 12, and to the 25th and 28th Articles of Religion referred to in the fourth article. Fifthly, in answer to the fifth article he alleges, that on the days mentioned in such article the said lighted candles were not placed on the communion-table, but upon a narrow movable ledge of wood resting on the said table, and that the said candles were so placed and kept lighted, not during the celebration of the Holy Communion only, as falsely suggested in the 5th article, but also during the whole of the reading of the Communion Service, including the Epistle and Gospel, and during the singing after the reading of the Nicene Creed, and during the delivery of the sermon. Sixthly, he denies that the use of such lights is an unlawful addition to and variation from the form and order prescribed, &c. Seventhly, in answer to the seventh article, he admits that on Sunday the 28th of December, 1866, on Christmas-day in that year, and on the following Sunday, he used incense for censuring persons and things in and during the celebration of the Holy Communion, and permitted and sanctioned such use of incense; but since the 30th of December, 1866, as was well known to the promoter of the suit prior to the institution thereof, he has desisted from so doing, and has ever since discontinued the said ceremony on being apprised by the opinion of counsel that such usage was of doubtful legality, and that he has never since introduced the said ceremony, as appears in his published address to his parishioners dated January, 1867, and appended to and exhibited with the

articles. Eighthly, he admits that he has in his said church on Sunday the 13th of January, 1867, caused and allowed incense to be burnt during the reading of the prayer of consecration, and afterwards until the time for the administration of the Communion to the people, and permitted and sanctioned such use of incense, but that he denies that he did the same unlawfully, or that such use is unlawful. Ninthly, he denies that the uses of incense as alleged in the seventh and eighth articles are severally unlawful additions to and variations from the form and orders prescribed, &c. Tenthly and eleventhly, he admits the facts stated in the tenth article to be true, but denies that the mixing and administration of wine and water, as in the tenth article alleged, is an unlawful addition to and variation from the form and order prescribed, &c. Thirteenthly, he denies that John Martin is of Baldwin's Gardens, in the district of St. Albans, or that he is an inhabitant or parishioner of the said parish or ecclesiastical district, but he is an attorney at law and solicitor, residing at No. 9, Montague Place, Russell Square, in the parish of St. George, Bloomsbury. That the only connexion he has with the district of St. Alban's is as a secretary of a school in Baldwin's Gardens, and he is acting contrary to the wish and desire of the churchwardens and parishioners generally of the said parish or ecclesiastical district, and at the instigation and as the agent and at the cost of a certain society called the Church Association.

A. Stephens, Coleridge, Dr. Swabey, and Droop appeared for the promoter.

W. M. James, Prideaux, Dr. Tristram, and Charles, for the defendant.

SIR R. PHILLIMORE (March 28).—This case of *Martin v. Mackonochie* was brought before my predecessor in this chair, by letters of request from the Bishop of London, under the provisions of the 3 & 4 Vict. c. 86. That statute, passed in the year 1840, enables any bishop within the Province of Canterbury either to try the case of a clerk for a criminal offence before himself with certain assessors, or to send it to the Court of the Archbishop for trial in the first instance. Since the passing of this statute, bishops have very generally availed themselves of the latter provision,

and this Court has now before it several cases so sent from several suffragan dioceses of the Province of Canterbury.

Under the old law, when these cases were triable in the Consistorial Court of each bishop, if they were sent by letters of request to the Court of Arches, these letters contained an averment that the lack of counsel, and difficulty of obtaining proper legal assistance, rendered it expedient, for the ends of justice, that the case should be tried in the first instance in the Court of Appeal, that is, in this Court. It is not to be wondered at, therefore, that this is, I believe, the only case but one which has been sent by letters of request from the great diocese of London, amply furnished as it is with all means and appliances requisite for the administration of justice, to the Court of Appeal ; and I much regret that I am deprived of the great assistance which I should have derived from the judgment of the Chancellor of the Bishop of London upon the important matters now before me if the case had been brought to this Court in the regular course of appeal.

The letters of request were accepted by Dr. Lushington, my learned predecessor in this chair, and in an early stage of these proceedings, before evidence had been taken, or argument heard upon the merits of the case, I was counsel for the accused clerk, and took objections to the manner in which the offence was charged in the criminal articles. When the Archbishop of Canterbury was pleased to confer on me the Judgeship of his Grace's Court, I proposed to hear the case, with the assistance of two learned persons well skilled in ecclesiastical law, the Vicar General of the Archbishop, and the Chancellor of Rochester ; but this arrangement was demurred to on behalf of the promoter of the Bishop of London's office, that is, the accuser ; and I then appointed, as my patent gave me full power to do, those two learned persons to be my surrogates for the hearing of this cause. They held one Court, and in consequence of arguments addressed to them touching the validity of their appointment, they adjourned the hearing of the cause until an opportunity had been afforded for an application to the temporal Court for a prohibition. The counsel for Mr. Mackonochie applied to the Court of Queen's Bench for

a rule *nisi* to shew cause why the prohibition should not go to these surrogates, upon the ground that I had exceeded my power in appointing them.

The promoter or accuser did not appear to shew cause against the prohibition, and the rule, upon an *ex parte* statement, was perhaps almost necessarily made absolute.

But I think if the rule had been opposed, and the powers given by my patent, and also the fact of the invariable usage of this Court, as proved by its earliest records, to appoint surrogates, been duly brought to the attention of the Court of Queen's Bench, it would have refused the rule. I mention this circumstance, in order to prevent any inconvenience which might ensue from its being supposed that this Court had no power to appoint surrogates. After these proceedings in the Court of Queen's Bench, the surrogates whom I had appointed, by a formal instrument entered upon the records of this Court, resigned the powers which I had conferred upon them.

A good deal has been said by the counsel on both sides respecting the motives of the accuser and the accused in this suit, but upon this subject the Court need say but very little.

Mr. Martin has been allowed by the Bishop of London to promote his Lordship's office in this case, and I must, of course, presume that his Lordship was satisfied upon good grounds, both that it was proper that his office should be promoted, and that Mr. Martin was a proper promoter ; because his Lordship, who has the advantage of having a very learned legal adviser, was, no doubt, aware, from the decision of the Queen's Bench in *The Queen v. the Bishop of Chichester* (1), as well as from the decision of the Privy Council in *Ray v. Sherwood* (2), that it was competent to him to exercise his discretion as to whether his office should be promoted or not. I must, therefore, consider Mr. Martin as having obtained full sanction for the course which he has adopted, and wholly decline to impute to him any unworthy motive whatever for the part which he has taken in this suit. It is, however, a matter of fact, admitted or proved before

(1) 2 El. & El. 209 ; s. c. 29 Law J. Rep. (N.S.) Q.B. 23.

(2) 1 Moo. P.C. 397.

me, that Mr. Martin is not, legally speaking, a parishioner of St. Alban's, nor, of course, a churchwarden, a part of whose office it is to represent to the Ordinary any misconduct on the part of the incumbent. This fact, however, if it should prove to be of any importance at all in this case, can only relate to the subordinate question of costs, and in no way affects my judgment upon the principal questions before me.

Upon the other hand, it is only fair to Mr. Mackonochie to state, that it appears from the documents in the cause, that having the cure of souls in one of the worst and most neglected districts of London, and receiving moderate temporal emolument, he has devoted himself to the discharge of his holy office, and to evangelizing an almost heathen population.

It is hardly necessary to say that he is not on this account entitled to conduct the services of the Church (if he has done so) in a manner not authorized by the law.

There are two modes of procedure in the Ecclesiastical Courts, one of civil, and the other of a criminal, character. There have been, in recent times, two leading judgments delivered upon the lawfulness of certain ornaments (to which word a precise legal meaning has been attached) used during the celebration of Divine worship and of certain decorations of churches.

In both these judgments the questions for judicial decision were raised in the civil form of procedure.

The "stone altar case" (as it has been commonly called)—*Faulkner v. Lichfield* (3)—arose on an application for a faculty in the Consistory of Ely, and was brought on appeal to this Court. The cause relating to the Knightsbridge Church—*Westerton v. Liddell* (4)—was instituted in a similar way in the Consistory of London, from a decision of which Court an appeal was prosecuted, first to the Court of Arches, and ultimately to the Judicial Committee of the Privy Council, which last tribunal recommended Her Majesty to reverse, upon many points, the decision of the Courts below. As the Archbishops and the Bishops, who are Privy Councillors, are only members of the Judicial Committee in cases of criminal proceedings against clerks in holy orders,

the prelates who did sit on this last occasion sat only as assessors and not as members of the Court.

The proceedings taken in this case are of a criminal character, and the sound of them, so to speak, is harsher than that of those in the cases to which I have referred, but substantially the same end is sought, and the same remedy is pursued; and, with an exception to be hereafter stated, I am not prepared to say,—inasmuch as not only certain ornaments, but also the use of them in the services of the Church, are complained of,—that it would have been competent to the promoters to have brought before me in a civil form all the matters contained in these criminal articles.

They are comprised under the following heads:

- (1.) The elevation of the Blessed Sacrament of the Lord's Supper, accompanied by kneeling "or excessive kneeling" at times not prescribed by the Rubrics.
- (2.) The use of incense during the celebration of the Eucharist.
- (3.) The mixing of water with wine at the time of the administration of the Lord's Supper.
- (4.) The use of lighted candles upon the Holy Table.

It will be necessary presently to enter into a fuller and more detailed statement of each of these charges, and of the answers to them. I will only observe that, with one exception to be noticed hereafter, there is no dispute in the case as to the facts to which the law is to be applied.

Statutes of Uniformity.

The law principally, though not exclusively, relied upon by the counsel for the promoter is contained in the Statutes of Uniformity. I must refer to these statutes.

The first statute is that of 2 & 3 Edw. 6. c. 1, which accompanied the first Prayer Book. The second is that of 5 Edw. 6. c. 4, which accompanied the second Prayer Book, and has been repealed. The third is that of 1 Eliz. c. 2, the penal sections of which are in force.

The additions made to the Prayer Book by James the First were not accompanied by a separate statute, but were made under the powers conferred upon the Crown act-

(3) 1 Robert. 184; s. c. 3 N. of Cas. 511.

(4) Moore's Special Report.

ing with the metropolitans, under a clause of the statute of Elizabeth.

Fourthly, the present Statute of Uniformity, 13 & 14 Car. 2. c. 4, which embodies so much of the statute of 2 & 3 Edw. 6. c. 1. and of 1 Eliz. c. 2, as were necessary for "the establishing and confirming" of the new Prayer Book.

It is necessary to refer somewhat at length to the statutes now in force.

The 2 & 3 Edw. 6. c. 1, which is the first act of uniformity of Edward the Sixth, begins by reciting that there had been in England different forms of prayer; "that is to say, the use of Sarum, of York, of Bangor, of Lincoln, and besides the same now of late much more divers and sundry forms and fashions have been used in the cathedral and parish churches of England and Wales, as well concerning the matins or morning prayer and the evensong, as also concerning the Holy Communion, commonly called the Mass, with divers and sundry rites and ceremonies concerning the same, and in the administration of the other sacraments of the Church; and as the doers and executors of the said rites and ceremonies, in other form than of late years they have been used, were pleased therewith; so other not using the same rites and ceremonies were thereby greatly offended; and, albeit, the King's Majesty, with the advice of his most entirely beloved uncle, the Lord Protector, with others of the council, hath heretofore divers times assayed to stay innovations or new rites, yet the same have not had such good success as His Highness required in that behalf; whereupon His Highness, by the most prudent advice, being pleased to bear with the frailty and weakness of his subjects in that behalf, of his great clemency hath not been only content to abstain from punishment of those that have offended in that behalf, (for that His Highness taketh that they did it of a good zeal,) but also to the intent a uniform, quiet, and godly order should be had concerning the premises, hath appointed the Archbishop of Canterbury and certain of the most learned and discreet bishops and other learned men of the realm to consider and ponder the premises; and thereupon having as well eye and respect to the most sincere and pure Christian religion taught by the Scriptures as to

usages in the primitive church, should draw and make one convenient and meet order, rite, and fashion of common and open prayer, and administration of the sacraments, to be had and used in His Majesty's realm of England and Wales, the which at this time, by the aid of the Holy Ghost, with one uniform agreement is of them concluded, set forth, and delivered to His Highness, to his great comfort and quietness of mind, in a book, entitled 'The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, after the use of the Church of England:' Wherefore the Lords spiritual and temporal, and the Commons, in this present parliament assembled, considering as well the most godly travel of the King's Highness, of the Lord Protector, and of other His Highness' council, in gathering and collecting the said archbishop, bishops, and learned men together, as the godly prayers, orders, rites, and ceremonies in the said book mentioned, and the considerations of altering those things which be altered, and retaining those things which be retained in the said book, but also to the honour of God, and the great quietness which by the grace of God shall ensue upon the one and uniform rite and order in such common prayer, and rites and external ceremonies, to be used throughout England and in Wales, at Calice, and the marches of the same, do give to His Highness most hearty and lowly thanks for the same." Then it goes on and says, "That all and singular the ministers in any cathedral or parish church shall be bounden to say and use the matins, evensong, celebration of the Lord's Supper, commonly called the Mass, and administration of each of the sacraments and all their common and open prayer, in such order and form as is mentioned in the same book, and none other or otherwise."

It then enacts, "That if any manner of parson, vicar, or other whatsoever minister that ought or should sing or say the common prayer mentioned in the said book, or minister the sacraments, shall refuse to use the said common prayer or to minister the sacraments in such cathedral or parish church, in such order and form as they be mentioned and set forth in the said book, or shall use, wilfully and obstinately stand-

ing in the same, any other rite or ceremony, order, form, or manner of mass openly or privately, or matins, evensong, administration of the sacraments, or other open prayer, than is mentioned and set forth in the said book," he becomes liable to certain penalties.

The 7th section of this act states, "That it shall be lawful for all men, as well in churches, chapels, oratories, or other places, to use openly any psalm or prayer taken out of the Bible at any due time, not letting or omitting thereby the service or any part thereof mentioned in the said book."

The 8th section of this act provides, "That the books concerning the said services shall, at the costs and charges of the parishioners of every parish and cathedral church, be attained and gotten before the Feast of Pentecost next following, or before; and that all such parishes and cathedral churches, or other places where the said books shall be attained and gotten before the said Feast of Pentecost, shall, within three weeks next after the said books so attained and gotten, use the said service, and put the same in use according to this act."

The present Act of Uniformity, passed in the year 1662, the 13 & 14 Car. 2. c. 4, is entitled 'An Act for the Uniformity of Public Prayers, and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the form of making, ordaining and consecrating Bishops, Priests and Deacons in the Church of England.'

The 1st section gives the following title to our present Prayer Book: 'The Book of Common Prayer and administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the Church of England; together with the psalter or psalms of David, pointed as they are to be sung or said in Churches; and the form and manner of making, ordaining and consecrating of Bishops, Priests and Deacons.'

The 2nd section, after reciting "that nothing can conduce more to the settling of the peace of the nation, nor to the honour of our religion and the propagation thereof, than a universal agreement in the public worship of Almighty God, and to

the intent that every person in this realm may certainly know the rule to which he is to conform in public worship and administration of sacraments, and other rites and ceremonies of the Church of England," enacts, "That all ministers shall be bound to say and use the morning prayer, evening prayer, celebration and administration of both the sacraments, and all other the public and common prayer, in such order and form as is mentioned in the book annexed and joined to the present act, intituled the Book of Common Prayer, and administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the Church of England."

And by the 24th section it is further enacted, "by the authority aforesaid, that the several good laws and statutes of the realm, which have been formerly made, and are now in force, for the uniformity of prayer and administration of the sacraments within this realm of England and places aforesaid, shall stand in full force and strength, to all intents and purposes whatsoever, for the establishing and confirming of the said book," (intituled as aforesaid) "hereinbefore mentioned to be joined and annexed to this act, and shall be applied, practised and put in ure for the punishing of all offences contrary to the said laws, with relation to the book aforesaid, and no other."

By the 17th section it is further enacted, "by the authority aforesaid, that no form or order of common prayers, administration of sacraments, rites or ceremonies, shall be openly used in any church, chapel, or other public place, or in any college or hall in either of the Universities, the colleges of Westminster, Winchester or Eton, or any of them, other than what is prescribed and appointed to be used in and by the said book."

By the statute 1 Eliz. c. 2. s. 27, it is enacted, "that all laws, statutes and ordinances wherein or whereby any other service, administration of sacraments, or common prayer is limited, established, or set forth to be used within this realm, or any other the Queen's dominions or countries, shall from henceforth be utterly void and of none effect."

The main proposition upon which the

alleged unlawfulness of all the matters contained in the criminal articles has been rested by the counsel for the promotor is, that they are all, in effect, rites and ceremonies other than and additional to those which are prescribed in the Prayer Book and the Act of Uniformity.

The answer to this charge is twofold: first, it is averred that the matters complained of are not rites or ceremonies; secondly, that if they fall within either category they are not "other than or additional to" those prescribed in the Book of Common Prayer, in the sense of being at variance with or repugnant to them, forasmuch as they are in accordance with and subsidiary to them.

Under the first position they maintain that the terms "rites and ceremonies" mean an entire service, such as Masses for the dead, or services for particular festivals; or customs, such as creeping to the Cross, and the like, which were abolished at the time of the Reformation.

That the elevation of the Blessed Sacrament, excessive kneeling, the use of incense, the mixing water with the wine, the lighting of candles, are elements or ingredients of a rite or ceremony, and not a rite or a ceremony *per se*.

The terms Rite and Ceremony, as used in the first Prayer Book, and from thence imported into our present Prayer Book, are terms, so to speak, of ecclesiastical and ritual art, and must be construed with reference to their use in contemporaneous and other works of writers upon ritual, unless they receive a different meaning from a comparison of other passages or parts in the Prayer Book or Statute in which they are found.

I must, therefore, refer at length to the Preface in our Prayer Book, entitled,—

"Of Ceremonies.

"Why some be abolished and some retained.

"Of such ceremonies as be used in the Church, and have had their beginning by the institution of man, some at the first were of godly intent and purpose devised, and yet at length turned to vanity and superstition; some entered into the Church by indiscreet devotion, and such a zeal as was without knowledge; and for because they were winked-at in the beginning, they grew daily to more and more abuses, which

not only for their unprofitableness, but also because they have much blinded the people, and obscured the glory of God, are worthy to be cut away, and clean rejected: other there be, which although they have been devised by man, yet it is thought good to reserve them still, as well for a decent order in the Church (for the which they were first devised), as because they pertain to edification, whereunto all things done in the Church (as the apostle teacheth) ought to be referred.

"And although the keeping or omitting of a ceremony, in itself considered, is but a small thing; yet the wilful and contemptuous transgression and breaking of a common order and discipline is no small offence before God, *Let all things be done among you, saith Saint Paul, in a seemly and due order*: the appointment of the which order pertaineth not to private men; therefore no man ought to take in hand, nor presume to appoint or alter any publick or common order in Christ's Church, except he be lawfully called and authorized therunto.

"And whereas in this our time, the minds of men are so diverse, that some think it great matter of conscience to depart from a piece of the least of their ceremonies, they be so addicted to their old customs; and again on the other side, some be so new-fangled, that they would innovate all things, and so despise the old, that nothing can like them but that is new; it was thought expedient, not so much to have respect how to please and satisfy either of these parties, as how to please God, and profit them both. And yet lest any man should be offended, whom good reason might satisfy, here be certain causes rendered, why some of the accustomed ceremonies be put away, and some retained and kept still.

"Some are put away, because the great excess and multitude of them hath so increased in these latter days, that the burden of them was intolerable; whereof Saint Augustine in his time complained, that they were grown to such a number, that the estate of Christian people was in worse case concerning that matter, than were the Jews. And he counselled that such yoke and burden should be taken away, as time would serve quietly to do it. But what would Saint Augustine have

said, if he had seen the ceremonies of late days used among us ; whereunto the multitude used in his time was not to be compared ! This our excessive multitude of ceremonies was so great, and many of them so dark, that they did more confound and darken, than declare and set forth Christ's benefits unto us. And besides this, Christ's Gospel is not a ceremonial law (as much of Moses' law was), but it is a religion to serve God, not in bondage of the figure or shadow, but in the freedom of the spirit ; being content only with those ceremonies which do serve to a decent order and godly discipline, and such as be apt to stir up the dull mind of man to the remembrance of his duty to God, by some notable and special signification, whereby he might be edified. Furthermore, the most weighty cause of the abolishment of certain ceremonies was, that they were so far abused, partly by the superstitious blindness of the rude and unlearned, and partly by the unsatiable avarice of such as sought more their own lucre, than the glory of God, that the abuses could not well be taken away, the thing remaining still.

"But now as concerning those persons, which peradventure will be offended, for that some of the old ceremonies are retained still : If they consider that without some ceremonies it is not possible to keep any order, or quiet discipline in the Church, they shall easily perceive just cause to reform their judgments. And if they think much, that any of the old do remain, and would rather have all devised anew : then such men granting some ceremonies convenient to be had, surely where the old may be well used, there they cannot reasonably reprove the old only for their age, without bewraying of their own folly. For in such a case they ought rather to have reverence unto them for their antiquity, if they will declare themselves to be more studious of unity and concord, than of innovations and new fangleness, which (as much as may be with true setting forth of Christ's religion) is always to be eschewed. Furthermore, such shall have no just cause with the ceremonies reserved to be offended. For as those be taken away which were most abused, and did burden men's consciences without any cause : so the other that remain, are retained for a discipline and

order, which (upon just causes) may be altered and changed, and therefore are not to be esteemed equal with God's law. And moreover, they be neither dark nor dumb ceremonies, but are so set forth, that every man may understand what they do mean, and to what use they do serve. So that it is not like that they in time to come should be abused as other have been. And in these our doings we condemn no other nations, nor prescribe any thing but to our own people only : for we think it convenient that every country should use such ceremonies as they shall think best to the setting forth of God's honour and glory, and to the reducing of the people to a most perfect and godly living, without error or superstition ; and that they should put away other things, which from time to time they perceive to be most abused, as in men's ordinances it often chanceth diversely in divers countries."

Perhaps it would be difficult to deduce from this language any certain conclusion as to the precise sense in which the terms *Rites* and *Ceremonies* are used.

In the first Prayer Book, at the close of the dissertation, which is at the end of the services, "Of ceremonies, why some be abolished and some retained," are "certain notes for the more explication and decent ministration of things contained in this book," one "note" is "as touching kneeling, crossing, holding up of hands, knocking upon the breast, and other gestures, they may be used or left as every man's devotion serveth without blame."

This note does not appear in the subsequent Prayer Books, but, nevertheless, at the Hampton Court conference in the year 1604, the Bishop of Winchester, replying to the objections made by the Puritans to the use of the cross in baptism and ceremonies generally, said,—*"In prayer, the kneeling on the ground, the lifting up of our hands, the knocking of our breasts, are ceremonies significant : the first, of our humility coming before the mighty God ; the second, of our confidence and hope ; the other, of our sorrow and detestation of our sins ; and these are and may lawfully be used."*

"Mr. Dean of the Chapel remembered the practice of the Jews, who, unto the institution of the Passover, prescribed unto them by Moses, had, as the rabbins wit-

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nesse, added both signes and words, eating soure herbs, and drinking wine, with these words to both, 'Take, and eat these in remembrance,' &c.; 'Drink this in remembrance,' &c. Upon which addition and tradition of theirs, our Saviour instituted the Sacrament of his last Supper, in celebrating it with the same words and after the same manner; thereby approving that fact of theirs in particular, and generally, that a Church may institute and retain a signe significant," which, says the reporter of the conference, satisfied His Majesty exceeding well—*Cardwell; Conferences on the Book of Common Prayer*, p. 197.

These gestures appear to me to have been considered as ceremonies wisely left to every man's discretion.

In the first "order of the Communion" which preceded the first Prayer Book, the Rubric says, "The time of the Communion shall be immediately after that the Priest himself hath received the Sacrament, without the varying of any other *rite* or *ceremony* in the Mass (until such order shall be provided), but, as heretofore, usually the Priest has done with the Sacrament of the Body," &c.

Here, again, rite and ceremony seem to be used for elements or portions of a service.

Let us consider the construction put upon the Latin terms (from which, of course, the English terms are borrowed) *ritus* et *cæremoniæ* by high Latin authorities.

Bona (*Opera Omnia*, p. 562), writing, *De Disciplina psallendi*, § III., says,

Cæremoniæ quid sint, et quæ hujus nominis origo. Earum efficacia, et utilitas ad divinum cultum. Veræ a falsis, et superstitiosis discernendæ. Exteriores cæremonias sine interno spiritu parum prodesse.

..... Sunt autem cæremoniæ, si proprie loqui velimus, ritus sancti in sacrificiis, et divinis officiis ad Dei cultum adhibiti: sed migravit vocabulum in usus etiam profanos; nam cum homines instituissent sibi invicem inclinare, genua flectere, manus osculari: hæ et aliæ honoris exhibitiones, cum proprio nomine carerent, cæptæ sunt etiam cæremoniæ dici.

Van Espen (*Jus Eccles. Universum*, p. 410. t. 5. c. 1, *de Celebratione Missarum*) speaking of the celebration of the Eucharist, says: "Certum tamen est ipsum apostolis

suis, totique Ecclesiæ, in eorum persona, potestatem auctoritatemque dedisse ea omnia in augustissimi hujus mysterii *ritibus* seu *cæremoniis* addendi, demendi, immutandi quæ illius dignitati et populorum devotioni pro temporum et locorum diversitate magis congruere judicarent."

Here, *ritus* and *cæremoniæ* are not separate services, but certain ingredients or accompaniments of one service, that of the Eucharist.

Gavanto (vol. 1. p. 3, edit. 1823, Venice), a great Roman ritualist, says, that Bona and Suarez both define *cæremonia* as "actio religiosa ad cultum et decentiam sacrificii ab ecclesia instituta."

He quotes Quarti's opinion as follows: "Procedit Quarti ad dividendas cæremonias in eas, quæ sunt intrinsecæ ipsi missæ, et partes ejusdem, et consistunt, dicit ipse, tum in verbis, tum in gestibus celebrantis, de quibus late Suarez, *disp.* 83 et 84, et in eas, quæ sunt circumstantiæ extrinsecæ ejusdem sacrificii, ut locus, tempus, vasa, et vestimenta sacra, &c. Dicit præterea, quod illæ cæremoniæ, quæ consistunt in gestibus, quædam inductæ sunt propter decentiam operandi, nec habent aliam significationem, ex. gr. quod sacerdos dum signat seipsum, ponit sinistram sub pectore; et aliæ inductæ sunt propter significationem moralem, vel mysticam, verb. grat. *mixtio aquæ cum vino*" (observe these words), "digitorum ablutio, crucis signa, de quibus Divus Thomas 3 *part. quæst.* 83, *artic.* 4, § 5. Verum, pace tanti viri, ego distinguem cæremoniam sacram a ritu, dicendo, ritus sacros consistere in illis precibus, epistola, evangelio, &c., quæ juxta ecclesiæ dispositionem recitari debent in missa; cæremoniam autem consistere in solis gestibus, quibus prædictæ preces juxta ejusdem ecclesiæ præscriptum peragi debent ad majorem ornatum, et decentiam sacrificii, quod celebratur; et revera Cæremonialia, seu libros cæremoniarum vocamus illos, qui non orationes et preces dicendas præscribunt, sed modum, quo illæ dicendæ sunt; e contra Rituales nuncupamus illos, qui continent preces, seu alias orationes, quas recitandas præscribunt. Ritus, quoniam in verbis regulariter consistunt, vel sunt partes missæ ordinariæ, quia scilicet semper ingrediuntur ejus compositionem; vel sunt extraordinariæ, sive mobiles, quia

non semper ejus compositionem ingrediuntur, sed ad majorem quandoque adduntur solemnitatem, atque ornatum" (5).

The Council of Trent, in the 22nd session, the 5th chapter, "*De Missæ Ceremoniis et Ritibus*," speaks as follows: "Quumque natura hominum ea sit, ut non facile queat sine adminiculis exterioribus ad rerum divinarum meditationem sustolli, propterea pia mater ecclesia ritus quosdam ut scilicet quædam submissa voce alia vero elatiore in missa pronuncierentur, instituit, ceremonias item adhibuit; ut" (these are the instances of ceremonies) "mysticas benedictiones, *lumina*, *thymiamata*, vestes, aliaque id genus multa ex apostolica disciplina et traditione, quo et majestas tanti sacrificii commenderetur, et mentes fidelium per hæc visibilia religionis et pietatis signa ad rerum altissimarum, quæ in hoc sacrificio latent, contemplationem excitarentur."

Whatever authority this passage may have, it would appear to include under the title *Cæremoniæ*, among other things, the use of lights, of incense and of vestments.

There is no doubt that the terms Rites and Ceremonies are sometimes used in the sense contended for by the defendants; but on the whole, the result of this examination of authorities leads me to the conclusion that there is a legal distinction between a Rite and a Ceremony; the former consisting in services expressed in words, the latter in gestures or acts preceding, accompanying or following the utterance of these words.

Applying this principle to the charges before me, I am of opinion, that the matters complained of must be considered in law as ceremonies.

Before I proceed to consider the greater question, whether they are ceremonies forbidden by the ecclesiastical law of England, and more especially by that part of it which consists of the provisions of the Prayer Book and the Statute of Uniformity, I think it right to draw attention to the judgment of the Church Universal, and especially of "that pure and apostolical branch of it established in this realm," upon the general subject of ceremonies.

And from that judgment it will, I think, appear that an essential distinction is drawn

(5) Gavanto, 'Thesaurus Sacrorum Rituum,' vol. 1. p. 4, par. I., in Rubrica Generali.

between those which are from their origin immutable, and those which it is competent to the proper authorities to mould according to the varying necessities and exigencies of each particular Church.

The only orders given in the New Testament with respect to the ritual of the Church are of the most general kind, and are to be found in the following passages: St. Paul in his First Epistle to the Corinthians ch. xiv. 26, 40, directs,

πάντα πρὸς οἰκοδομὴν γένησθω

and again,

πάντα εὐσχημῶνς καὶ εἰς τὴν δόξαν γένησθω

which we render,

"Let all things be done to edification,"

and

"Let all things be done decently and in order."

St. Augustine, whose authority our Church so highly regards, observes (Ep. 36, tom. 2. p. 101), "In his rebus de quibus nihil certi statuit Scriptura Divina, mos populi Dei vel instituta majorum pro lege tenenda sunt."

And St. Jerome, to whom our articles refer, says (Ep. 28. *ad Lucinium Bæticum*), "Ego illud te breviter admonendum puto traditiones ecclesiasticas præsertim" (remark the caution) "quæ fidei non officiant ita observandas ut a majoribus traditæ sunt: nec aliorum consuetudinem aliorum contrario more subverti. Sed unaquæque provincia abundet in suo sensu, et præcepta majorum leges apostolicos arbitretur."

When Augustine, the missionary of Gregory the Great (to whom this country is so much indebted), found the ancient British Churches in possession of a ritual in accordance with the Gallican use and that of the Eastern Church, he became perplexed what course to pursue, and wrote for advice on the subject to the Pope. From our old historian Bede we learn how wise an answer he received (*Beda*, Hist. i. 27, II. "Interrogatio Augustini"): "Cum una sit fides," wrote Augustine, "cur sunt ecclesiarum diversæ consuetudines, et altera consuetudo missarum in sancta Romana ecclesia, atque altera in Galliarum tenetur? Respondit Gregorius Papa. Novit fraternitas tua Romanæ ecclesiæ consuetudinem, in qua se meminit nutritam. Sed mihi placet, sive in Romana, sive in Galliarum, seu in qualibet ecclesia aliquid invenis"

quod plus Omnipotenti Deo possit placere, sollicite eligas, et in Anglorum ecclesia, quæ adhuc ad fidem nova est, institutione præcipua, quæ de multis ecclesiis colligere potuisti, infundas. Non enim pro locis res, sed pro bonis rebus loca amanda sunt. Ex singulis ergo quibusque ecclesiis, quæ pia, quæ religiosa, quæ recta sunt elige, et hæc, quasi in fasciculum collecta, apud Anglorum mentes in consuetudinem deponere."

According to a later historian of our Church, the learned Field, Dean of Gloucester: "Ceremonies are outward acts of religion, having institution, either from the instinct of nature, as the lifting up of the hands and eyes to heaven, the bowing of the knee, the striking of the breast, and such like; or immediately from God, as the sacraments; or from the Church's prescription: and either only serve to express such spiritual and heavenly affections, dispositions, motions and desires as are or should be in men; or else to signify, assure and convey unto them such benefits of saving grace as God in Christ is pleased to bestow on them. To the former purpose and end the Church hath power to ordain ceremonies; to the later, God only"—*Field, Of the Church*, vol. 2. p. 527.

And Burnet in his *History of the Reformation* (edit. 1829, vol. 2, p. 164), expressing himself with greater accuracy than usual, in speaking of the use of a ceremony in relation to the belief of the Church, says, "This seems more necessary to be well explained, by reason of the scruples that many have since raised against significant ceremonies, as if it were too great a presumption in any Church to appoint such, since these seem to be of the nature of sacraments. Ceremonies that signify the conveyance of a Divine grace and virtue are indeed sacraments, and ought not to be used without an express institution in Scripture; but ceremonies that only signify the sense we have, which is sometimes expressed as significantly in dumb shews as in words, are of another kind; and it is as much within the power of the Church to appoint such to be used, as it is to order collects and prayers, words and signs being but different ways of expressing our thoughts."

The language of our Church in her Arti-

cles on this subject is expressed as follows: In Article 20,—

"Of the Authority of the Church.

"The Church hath power to decree rites or ceremonies, and authority in controversies of faith: And yet it is not lawful for the Church to ordain anything that is contrary to God's Word written, neither may it so expound one place of Scripture, that it be repugnant to another. Wherefore, although the Church be a witness and a keeper of Holy Writ, yet, as it ought not to decree anything against the same, so besides the same ought it not to enforce anything to be believed for necessity of salvation."

And in the 34th Article,—

"Of the Traditions of the Church.

"It is not necessary that traditions and ceremonies be in all places one, or utterly like, for at all times they have been divers, and may be changed according to the diversities of countries, times, and men's manners, so that nothing be ordained against God's Word. Whosoever through his private judgment, willingly and purposely doth openly break the traditions and ceremonies of the Church, which be not repugnant to the Word of God, and be ordained and approved by common authority, ought to be rebuked openly (that others may fear to do the like), as he that offendeth against the common order of the Church, and hurteth the authority of the magistrate, and woundeth the consciences of the weak brethren.

"Every particular or national Church hath authority to ordain, change and abolish ceremonies or rites of the Church ordained only by man's authority, so that all things be done to edifying."

Bishop Beveridge (few higher authorities could be invoked) in his '*Ecclesia Anglicana Ecclesia Catholica, or the Doctrine of the Church of England consonant to Scripture, Reason, and Fathers, in a Discourse upon the Thirty-nine Articles*,' (Oxford Edition, 1846,) vol. 7, p. 373, thus comments upon article 20, "Of the authority of the Church":—"First (he says), it hath power to decree rites and ceremonies, so that it is lawful for the Church to decree and appoint what rites or ceremonies shall

be used in the public worship of the great God ; not as parts of that worship, for then they would not be rites and ceremonies. And therefore it is in vain objected by the adversaries to this truth, that herein we give the Church power to add anything to God's worship which is not commanded in his Word ; as if rites and ceremonies were in themselves any part of worship. Whereas what is any part of God's worship cannot be a mere rite or ceremony, neither can that which is a mere rite or ceremony be any part of His worship. For rites and ceremonies, in that they are nothing but rites and ceremonies, be in themselves indifferent, neither good nor bad, until determined by the Church ; after which determination also they still remain indifferent in themselves, and are good and bad only in reference to their decree, who had power and authority to determine them. Whereas every the least part of God's worship in that it is a part of God's worship can be by no means omitted without sin ; and therefore when it is here said that the Church hath power to decree rites and ceremonies, we must always by the words 'rites and ceremonies' understand nothing else but the particular circumstances and customs to be observed in the service and worship of God, not as any cause or part thereof."

Again the Bishop says, (p. 375)—"We must needs grant that the Church of Corinth (and so other Churches) had power and authority to determine and order these things. Or, if they had no such power before, yet St. Paul, or rather the Most High God by St. Paul, did in these words grant them such a power and authority, in the decreeing these and the like circumstances and ceremonies for the more decent and orderly worshipping of the Glorious Jehovah, giving them this one general comprehensive rule, 'Let all things be done to edifying, and in order ;' out of which one general rule, that, and all Churches whatsoever, according to the variety of times and places they live in, were to frame other particular rules and canons for the edifying and orderly performance of God's worship ; who being a God, not of confusion, but of order in himself, he requires such worship as is done in order, not in confusion, from us."

(Page 377)—"Neither can I see in reason how this power in ceremonies and contro-

versies should be denied the Church. For first, as for ceremonies, they cannot but be acknowledged to be indifferent, neither in themselves good nor bad ; and if they be in themselves either good or bad and not indifferent, they are not merely ceremonies, especially if they be in their own nature bad and sinful, they are not the ceremonies intended in this place. For this same Article, in the following part of it, doth determine that the ceremonies here intended are only such as are not against the Scripture, and by consequence not unlawful. Now such rites and ceremonies as are in themselves indifferent, it can be no sin to determine them to either part ; for which part soever they are determined to, they cannot be determined into sin. I mean, what is in itself indifferent, and so may be used or not used without sin whether it be decreed to be used, or not to be used, it cannot be any sinful decree, especially when, after as well as before the decree, they are still acknowledged to be in themselves indifferent, though not as to our use. Which things of indifferency also, as all ceremonies are, cannot be supposed to come within the command of God, for then they would not be indifferent ; and seeing God hath not left any particular command, but only a general rule about all things of indifferency, that they be so ordered that they be done decently and to edifying, the Church cannot be thought to sin in determining them, so as she thinks the most edifying and decent, as we shall by the blessing of God see more fully in the 34th Article. And if it be no sin thus for the Church to determine ceremonies, it must needs be granted that she hath power to decree them."

And on Article 34, "Of the Traditions of the Church," the Bishop observes, (p. 526)—"But there being many circumstances required to the performance as well of religious as civil actions, and so to the worship of God as well as anything else, as, for example, the time when, the place where, the habit in which His public service shall be performed, and the like, it being impossible it should be performed without these and the like circumstances, and seeing the all-wise God hath thought good not to determine these in His Word, but to leave it to the discretion of the

Church to determine them as it shall see fit, only giving them this general rule to square all these their determinations by—‘Let all things be done decently and in order.’ Hence it is that every particular Church hath still thought fit to exercise this her power and authority in determining these circumstances, according to that manner as seemeth to herself orderly and devout, so that there is no necessity that one Church should determine them after the same manner that another doth ; nay, it is often necessary that one Church should not follow another in this case ; for it often so falls out that what is decent in one place is unseemly in another, and every Church is bound to model circumstances according to that order which is the most seemly and decent in the place where it is settled.”

(Page 536)—“And if we should descend down to after councils, we shall find there was scarce ever a Provincial Church met together in council since our Saviour’s time but did not ordain some ceremonies or other to be observed by her children. It would be an endless thing to reckon up all the ceremonies that were ordained or altered by Provincial Churches ; or indeed, all the Provincial Churches that ordained or altered ceremonies in the primitive times. I shall, therefore, instance only in such ceremonies as our Church hath thought good still to retain, that so we may see both how Provincial Churches have still looked upon themselves in all ages to have power to ordain ceremonies, and also, that the ceremonies retained and ordered by our Church are no new-fangled ceremonies, nor Popish superstitions, but that most of them were ordained and used in the Primitive Church before the Pope had forged his superstitions.”

This very learned prelate then recites a great number of instances in which the Provincial Councils of different countries have made ordinances with respect to their own ritual observances, and adds, “And thus we see how many, even of the very rites and ceremonies which are still in use amongst us, were long ago ordained by Provincial Churches met together in council. Many more might I heap up to the same purpose, but these may be enough to shew how the Provincial or National Churches of Christ in all ages, since His Incarnation.

have still exercised this power in ordaining, altering and abolishing ceremonies, which certainly they would never have done if they had not believed they had power to do it.”

Bishop Jeremy Taylor, (vol. 14, Heber’s edition), in his ‘Rule of Conscience’ (p. 21), lays down as Rule XII., *All those Rituals which were taught to the Church by the Apostles concerning Ministries, which were of Divine institution, do oblige all Christendom to their observation.*

And on this rule he observes, —“(1.) I instance in the Holy Sacrament first of all ; concerning which the Apostles delivered to the Churches the essential manner of celebration, that is, the way of doing it according to Christ’s commandment, for the words themselves, being large and indefinite, were spoken indeed only to the Apostles, but yet they were representatives of all the whole ecclesiastical order in some things, and of the whole Christian Church in other ; and, therefore, what parts of duty, and power, and office did belong to each, the Apostles must teach the Church, or she could have no way of knowing without particular revelation.

“(2.) Thus the Apostles taught the bishops and priests to consecrate the symbols of bread and wine before they did communicate ; not only because by Christ’s example we were taught to give thanks before we eat, but because the Apostles knew that the symbols were consecrated to a mystery. And this was done from the beginning, and in all Churches, and in all ages of the Church ; by which we can conclude firmly in this rule, that the Apostles did give a canon or rule to the Churches to be observed always, and that the Church did never believe she had authority or reason to recede from it. For in those rites which are ministries of grace, no man must interpose anything that can alter any part of the institution, or make a change or variety in that which is of Divine appointment. For the effect in these things depends wholly upon the will of God, and we have nothing to discourse or argue ; for we know nothing but the institution, nothing of the reason of the thing, and therefore we must in these cases, with simplicity and obedience, apply ourselves to practise as we have received, for we have nothing else to guide

na. Memory and obedience, not discourse and argument, are here in season."

The Bishop then proceeds to distinguish between alterable and unalterable rites, as follows (p. 222): "But where the Apostles did not interpose, there the Churches have their liberty; and in those things also, which evidently were no part of the appointed liturgy or ministration in those things, though it be certain the Apostles did give rules of order and decency, yet because order is as variable as the tactics of an army, and decency is a relative term, and hath a transient and changeable sense, in all these things there is no prescription to the Church, though we did know what the Churches apostolical did practise, for they did it with liberty, and therefore we are not bound; the Churches are as free as ever; though the single persons in the Churches can be bound, yet the Churches always have liberty."

Luther, in the 'Formula Missæ et Communionis' for the Church of Wittenberg, which appears to have been written in 1523, speaking of the ceremonies of Divine worship which he recommends, says:—"Sexto, sequitur Evangelii lectio. Ubi nec candelas neque thurificationem prohibemus, sed nec exigimus, esto hoc liberum."

The same spirit of true liberality is exemplified in the writings of the late most distinguished American prelate, the Bishop of Vermont. Speaking of ornaments used in the services of the Church, he observes: "The same liberty exists with regard to lights upon or behind the altar, the use of chrism and incense, the mixing of water with the wine of the Holy Eucharist, and the representation of figures and emblems in stained glass windows; for all of these were established by usage in the second year of Edward the Sixth, and our Church has uttered no *prohibition* concerning any of them, but has merely *omitted* to notice them, directly or indirectly, in her whole legislation. It is certain that none of these things interfere with our liturgy, because they may be used without deviating in the slightest degree from our prescribed forms. And the plain result would seem to be, that their introduction, whether expedient or not, can never be justly considered unlawful"—*Law of Ritualism, by Bishop of Vermont*, p. 84.

Great variety of usage is to be found in the Greek, the Roman, the Gallican and the English Churches upon this subject. All persons moderately acquainted with ecclesiastical history are aware with what zeal and tenacity the Church of Milan has clung to its Ambrosian rite;—of the various liturgies of the Greek Church, and the different uses in England which, though much reconciled by the famous use of Sarum, were ultimately merged in our present Prayer Book.

I will close my citations on this subject with one from the Great Roman Ritualist, Bona: "Quarto, tanquam verissimum, et apud omnes indubitatum habendum est id quod sæpius in hoc libro repetendum fuit, quædam esse in ecclesia, quæ ad fidem ut dogmata, quædam quæ ad ritus ut mores pertinent. Quæ fidei sunt, sancta inviolabilia, immutabilia semper, et ubique manent; Deumque solum auctorem agnoscunt. Ad ea credenda cæco quodam obsequio captivum ducimus intellectum; ut si quis ea turbare, vel quovis modo immutare aut iis contradicere ausus fuerit, diro anathemate percussus extra ecclesiam fit, nec locum deinceps habet inter Orthodoxos. Ritus et ea quæ morum, ac disciplinæ sunt ab hominum arbitrio pendent, et cum tempore variantur, rerumque statu immutato veteres consuetudines abrogantur, et novæ succedunt, illæsa fidei unitate"—*Bonæ Opera Omnia*, "*Rerum Liturgicarum*," lib. 1. c. 23. p. 265.

"Moribus autem mutatis sacros quoque ritus variari consequens fuit. Distinguendæ igitur ætates; disquirenda mutationis ratio et omnia ad sua principia revocanda sunt ut certa rerum notitia habeatur"—*Bona, Rer. Lit.*, lib. 1. c. 18. s. 1. p. 242.

(IX.) Ritus ac cæremoniæ non in æternum permanent tollique possunt ac mutari sine fidei ac unitatis dispendio—*Ib.* s. 9, p. 247.

I have thought it expedient to recite the foregoing authorities upon the nature of Rites and Ceremonies in order to fortify my position, that the questions now pending before me in no way affect the relations of the Church of England to the Church Catholic, but have reference solely to matters of detail and order in her ministrations, which every independent Church has at all times claimed and exercised; and having

thus, I trust, divested the issue of the case before me of that importance which has been, not unnaturally perhaps, ascribed to it by the excited feelings of both parties, I return to the consideration of the charges contained in these criminal articles.

I am not called upon to pronounce in the judgment which I am about to deliver any decision upon any question of doctrine. If, indeed, the law had cast so grave a responsibility upon me, I should have much considered whether it would not have been right and proper to have invoked the aid of spiritual assessors, competent from their position and learning in the Church, to have assisted and guided me in the discharge of such a duty. I thank God, however, that no such consideration embarrasses me on the present occasion.

Criminal Articles in the Ecclesiastical Court distinguished from an Indictment.

Two conclusions result from the premises which I have stated : first, that the matters in dispute are Ceremonies ; and secondly, that they belong to that category of Ceremonies which are designated "mutable."

There is also a proposition of fact which should be mentioned in this place, that none of the ceremonies complained of are expressly directed to be used either in the Prayer Book or the Act of Uniformity.

The promotor avers, and undertakes to prove, that with respect to these matters of charge, Mr. Mackonochie has violated the Statutes of Uniformity, certain specified canons of those enacted by the Convocation and Crown in 1603, and the general ecclesiastical law.

The counsel for Mr. Mackonochie have contended, that inasmuch as a breach of the Statutes of Uniformity rendered Mr. Mackonochie liable to be proceeded against criminally in a court of common law, as well as in this court, I am bound to apply the same rules and observe the same strictness required by the common law courts in a matter of indictment. I am of a different opinion, having regard both to principle and to precedent ; nor do I admit the proposition that unless Mr. Mackonochie be proved to have committed a breach of the Statutes of Uniformity, although he should be proved to have offended against the Law Ecclesiastical, that he is entitled to an

acquittal from the charges now laid against him. I deem it to be my duty to consider whether the defendant be or be not proved to have offended against the Laws Ecclesiastical in the matter of one or more, or all, of these criminal charges, and to give my decision accordingly.

I have been referred to a case—*The King v. Sparkes* (6). This was an indictment in the first year of James the Second against a clergyman, at the Quarter Sessions in Devonshire, for using *alias preces* in the Church, and *alio modo* than mentioned in the Book of Common Prayer ; and the indictment concluded *contra formam statuti, &c.* He was found guilty, and fined 100 marks. Upon writ of error, it was admitted that offences against these statutes might be inquired of by the Justices, but the indictment was held bad, for that it ought to have alleged that the defendant used other forms and prayers instead of those enjoined, which were neglected by him ; for that otherwise any person might be indicted who used prayers before his sermon other than such as are required by the Book of Common Prayer ; and Mr. Cripps observes, that although this decision established that Justices had jurisdiction in such cases, and that indictments, properly framed for offences against these statutes, might be inquired of by them, yet it is probable that indictments of this nature have been very rarely, if ever, preferred ; for the jurisdiction of the ecclesiastical court was in no way taken away by those statutes. And wherever it may have been necessary to institute any penal proceedings against clergymen for the omission of, or addition to, anything contained in the Book of Common Prayer, the proceeding has probably been always in the ecclesiastical court ; and, indeed, prosecutions in the temporal courts upon those statutes seem to have been discouraged by the Judges ; for in a case at the Thetford Lent Assizes in 1795, a clerk was indicted upon these statutes, but the evidence was not that he left out or added any prayers, or altered the form of worship, but that he did not read prayers twice on a Sunday, but alternately one Sunday in the morning

(6) 3 Mod. 79 ; s. c. Cripps's Laws of the Church, 604 ; 3 Burn's Ecclesiastical Law, 429.

and the next in the evening, and omitted to read them at all on certain saints' days. Mr. Baron Perryn, who tried the indictment, observed, that it was *primæ impressionis*, and being of opinion that the offence complained of was purely of ecclesiastical cognizance, and not the subject of prosecution in the temporal courts, directed the jury to acquit the defendant, which they accordingly did.

Looking at all the circumstances it does not appear to me that the case of *The King v. Sparkes* is worthy of much attention, and it will in no way influence my judgment.

The principal heads under which the argument of the counsel for the promoter may be ranged appear to me to be the following :

First. That as by each and all of the practices charged in these articles, a new rite or ceremony has been added by Mr. Mackonochie to those which are prescribed by the Statutes of Uniformity, such practices are unlawful.

Secondly. That these particular additions are expressly prohibited.

Thirdly. That they are by necessary implication prohibited, inasmuch as they are connected with Roman or Popish doctrines.

Fourthly. That as such they have, as a matter of fact, been disused ever since the Reformation.

Now it appears to me necessary to examine, in the first instance, these last two grounds of objection, inasmuch as a consideration of the weight due to them must affect the general application of the law,—wherever it be obscure or ambiguous, or silent as to positive precept,—to the particular subject of these criminal charges.

Identity of the Status of the Church before and after the Reformation.

I will, therefore, consider in the first instance what weight is to be ascribed to the proposition—

“That they are by necessary implication prohibited, inasmuch as they are connected with Roman or Popish doctrines.”

The counter proposition appears to be that the similarity of these ornaments and practices with those in the Church of Rome does not furnish a safe criterion whereby to

try the question of their legality in the Church of England. That the true criterion is conformity with primitive and catholic use, and not antagonism to Rome.

A great part of the arguments addressed to me by the counsel on both sides was founded upon one or the other of these propositions.

I am very far from complaining of these arguments, or of the length to which they extended, for, in my opinion, a careful consideration of these propositions, however large, grave, and difficult, is a necessary preliminary to the due construction of the laws, formularies, and usages involved in the present inquiry.

They must, if this construction be doubtful, receive, so to speak, a colour and complexion from the judgment which is formed upon the spirit and principles which governed the Reformation of our Church.

It is my duty to form this judgment upon an historical examination—however unequal my powers may be to the task—into the principal acts of the State and the Church which, since the great epoch of the Reformation, have introduced, accompanied, and settled the ecclesiastical establishment of this kingdom.

It is scarcely necessary to say that where the language of a statute is plain I must obey it, or that where the Court of Appeal has laid down a principle applicable to this case, I must follow it. But, where I have no such guide, I must seek the exposition of the law from the general language of the cardinal statutes, the public and authoritative declarations which accompanied and illustrated them, the judicial construction which they have received, the formularies which these Statutes ordered, whether with or without the concurrent sanction of the Church, though happily the latter alternative is of rare occurrence ; I must also consider the canons which bind the clergy, and the opinions of the Bishops and great divines of our Church, who were not unfrequently also the councillors of the State and the authors of the formularies.

A.—*Identity in Law.*

I propose to pursue my investigation in the following order : first, I will consult the law ; secondly, I will have recourse to historical and theological statements.

The inquiry into the law admits of the following subdivisions: the statute law; the canons enacted since the Reformation; and the general common law of the Church.

In the history of no kingdom is the independence of the national Church written with a firmer character than in that of England, in the statutes of the realm, in the decisions of judicial tribunals, and the debates of parliament (7).

The Articles of Clarendon, in Henry the Second's reign (A.D. 1164), though directly aimed at the repression of the inordinate claims and privileges of the National Church, were, no doubt, indirectly "calculated," as Hume observes, "to establish the independency of England on the Papacy"; and therefore, when the King sought Pope Alexander's ratification of them, that Pontiff annulled and rejected all but six out of the sixteen memorable articles.

The resistance of Beckett, and, still more, the general feeling excited by the wicked and impolitic murder of that prelate, procured the practical abrogation of the articles objected to, by the enactments of Edward 1. and 3, of Richard 2, of Henry 4. and 5, and of Edward 4.

But in the severe penalties attached to the statutes of *Provisors* and *Præmunire* may be read the steady determination of the English people to maintain an independent National Church, and to resist the ultramontane doctrines which had taken root in some other countries.

The Statute of Provisors (25 Edw. 3. stat. 6, A.D. 1350) recites that "the Holy Church of England" was founded in the "estate of prelacy within the realm of England" by the King and nobles of England, and forbids the prevalent abuses of the Pope's bestowing benefices upon aliens, "benefices of England which be of the advowry of the people of Holy Church," the reservation of first-fruits to the Pope, and the *provision* or reservation of benefices to Rome. By 38 Edw. 3. stat. 2. c. 1. (A.D. 1363), persons receiving citations from Rome in courts pertaining to the King, &c. are liable to the penalty of 25 Edw. 3.

The statute (A.D. 1392) 16 Ric. 2. c. 5.

renders the procuring of bulls from Rome liable to *præmunire*, and it recites a variety of papal aggressions upon the privileges of the Crown; among other matters, as to the translation of bishops out of the realm, or from one bishopric to another within the realm; and the carrying of treasure out of the realm; and so the realm, destitute as well of counsel, as of substance, to the final destruction of the said realm, and so the Crown of England, which hath been so free at all times that it hath been in no earthly subjection, but immediately subject to God in all things touching the regality (*la regalie*) of the same Crown, and to none other, should be submitted to the Pope, and the laws and statutes of the realm by him defeated and avoided at his will, in perpetual destruction of the sovereignty of the kingdom of the King and Lord, his Crown, his regality, and of all his realm, which God defend.

This statute before the Reformation, and the subsequent enactment of 24 Hen. 8. c. 12, and the great case of *Cawdry* (8), as reported by Lord Coke and corrected by Bishop Stillingfleet, may be said to contain a treatise on constitutional law of England upon the subject of the usurpation of the Papal See upon the liberties of the National Church, and in regard to the authority and privilege of the English Crown. It would be difficult to conceive a clearer or more dignified exposition of the law upon this subject than is contained in the prefatory part of the statute of Hen. 8: "Where by divers sundry old authentick histories and chronicles it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king, having the dignity and royal estate of the imperial Crown of the same, unto whom a body politic, compact of all sorts and degrees of people, divided in terms, and by names of spirituality and temporality, been bounden and owen to bear next to God a natural and humble obedience; he being also institute and furnished, by the goodness and sufferance of Almighty God, with plenary, whole and entire power,

(7) Phillimore's International Law, vol. 2. pp. 412, 416.

(8) 5 Rep. 1. Stillingfleet's Eccles. Cases, 'Of the Foundation of Ecclesiastical Jurisdiction,' vol. 2. p. 49.

pre-eminence, authority, prerogative, and jurisdiction, to render and yield justice, and final determination to all manner of folk, resiants, or subjects within this his realm, in all causes, matters, debates and contentions, happening to occur, insurge or begin within the limits thereof, without restraint or provocation to any foreign princes or potentates of the world; the body spiritual whereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared, interpreted and shewed by that part of the said body politic called the spiritualty, now being usually called the English Church, which always hath been reputed, and also found of that sort, that both for knowledge, integrity and sufficiency of number, it hath been always thought, and is also at this hour sufficient, and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties as to their rooms spiritual doth appertain; for the due administration whereof, and to keep them from corruption and sinister affection, the King's most noble progenitors, and the antecessors of the nobles of this realm, have sufficiently endowed the said Church both with honour and possessions; and the laws temporal for trial of property of lands and goods, and for the conservation of the people of this realm in unity and peace, without rapine or spoil, was and yet is administered, adjudged and executed by sundry judges and ministers of the other part of the said body politic, called the temporality; and both their authorities and jurisdictions do conjoin together in the due administration of justice, the one to help the other."

At the period of the Reformation the National Church introduced an express denial of the authority of the Pope,—henceforth called in all public acts and documents the Bishop of Rome,—into her articles and canons, and an acknowledgment of the temporal supremacy of the Crown over the ecclesiastical as well as the civil state. Henry the Eighth was excommunicated, and in the Bull his subjects were commanded to renounce their allegiance, and the nobles were ordered "*sub ejusdem excommunicationis ac perditionis*

bonorum suorum poenis," to unite with all Christian princes in expelling Henry from England. Elizabeth was excommunicated in pretty similar terms, but not until twelve years after her accession. In answer to a request from the Emperor and other Roman Catholic princes, that she would allow the Roman Catholic places of worship, she replied that she would not allow them to keep up a distinct communion, alleging her reasons in these remarkable words: "For there was no new faith propagated in England; no religion set up but that which was commanded by Our Saviour, practised by the primitive Church, and unanimously approved by the fathers of the best antiquity." The Roman Catholics, both in England and Ireland, appear to have outwardly conformed to the services of the Church for about ten years.

The peculiar character of the English people and the English Church is also strongly shewn in their determination not to admit the general body of the Canon Law into these realms, but only such portions of it as were consistent with the Constitution, the common law, and the peculiar usages of the Anglican Church. The rules of the general Canon Law were principally introduced into this country, and considerably modified in their introduction through the medium of provincial constitutions passed by the authority of the Metropolitans of England. It is true that the Pope endeavoured to maintain his authority in this matter by sending legates from time to time, and by the device of creating the Archbishop of Canterbury "*legatus natus*" of the Holy See (9). But England possesses in her provincial constitutions, collected by Lyndewode, a body of domestic ecclesiastical law, upon which, before the Reformation, a national independent character was in many respects impressed. The common law was always disposed to recognize these constitutions,

(9) "Thus much is evident, as Gervasius, in the life of William, at this time (anno 1125) Archbishop of Canterbury, well observes, that the legatine power was looked upon as a breach of the law of England, and an invasion of the ancient liberties of the English Church and nation, as well as the rights of the Sees of Canterbury and York in particular, and that the minds of men were scandalized and offended at it."—*Inett's Origines Anglicanae*, vol. 2. p. 223.

while to the general canon law it always manifested considerable averseness.

But it has always been the doctrine of the temporal and ecclesiastical Courts since the Reformation that the constitutions contained in Lyndewode, and the general usages of the Church, and certain portions of the canon law admitted by those usages, are still binding upon the Church of this realm.

I will give some instances: So late as the year 1848 criminal articles were preferred against a clerk in holy orders for accepting a benefice with cure of souls whilst in possession of another benefice with a cure of souls without dispensation — *Burder v. Mavor* (10). The articles alleged that by the 29th canon of the 24th Council of Lateran, A.D. 1215, he was *ipso jure* deprived of the first living. Sir H. Jenner Fust observed, "The first of the articles sets forth the law, namely, that by a decree of the Council of Lateran, when any person in possession of a benefice with cure of souls shall accept another like benefice, the former becomes void, that is, he loses that benefice, and that is the law of this country at this time. The statute of Henry the Eighth does not affect this law, except that it makes the other living voidable; that is, by sentence, or void by presentation of the patron. . . . Under these circumstances, the facts being proved, the Court is bound to sign a sentence, declaring the perpetual curacy of Forest Hill void by Mr. Mavor's acceptance of another benefice with cure of souls."

In the case of *Saunders v. Head* (11) Sir Herbert Jenner Fust said, "It has been made a subject of complaint, on behalf of Mr. Head, that the articles do not contain any specification of the law relied on to establish them; that the first article is merely general, and that, under such general pleading, it is difficult for a defendant to know how to address himself to the question of law applicable to his case; that the canon law has been referred to generally without particular specification."

(Page 579)—"Now the objection taken in this case is not taken for the first time: it has been frequently taken in this court, and as often overruled. The answer always given to the objection is, that where the

general Law Ecclesiastical is relied on, it is not necessary to plead specifically; that where the offence is one generally cognizable in the Ecclesiastical Court it is not necessary to point out the particular canon or statute on which the proceedings are founded."

In the case of *Kemp v. Wickes* (12), Sir John Nicholl said,—"The law of the Church of England and its history are to be deduced from the ancient general Canon Law, from the particular constitutions made in this country to regulate the English Church, from our own canons, from the Rubric, and from any acts of parliament that may have passed upon the subject; and the whole may be illustrated, also, by the writings of eminent persons."

In the year 1856 a royal licence was granted to Convocation to alter certain canons of 1603; the licence recited the 25 Hen. 8. c. 29. restraining the meeting of Convocation, and continued as follows: "And further, by the said act it is provided that no canons, constitutions, or ordinance should be made or put in execution within this realm, by authority of the Convocation of the clergy, which shall be contrariant or repugnant to the King's prerogative royal, or the customs, laws or statutes of this realm, anything in the said act to the contrary thereof notwithstanding; and, lastly, it is also provided by the said act that such canons, constitutions, ordinances, and synodals provincial which then were already made, and which were not contrary or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the King's prerogative royal, should then still be used and executed as they were upon making of the said act, till such time as they should be viewed, searched, or otherwise ordered and determined by the persons mentioned in the said act, or the more part of them, according to the tenor or form and effect of the said act, as by the said act amongst divers other things more fully and at large it doth and may appear."

B.—*Historical and Theological Statements as to Identity.*

Having made these observations with regard to the connexion that subsists be-

(12) 3 Phill. 276.

(10) 1 Robert. 614; s. c. 6 N. of Cas. 1.

(11) 3 Curt. 577.

tween the law as to the Church before and after the Reformation, I will now advert to the evidence of identity furnished by our history and theology since the Reformation.

In 1549, Edward the Sixth's government in their message to the Devonshire rebels state, "It seemeth to you a new service, and indeed is none other but the old; the self-same words in English which were in Latin, saving a few things taken out (13)."

Constant references are made in the Homilies, which were produced under the auspices of Cranmer early in the reign of Edward the Sixth, to the "usages of the primitive Church," and the "sentences and judgments of the most ancient, learned, and godly doctors of the Church."

Collier (14), speaking of the various influences at work during this reign, says, "Peter Martyr concurred with Bucer in his animadversions upon the Common Prayer Book, as appears by his letter to him upon that subject.

"However, from what has been observed, the reader may perceive Bucer was somewhat overcharged with scruples, and carried his censure too far. Neither are his remarks at all reconcilable with his concessions in the beginning of his discourse. And, amongst other things, his setting aside antiquity with so much ease is particularly remarkable. There is a great deference, without doubt, due to the authority of the first centuries. It was then the apostolical traditions were fresh, miracles were frequent, and the Church under the conduct of a distinguishing illumination. Then secular views and projects of ambition were foreign to inclination. Under such opportunities and qualifications, what room is there for suspicion of ignorance or foul dealing? To reject the usages of the ancient Church, because we do not meet with them in Scripture, is no good logic. It is plainly not the design of the New Testament to furnish liturgies and rituals. The converts to St. Peter's sermon continued stedfastly

in breaking of bread (15)—that is, administering the Holy Eucharist—and in prayers. But what the prayers were at this solemnity is nowhere delivered in Scripture. Where the extraordinary effusions of the Holy Ghost were not supplied, things of this nature were left to the discretion of the spiritual directors, who were to govern themselves by St. Paul's general rule, 'Let all things be done decently and in order.' (1 Cor. xiv. 40.)

"It is true, if the religious customs of antiquity were plainly inconsistent with the doctrine of the inspired writings, we ought to stand off from them; but in other cases our Saviour's saying is applicable to the present purpose, 'He that is not against us, is for us.' And when the governors of the Church are under no restraint as to ceremonies and compositions, what should hinder them from following their judgments, and directing as they think fit 'For where there is no law, there can be no transgression.' What should hinder them in this case from enlarging the circumstances of worship, from assisting the memory, raising the affections, and explaining the mysteries, with additional ceremonies and devotions?

"His objection against primitive usages, because they have been overvalued and misapplied by the Church of Rome, goes upon a mistaken ground; for, granting the allegations hold good, there is no consequence in the reasoning. To argue from the abuse against the use of things is the way to take our Bibles from us; for what book has been more abused than the inspired text? By this topic almost everything in religion and nature must be contraband and prohibited. Bucer was formerly sensible of this fallacy; he saw the danger of disputing at this rate, and determines against it. To quit antiquity in any custom because it is continued in the Church of Rome has neither reason nor charity in it. It is a peevish principle, and helps to keep up a spirit of division. We ought rather to lament the breaches in the Church than make them wider. All reproachful language, humoursome distance, and unnecessary squabbles, serve only to exasperate one part of Christendom against another,

(13) Foxe, *Acts and Mon.* v. p. 784. Note to Procter on the Book of Common Prayer, pp. 25, 26.

(14) *Ecclesiastical History of Great Britain*, Vol. 5. book 4. p. 406.

(15) *Acts* ii. 42.

and make our common religion the jest of infidels and atheists."

The same author (16) thus introduces the subject of the Apology of Jewel.

"The next remarkable occurrence is Bishop Jewel's sermon at Paul's Cross. It was preached in Lent this year, upon these words of the Apostle Paul, 'I have received of the Lord that which also I deliver unto you.' From this text he took occasion to make that remarkable challenge in defence of the Reformation. The Church of England was reproached with novelty by the Papists, and charged with departing from primitive doctrine and practice. To wipe off these aspersions the Bishop put the case upon a bold issue, and declared in the pulpit, 'That if any learned men of all our adversaries, or if all the learned men that are alive, are able to bring any one sufficient sentence out of any old Catholic doctor or father, or out of any general council, or out of the Holy Scriptures of God, or any one example of the primitive Church, whereby it may be plainly and clearly proved that for the six hundred years after Christ there was any private mass in the world; or that there was any communion administered under one kind; or that the people had their common prayer in a language which they did not understand; or that the Bishop of Rome was then called universal bishop or head of the universal church; or that the people were then taught to believe that Christ's body is really, substantially, corporally, carnally, or naturally in the sacrament, &c. If any one of his adversaries were able to make good but a single proposition amongst all these, either by sufficient declarations in Scripture, or by the testimony of the ancient fathers and councils, he was ready to give up the contest and subscribe himself a proselyte.'"

It is not unworthy of remark that in the canon of 1571, concerning preachers, it is ordered, "In primis videbunt concionatores, nequid unquam doceant pro concione quod a populo religiose teneri et credi velint, nisi quod consentaneum sit doctrinæ Veteris aut Novi Testamenti, quodque ex illa ipsa doctrina Catholici patres et veteres episcopi collegerint."

The Puritans did not dispute the lawfulness of set forms of prayer, but they were to be such as were used in Geneva and Scotland—*Neale's History*, p. 236; *Madox*, p. 78. But Bishop Burnet observes, speaking of the year 1548 (17): "It being resolved to bring the whole worship of God under set forms; they (our Reformers) set one general rule to themselves (which they afterwards declared) of changing nothing for novelty's sake, or merely because it had been formerly used. They resolved to retain such things as the primitive Church had practised, cutting off such abuses as the latter ages had grafted on them, and to continue the use of such other things which, though they had been brought in not so early, yet were of good use to beget devotion, and were so much recommended to the people by the practice of them that the laying aside these would, perhaps, have alienated them from the other changes they made; and therefore they resolved to make no change without very good and weighty reason. In which they considered the practice of our Saviour, who did not only comply with the rites of Judaism himself, but even the prayer he gave to his disciples was framed according to their forms; and his two great institutions of Baptism and the Eucharist did consist of rites that had been used among the Jews; and since he who was delivering a new religion, and was authorized in the highest manner that ever any was, did yet so far comply with received practices as from them to take those which he sanctified for the use of his Church, it seemed much fitter for those who had no such extraordinary warrant to give them authority in what they did, when they were reforming abuses, to let the world see they did it not from the wanton desire of change or any affectation of novelty, and with those resolutions they entered on their work."

I now approach an authority to which almost universal homage has been accorded,—the authority of Hooker (18).

"They," he says, "which measure religion by dislike of the Church of Rome think every man so much the more sound by how much he can make the corruption

(16) Collier's *Ecclesiastical History*, vol. 6. p. 303.

(17) *History of the Reformation*, vol. 2. p. 150.

(18) Hooker, book 4. ch. 8.

thereof to seem more large ; and therefore some there are, namely, the Arians in reformed Churches of Poland, which imagine the canker to have eaten so far into the very bones and marrow of the Church of Rome as if it had not so much as a sound belief, no not concerning God himself, but that the very belief of the Trinity were a part of antichristian corruption ; and that the wonderful providence of God did bring to pass that the Bishop of the see of Rome should be famous for his triple crown,—a sensible mark whereby the world might know him to be that mystical beast spoken of in the Revelation, to be that great and notorious antichrist in no one respect so much as in this, that he maintaineth the doctrine of the Trinity. Wisdom therefore and skill is requisite to know what parts are sound in that Church and what corrupted.

“Neither is it to all men apparent which complain of unsound parts, with what kind of unsoundness every such part is possessed. They can say, that in doctrine, in discipline, in prayers, in sacraments, the Church of Rome hath (as it hath indeed) very foul and gross corruptions, the nature whereof, notwithstanding because they have not for the most part exact skill and knowledge to discern, they think that amiss [many times which is not ; and the salve of reformation they mightily call for, but when and what the sores are which need it, as they wot full little, so they think it not greatly material to search.”

“(19) That the Church of Rome doth hereby take occasion to blaspheme, and to say our religion is not able to stand of itself unless it lean upon the staff of their ceremonies, is not a matter of so great moment that it need to be objected, or doth deserve to receive an answer. The name of blasphemy in this place is like the shoe of Hercules on a child's foot. If the Church of Rome do use any such kind of silly approbation, it is no such ugly thing to the ear that we should think the honour and credit of our religion to receive thereby any great wound. They which hereof make so perilous a matter do seem to imagine that we have erected of late a frame of some new religion, the furniture whereof we should

not have borrowed from our enemies, lest they relieving us might afterwards laugh and gibe at our poverty ; whereas in truth the ceremonies which we have taken from such as were before us are not things that belong to this or that sect, but they are the ancient rites and customs of the Church of Christ, whereof ourselves being a part, we have the selfsame interest in them which our fathers before us had, from whom the same are descended unto us.”

“No man which is not exceeding partial can well deny but that there is most just cause wherefore we should be offended greatly at the Church of Rome. Notwithstanding at such times as we are to deliberate for ourselves, the freer our minds are from all distempered affections the sounder and better is our judgement. When we are in a fretting mood at the Church of Rome, and with that angry disposition enter into any cogitation of the orders and rites of our Church, taking particular survey of them, we are sure to have always one eye fixed upon the countenance of our enemies, and according to the blithe or heavy aspect thereof our other eye sheweth some other suitable token either of dislike or approbation towards our own orders. For the rule of our judgment in such case being only that of Homer, ‘This is the thing which our enemies would have,’ what they seem contented with, even for that very cause we reject ; and there is nothing but it pleaseth us much the better if we espy that it galleth them.

“Miserable were the state and condition of that Church the weighty affairs whereof should be ordered by those deliberations wherein such a humour as this were predominant. We have most heartily to thank God, therefore, that they amongst us to whom the first consultations of causes of this kind fell were men which aiming at another mark, namely, the glory of God and the good of this His Church, took that which they judged thereunto necessary, not rejecting any good or convenient thing only because the Church of Rome might perhaps like it.”

The Puritans at the Hampton Court Conference in the reign of James the First vehemently objected to the sign of the Cross in the sacrament of Baptism, and the reply to their objections incorporated in the thirtieth canon (of 1603) deserves the care-

ful study of those who would thoroughly understand the mind of the English Church upon the subject now under consideration.

(20) "And this use of the sign of the Cross in Baptism was held in the primitive Church, as well by the Greeks as the Latins, with one consent and great applause. At that time, if any had opposed themselves against it, they would certainly have been censured as enemies of the name of the Cross, and consequently of Christ's merits, the sign whereof they could no better endure. This continual and general use of the sign of the Cross is evident by many testimonies of the ancient fathers.

"It must be confessed that in process of time the sign of the Cross was greatly abused in the Church of Rome, especially after that corruption of popery had once possessed it. But the abuse of a thing doth not take away the lawful use of it. Nay, so far was it from the purpose of the Church of England to forsake and reject the Churches of Italy, France, Spain, Germany, or any such like Churches in all things which they held and practised, that, as the Apology of the Church of England confesseth, it doth with reverence retain those ceremonies which doth neither endamage the Church of God, nor offend the minds of sober men, and only departed from them in those particular points wherein they were fallen both from themselves in their ancient integrity, and from the apostolical Churches which were their first founders."

".... So that for the very remembrance of the Cross, which is very precious to all of them that rightly believe in Jesus Christ, and in the other respects mentioned, the Church of England hath retained still the sign of it in Baptism, following therein the primitive and apostolical Churches."

Dr. Jackson, who was President of Corpus Christi College and Dean of Peterborough, one of our most learned divines, writing A.D. 1629, in his treatise of the Holy Catholic Faith and Church, says (21), "That the title of *Catholic* is proper and essential unto the faith professed by the present visible Church of England, but cannot truly be attributed to the faith or creed of the *modern visible Romish Church*.

(20) Canon 30. The lawful Use of the Cross in Baptism explained.

(21) Works, vol. 12. ch. 21. p. 161, edit. 1845.

"Whether the name *Catholic* were first bestowed upon the Church, or upon that faith which is the life and soul of the Holy Apostolic Church, shall be no part of our inquiry. It sufficeth that the name *Catholic* itself is univocal in respect both of Church and faith. True faith is therefore *Catholic* faith, because it is the only door or way unto salvation, alike common unto all, without national or topical respect. Whosoever of any nation have been saved have been saved by this one and the same faith, and whoever will be saved (as Athanasius speaks) must hold this *Catholic faith*, and he must hold it *pure and undefiled*. The main question then is, who they be that hold this *Catholic faith*, and whether they hold it *undefiled or no*. Were Vincentius' rules as artificial as they are orthodoxal and honest, the issue betwixt us and the Romanist would be very easy and triable. But let us take them as they are: 'Id Catholicum est quod ab omnibus ubique et semper,' &c. 'That is Catholic which is held by all, in all places, and at all times.'

"The three special notes of the Catholic faith or Church by him required are *universality*, *antiquity*, and *consent*. Whether these three members be different or subordinate, and oftentimes coincident, I leave it to be scanned by logicians. According to the author's limitation, all three marks agree to us, not to the Romanist."

"The fallacy by which the Romanists deceive poor simple people is in making them believe that our religion and their religion, our faith and their faith, are *duo prima diversa*, or so totally distinct that part of the one could not be included in the other. But for the *universality* of our faith we have every member of the Romish Church a suffragant or witness for us. First, nothing is held as a point of faith in our Church but the present Romish Church doth hold the same, and confess the same to have been held by all orthodoxal antiquity. So that for the *form* of faith established in our Church, we have the consent of the primitive Church, of the four first general councils, of all succeeding ages unto this present day, the consent likewise of the present Romish Church, and of ourselves. Now, as France is a great deal bigger than Normandy, if we compare them as distinct and opposite, and yet France and Nor-

mandy is bigger than France without Normandy, so likewise though the present visible Romish Church be much greater than the Church of England, yet seeing the Romish Church, how great soever, doth hold all the points of faith which our Church doth for catholic and orthodoxal, our consent and their consent, our confession and their confession, is more universal than their consent without ours. But if their consent unto the points of faith believed by us prove our faith to be universal, and our Church by consequence to be *catholic*, why should not our consent unto the points of faith believed by them prove their faith to be universal, or their Church to be *catholic*? Because it is not enough to hold all points of Catholic faith, unless the same points be kept *holy and undefiled*. The Romish Church, we grant, doth hold all points of Catholic faith, and so far as she hold these points we dissent not from her; yet dissent from her we do in that she hath *defiled* and polluted the Catholic faith with new and poisonous doctrines, for which she neither hath the consent of antiquity, nor of reformed churches."

And again, answering that silly taunt of the Romanists, "Where was your Church before the Reformation?" he observes: "The question is much the same as if they should ask us, where was King Henry the Seventh's kingdom, where were his subjects, where was your commonweal whilst Richard the Third did call parliaments, and sway the sceptre of this kingdom? The kingdom of Henry the Seventh and of his successors, or the English commonweal, was in the same place then as now it is. The deposition of the tyrant, the dissolution of the tyranny, and the reducing of English subjects to their true allegiance, did work no essential alteration in the commonweal of the kingdom, but only a reformation of the government, and redcement of it to the fundamental laws of the land.

"No more did the rejection of the Romish Church's usurped authority in matters spiritual induce any substantial alteration in the English Church, but a reformation or reduction of it unto the fundamental constitution of the primitive Church" (22).

In the warrant issued by Charles the Second for the conference at the Savoy, which preceded the adoption of our present Prayer Book (Cardwell's *Conferences*, p. 300), a commission of certain persons is appointed to advise upon and review the said Book of Common Prayer, comparing the same with the most ancient liturgies which have been used in the Church in the primitive and purest times.

So careful were the compilers of this great treasure of the Church that it should speak the Catholic language, to which Christian ears and hearts had been accustomed, while the apostolical spirits and doctrine still guided the undivided Church.

Hear on this subject the erudite and eloquent Donne: "If they (the Roman Catholics) say, we are perplexed with differences of opinions amongst ourselves, let this satisfy them, that we do agree all in all fundamental things; and that in things much nearer the foundation than those in which our differences lie they differ amongst themselves, with more acrimony and bitterness than we do. If they think to perplex us with the fathers, we are ready to join that issue with them; where the fathers speak unanimously, dogmatically, in matters of faith, we are content to be tried by the fathers. If they think to perplex us with councils, we will go as far as they in the old ones; and, as far as they for meeting in new councils, if they may be fully, that is, royally, imperially, called, and equally proceeded in, and the resolutions grow and gathered there upon debates, upon the place, and not brought thither upon commandment from Rome."—*Donne's Works*, vol. 3. p. 11.

Bishop Cosin, an authority of special significance and weight, because he largely assisted in the compilation of our Prayer Book (23), says: "In truth we have continued the old religion; and the ceremonies which we have taken from them that were before us are not things which belong to this or that sect, but they are the ancient rites and customs of the Church of Christ, whereof ourselves being a part, we have the selfsame interest in them which our fathers before us had, from whom the same descended to us. To abrogate those things without constraint

(22) Hooker's *Works*, vol. 12. p. 181.

NEW SERIES, 37.—ECCLES.

(23) Preface to his *Notes on the Common Prayer*.

of apparent harm thence arising had been to alter unjustly the universal practice of the people of God and those general decrees of the fathers, which (in St. Augustin's language) is madness and insolence to do, both in respect of the universal authority of the Church, which no particular Church has power to control, and also in regard of reasons before mentioned."

Archbishop Bramhall, who wrote in 1677 his 'Just Vindication of the Church of England,' &c., says: "But it is not enough to charge the court of Rome unless we can discharge ourselves, and acquit our own Church, of the guilt of schism which they seek to cast upon us. First, they object that we have separated ourselves schismatically from the communion of the Catholic Church. God forbid! Then we will acknowledge, without any more to do, that we have separated ourselves from Christ, and all His holy ordinances, and from the benefit of His passion, and all hope of salvation.

"But the truth is, we have no otherwise separated ourselves from the communion of the Catholic Church than all the primitive orthodox fathers, and doctors, and churches did long before us, that is, in the opinion of the Donatists, as we do now in the opinion of the Romanists; because the Romanists limit the Catholic Church now to Rome in Italy, and those churches that are subordinate to it, as the Donatists did then to Cartenna in Africa, and those churches that adhered to it. We are so far from separating ourselves from the communion of the Catholic Church that we make the communion of the Christian Church to be thrice more catholic than the Romanists themselves do make it, and maintain communion with thrice so many Christians as they do. By how much our Church should make itself, as the case stands, more Roman than it is, by so much it should thereby become less catholic than it is."—*Works, folio, Dublin*, chap. 9.

"As for my religion," said the holy Ken, with almost his latest breath, "I die in the holy catholic and apostolic faith, professed by the whole Church before the disunion of East and West; more particularly I die in the communion of the Church of England, as it stands distinguished from all Papal and Puritan innovations,

and as it adheres to the doctrine of the Cross."

Bishop Beveridge compiled, with infinite labour and accuracy, a *Codex Canonum Ecclesie Primitivæ vindicatus ac illustratus*: in his preface to which are these words (s. 6.), "For when this our English Church, through long communion with the Roman Church, had contracted like stains with her, from which it was necessary that it should be cleansed, they who took that excellent and very necessary work in hand, fearing that they, like others, might rush from one extreme to the other, removed indeed those things, as well doctrines as ceremonies, which the Roman Church had newly and insensibly superinduced, and, as was fit, abrogated them utterly. Yet notwithstanding whatsoever things had been at all times believed and observed by all churches in all places, those things they most religiously took care not so to abolish with them. For they well knew that all particular churches are to be formed on the model of the Universal Church, if indeed, according to that general and received rule in ethics, 'every part which agreeth not with its whole is therein base.' Hence, therefore, these first reformers of this particular church, directed the whole line of that reformation which they undertook, according to the rule of the whole or Universal Church, casting away those things only which had been either unheard of, or rejected by the Universal Church, but most religiously retaining those which they saw, on the other side, corroborated by the consent of the Universal Church. Whence it hath been brought to pass, that although we have not communion with the Roman, nor with certain other particular churches, as at this day constituted, yet have we abiding communion with the Universal and Catholic Church, of which evidently ours, as by the aid of God first constituted, and by his pity still preserved, is the perfect image and representation."

Observe how Barrow speaks in his Treatise on the Pope's Supremacy. "This new creed," he says, "of Pius the Fourth containeth these novelties and heterodoxies: 1, Seven sacraments; 2, Trent doctrine of justification and original sin; 3, Propitiatory sacrifice of the mass; 4, Transubstantiation; 5, Communicating

under one kind; 6, Purgatory; 7, Invocation of Saints; 8, Veneration of relics; 9, Worship of images; 10, The Roman Church to be the mother and mistress of all churches; 11, Swearing obedience to the Pope; 12, Receiving the decrees of all synods and of Trent" (24).

Bishop Sanderson (died 1662) believed that "(25) all men would be found much mistaken who account all Popery that is taught or practised in the Church of Rome. Our godly forefathers, to whom (under God) we owe the purity of our religion, and some of whom laid down their lives for the defence of the same, were, sure, of another mind, if we may, from what they did, judge what they thought. They had no purpose (nor had they any warrant) to set up a new religion, but to reform the old, by purging it from those innovations, which on tract of time (some sooner, some later) had mingled with it, and corrupted it both in the doctrine and worship. According to this purpose they produced, without constraint or precipitancy, freely and advisedly, as in peaceable times, and brought their intentions to a happy end, as by the results thereof contained in the articles and liturgy of our Church, and the prefaces thereunto, doth fully appear. From hence chiefly, as I conceive, we are to take our best scantling, whereby to judge what is, and what is not, to be esteemed Popery. All those doctrines then held by the modern Church of Rome, which are either contrary to the written Word of God, or but superadded thereunto as necessary points of faith to be of all Christians believed under pain of damnation; and all those superstitions used in the worship of God which are either unlawful as being contrary to the Word; or being not contrary and therefore arbitrary and indifferent, are made essentials, and imposed as necessary parts of worship: these are, as I take it, the things whereunto the name of Popery doth properly and peculiarly belong. But as for the ceremonies used in the Church of Rome which the Church of England at the Reformation thought fit to retain, not as essential or necessary parts of God's service, but only as accidental and mutable circumstances attending the same, for order, comeliness,

and edification's sake; how these should deserve the name of popish, I so little understand, that I profess I do not yet see any reason why, if the Church had then thought fit to have retained some other of those which were then laid aside, she might not lawfully have so done; or why the things so retained should have been accounted popish. The plain truth is this: the Church of England meant to make use of her liberty and the lawful power she had (as all the Churches of Christ have, or ought to have) of ordering ecclesiastical affairs here; yet to do it with so much prudence and moderation that the world might see by what was laid aside, that she acknowledged no subjection to the See of Rome; and by what was retained, that she did not secede from the Church of Rome out of any spirit of contradiction, but as necessitated thereunto for the maintenance of her just liberty. The number of ceremonies was also then very great and thereby burdensome, and so the number thought fit to be lessened. But for the choice which should be kept and which not, that was wholly in her power and at her discretion."

Bishop Smalridge, the accomplished friend of Addison, wrote a sermon on the authority of the governors of our Church to prescribe rites and ceremonies (vol. 1. p. 145), in the course of which he said:

"But because those who allow some rites to be lawful may entertain some doubts concerning the use of ours, as apprehending them to have some particular faults which do not belong to all ceremonies in general, I shall proceed to clear those which we of this Church are required to observe, from such objections as are brought to prove them unlawful and unwarrantable. Those who scruple the use of them allege it as one main ground of their scruples, that those ceremonies which are used in our Church are also used in the Church of Rome, and they are therefore cautious of observing them, lest they should thereby countenance the errors and corruptions of that Church. Now this would be a good argument against the usage of such rites, if it could be proved that those who err in some things do certainly err in everything; or, that we ought to shew our abhorrence of the corruptions of a Church by condemning and abolishing even those usages which have

(24) Barrow's Works, vol. 7. p. 621, edit. 1830.

(25) Preface to Fourteen Sermons.

nothing in them but what is innocent and incorrupt. But we have not declared war against those of that Church as they are Christians, but as they are perverters of the Gospel of Christ; we do not profess to differ from them in everything, but only in such things wherein we apprehend them to have degenerated from the pure and undefiled Church of Christ. We think that we should not be able to vindicate ourselves from the charge of schism, which they bring against us, if whatever doctrine they held, whatever rite they practised, that we should, for no other reason but because they held and practised it, forthwith condemn and reject. The ablest champions for the cause of the Reformation have always thought it the best answer against the charge of schism, to allege and prove that we have no further departed from them than they departed from the pure and primitive Church of Christ. What is contrary to the purity of the Gospel, that we reject; not because popish, but because repugnant to the laws and doctrines of Christ: what is noways contradictory to the simplicity of the Gospel, what may be subservient to piety, that we retain; not because practised by the Church of Rome, but because agreeable to the rules of the Gospel. If there be anything in our ceremonies that is sinful, they ought presently to be abolished, though there was nothing of the same kind practised by those of the Roman communion (26). What is decent and laudable in them cannot lose its worth and value, because others have them in common with us. If it be laid down as a good rule of reformation that we must depart as far as possible from Rome, we must renounce the articles of our creed, because they of that Church profess to believe them; we must declare ourselves Socinians that we may be thought staunch Protestants; and we must renounce the doctrine of the Trinity, because it is held by those who do also hold that of transubstantiation. In the Romish religion there are some things evil, some things good, some things wholly indifferent. Whatever is sinful in that communion we are bound

to reject, and have, we think, accordingly rejected; what is good we ought to retain, and therefore do retain; what was indifferent, it was at the discretion of our reformers either to keep or change, as they thought should be more expedient. Private persons may, according to the variety of their judgments, think some things might have been kept which were left off, or some things might have been dropped which are still kept; but unless they can prove those that have been abolished to be necessary, or those that are reserved to be unlawful, they are bound quietly to submit to the abolition of the former, and to the usage of the latter."

Bishop Bull, writing in 1705 on "*The Corruptions of the Church of Rome*, in answer to the Bishop of Meaux' queries," thus maintains the true position of our Church: "I proceed to the bishop's questions: He asks me what I mean by the Catholic Church? I answer, What I mean by the Catholic Church, in the book, which he all along refers to, I have already shown, and the very title of the book sufficiently declares. If he asks me what I mean by the Catholic Church, speaking of it as it now is, I answer, By the Catholic Church, I mean the Church Universal, being a collection of all the Churches throughout the world, who retain the faith (*ἡ πίστις*) once delivered to the Saints (Jude 3); that is, who hold and possess in the substance of it, that faith and religion which was delivered by the Apostles of Christ to the first original Churches, according to Tertullian's rule before mentioned. Which faith and religion is contained in the Holy Scriptures, especially of the New Testament, and the main fundamentals of it comprised in the canon or rule of faith, universally received throughout the primitive Churches, and the possession thereof acknowledged to be a sufficient tessera or badge of a Catholic Christian. All the Churches at this day which hold and profess this faith and religion, however distant in place, or distinguished by different rites and ceremonies, yea, or divided in some extra-fundamental points of doctrine, yet agreeing in the essentials of the *Christian* religion, make up together one Christian Catholic Church under the Lord Christ, the supreme head thereof. The Catholic Church under this

(26) About this time Archbishop Tenison wrote a remarkable 'Discourse of Idolatry,' and (chap. 12. p. 279) upon this principle vindicated the use of images and pictures in the Church of England.

notion is not a confused heap of societies separated one from another."—These are important words.—“But it seems, no other union of the Church will satisfy the bishop, but an union of all the Churches of Christ throughout all the world, under one visible head, having a jurisdiction over them all, and that head the bishop of Rome for the time being. But such an union as this was never dreamed of amongst Christians for at least the first six hundred years, as shall be shown in its due place” (27).

In addition to this mass of evidence derived from the writings of English divines, I may cite the following testimonies to the same effect from the works of three distinguished foreigners, who watched with deep interest the form which the Reformation of the Church took in England: Isaac Casaubon, Hugo Grotius, and Saravia.

Casaubon [*ad Salmas Epist.* 837. p. 489,] A.D. 1612: “Quod si me conjectura non fallit, totius Reformationis pars integerrima est in Anglia, ubi cum studio veritatis viget studium antiquitatis.”—[*Epist. ad Cardinal Perron*, p. 494]. “Parata est Ecclesia Anglicana fidei suæ reddere rationem, et rebus ipsis evincere, auctoribus Reformationis hic institutæ non fuisse propositum novam aliquam ecclesiam condere, ut imperiti et malevoli calumniantur; sed quæ erant collapsa, ad formam revocare quam fieri posset optimam; optimam autem judicarunt nascenti Ecclesiæ ab Apostolis traditam, et proximis seculis usurpatam.”

Hugo Grotius [*Epist. ad Boetsaeler*, *Epist.* 62, p. 21, edit. 1637]: “Certum est mihi *Λειτουργίαν* Anglicanam, item morem imponendi manus adolescentibus in memoriam Baptismi, auctoritatem Episcoporum, et Presbyteria ex solis Pastoribus composita multaque alia ejusmodi satis congruere institutis vetustioris Ecclesiæ, a quibus in Gallia et Belgio recessum negare non possumus.”—[*Epist. ad Corvinum*, *Epist.* p. 434]: “Qui illam optimam antiquitatem sequuntur ducem, iis non eveniet ut multum sibi ipsis sint discolores. In Anglia vides quam bene processerit dogmatum noxiorum repurgatio; hac maxime de causa, quod qui id sanctissimum negotium procurandum susceperunt, nihil admisissent novi, nihil sui,

(27) Ball's Works, vol. 2. p. 242, edit. 1846.

sed ad meliora secula intentam habuere oculorum aciem.”

Hadrian Saravia, the friend of Hooker: “Among others that have reformed their churches, I have often admired the wisdom of those who restored the true worship of God to the Church of England,—who so tempered themselves, that they cannot be reproved for having departed from the ancient and primitive customs of the Church of God; and that moderation they have used, that by their example they have invited others to reform, and deterred none.”—*Wordsworth, Theophilus Anglicanus*, p. 171.

In 1851 the Archbishops of Canterbury and York and twenty bishops published a statement in which they set forth “the undoubted identity of the Church before and after the Reformation;” and that at the Reformation the English Church rejected certain corruptions and established “one uniform ritual,” but “without in any degree severing her connexion with the ancient Catholic Church.”—*Phillimore's International Law*, vol. 2. p. 422, and *The Guardian*, April 2, 1851.

In 1867, eight primates and sixty-eight bishops assembled from all parts of the globe, under the presidency of the Metropolitan of Canterbury.

The resolutions of this conference were prefaced by the following introduction: “We, Bishops of Christ's Holy Catholic Church, in visible communion with the United Church of England and Ireland, professing the Faith delivered to us in Holy Scripture, maintained by the Primitive Church, and by the Fathers of the English Reformation, now assembled, by the good providence of God, at the Archiepiscopal Palace of Lambeth, under the presidency of the Primate of all England, desire, first, to give hearty thanks to Almighty God for having thus brought us together for common counsels and united worship; secondly, we desire to express the deep sorrow with which we view the divided condition of the flock of Christ throughout the world, ardently longing for the fulfilment of the prayer of our Lord, ‘That all may be one, as Thou, Father, art in me, and I in Thee, that they also may be one in Us, that the world may believe that Thou hast sent me;’ and, lastly, we do here

solemnly record our conviction that unity will be most effectually promoted by maintaining the Faith in its purity and integrity, as taught in the Holy Scriptures, held by the Primitive Church, summed up in the Creeds, and affirmed by the undisputed General Councils."

But after all no argument for the continuity of the Church of England can be stronger than that which is derived from the structure, order, and contents of the Prayer Book. It contains the Breviarium, in which towards the end of the eleventh century had been inserted all the offices of the canonical hours, called also *Portiforium* and in England *Portuary*, the Missale or the service for the Holy Communion, and the Ordinale, which is referred to under the name of the "Pie" in the preface. There were various "Uses" or Prayer Books in England, known as the Salisbury, the York, the Bangor, and the Hereford Uses, and others. The most celebrated appear to have been the *Portiforium* or Breviary of Sarum, which contained the Daily Services,—the Sarum Missal, which contained the Holy Communion Service,—and the Sarum Manual, a book of occasional offices. These books of devotion seem to have been compiled by Osmund, Bishop of Salisbury, about the time of the Conquest; and in 1531 a reformed edition of the Sarum *Portiforium* was reprinted, and shortly afterwards a reformed Missal was published. There were also Primers, which contained, in a vulgar tongue, large portions of the Service in use amongst the people. In 1536 the Roman Breviary was reformed, and published by a Spanish Bishop, Cardinal Quignonez; and in 1544 Hermann, Archbishop of Cologne, whom the Pope during the early sittings of the Council of Trent deprived (28), published a reformed ritual (29).

In 1542 Henry the Eighth directed Convocation to consider the revision of the books of devotion then in use in this country. It is probable that the fruit of their labours, as well as the other works to which reference has been made, were laid before the royal visitors appointed by

Edward the Sixth in January, 1546–7, and the Committee of Convocation, to whom the preparation of the Prayer Book of 1549 was entrusted.

The whole Prayer Book in fact, with very inconsiderable exceptions, consists of a translation of the ancient liturgies, and especially of the liturgy used by the Western Church. And we learn from the Preface to the Prayer Book that the object was to restore that "godly and decent order of the ancient fathers" which had been broken, and to introduce an order of prayer and reading of Holy Scripture "agreeable to their mind and purpose;" and that all suggested alterations which "secretly struck at some laudable practice of the whole Catholic Church of Christ" were rejected; and that the calendar contained a "table of feasts, vigils, fasts, and days of abstinence," which were in accordance with primitive and catholic use; while the ornaments of the church and the vestments of the ministers were such as to present to the people some of the most prominent features of the ancient service, and were for this reason the ground of unceasing attack from the Puritans, and the disciples of the Genevan school. And it is the observation of Mr. Hallam, while speaking of the Roman Catholics, "that it was always held out by our Church, when the object was conciliation, that the liturgy was essentially the same with the mass book."—*Const. History*, vol. 1. p. 117 n. edit. 1829.

These premises, which I have stated at some length, lead me to the conclusion that no sound argument against the lawfulness of the matters objected to in these articles can be deduced from the mere fact of their identity with the ceremonies in use before the Reformation.

Argument from Disuse.

I will next consider the argument founded on the alleged *de facto* disuse, since the Reformation, of the ceremonies or ornaments complained of in these articles.

It assumes this kind of shape:

"If these things were legal they would have been in use; their non-usage is almost fatal to their claim of legality; the presumption of law is strongly against them; and in order to refute that presumption a continuous usage must be established by those who maintain their lawfulness."

(28) Sarpi, *Istoria del Concil. Trident.*, lib. 1. n. 59.

(29) See Preface to Annotated Book of Common Prayer.

This argument seems to have been in the mind of the Judge of the Consistory of London in the Knightsbridge Church cases, though at the same time he strenuously asserted that no provision of statute or lawful canon could be abrogated by non-user. The doctrine of desuetude he repudiated, as unknown to the law of England.

This argument from the long disuse of ornaments and observances recently revived cannot be altogether passed over.

The fact of disuse raises a practical prejudice, if not a legal obstacle to all such revivals. The consideration of the causes which have induced it has a bearing upon the discussion of the questions which I am to adjudicate.

The argument appears to me to admit of two distinct answers.

In the first place it proves too much; for perhaps there is no historical fact more certain than this, namely, that the law derived from the rubrics and canons has never, at any period since the Reformation, been universally and duly obeyed. The proposition is startling, but I think unquestionably true. The instances of disobedience are striking, if not many; take, as one example, the vestments of the clergy.

The rubric of Edward the Sixth provides: "And here it is to be noted, that such ornaments of the church, and of the ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this Church of England, by the authority of Parliament, in the second year of the reign of King Edward the Sixth."

And the Judicial Committee of the Privy Council, in *Westerton v. Liddell*, most deliberately and emphatically decided that "the rubric to the Prayer Book of January the 1st, 1604, adopts the language of the rubric of Elizabeth; the rubric to the present Prayer Book adopts the language of the Statute of Elizabeth; but they all obviously mean the same thing, that the same dresses and the same utensils or articles which were used under the first Prayer Book of Edward the Sixth may still be used." Their Lordships say: "No difficulty will be found in discovering amongst the articles of which the use is there enjoined, ornaments of the church, as well as ornaments of the ministrations. Besides the vestments differing in the different services, the rubric provides for the

use of an English Bible," &c.—*Liddell v. Westerton* (30).

The dresses of which the use is prescribed in the first Prayer Book of Edward the Sixth are thus ordered: "Upon the day, and at the time appointed for the ministration of the Holy Communion, the priest that shall execute the holy ministry shall put upon him the vestures appointed for that ministration; that is to say, a white albe plain, with a vestment or cope."

"And whensoever the bishop shall celebrate the Holy Communion in the church, or execute any other public ministration, he shall have upon him, beside his rochet, a surplice or albe, and a cope or vestment, and also his pastoral staff in his hand, or else borne or holden by his chaplain."

The canons of 1603 could not alter or affect the positive provisions of a statute; but, on the supposition that they alone were to be consulted, the use of the surplice in parish churches is distinctly enjoined by them (Canon 58). Nevertheless I well recollect that when Bishop Blomfield published his celebrated charge in 1842, the expression therein of his opinion, that the preacher ought to wear the surplice rather than the gown in the morning service, raised a storm of religious controversy and excited feeling upon which a sober-minded man now looks back with surprise and regret. And I cannot but agree with his biographer, that "it will hardly be denied, that the great principle for which Bishop Blomfield contended, that in Divine service all things should be done *decently*, and in *order*, is now acted upon in the Church of England to an extent which, twenty years ago, would hardly have been expected by men of calm judgment, and which, thirty years ago, would by most have been pronounced impossible."—*Memoir of Bishop Blomfield*, vol. 1. p. 64.

The same canons enjoined the use of copes in cathedrals (Canon 24), a special prayer called the bidding prayer to be used by all ministers before every sermon (Canon 55), a passing bell to be tolled for every dying parishioner (Canon 67); "upon every Sunday and Holyday" the minister shall "under pain of suspension and excommunication, for half an hour or more, examine and instruct the youth and ignorant

(30) Moore's Special Report, pp. 156-9.

persons in his parish in the Ten Commandments, the Articles of the Belief, and in the Lord's Prayer; and shall diligently hear, instruct, and teach them the Catechism set forth in the Book of Common Prayer" (Canon 59); that a particular dress, minutely specified, shall be worn by ecclesiastical persons on a journey (Canon 74); that the Litany shall be said or sung wherever appointed by the Prayer Book, more particularly upon Wednesdays and Fridays, though they be not holydays (Canon 15).

The rubric directs that the holy elements shall be placed upon the Table of the Lord at a particular part of the service; but till lately, and before the decision of the Privy Council in favour of the use of the credence table, this rubric was generally disobeyed. The rubric is express in its directions, that "unless the minister be otherwise reasonably hindered," he shall perform daily service; that "the feasts shall be observed," in which category are included all Sundays, and certain feasts and saints' days; and there is also a careful table of the vigils, fasts, and days of abstinence to be observed throughout the year; that "so many as intend to be partakers of the Holy Communion shall signify their names to the curate at least some time the day before." Private baptism, which was only to be allowed for "great cause or necessity," had so generally superseded public baptism, that the late Bishop of London was compelled expressly to forbid his clergy to baptize privately except in cases of necessity; and, indeed, of all these precise orders, of which the catalogue is not exhausted, having for their object the spiritual edification of members of the Church, how very few, till lately, within our own memory, have been obeyed, and how much more common has been the breach than the observance of them.

It is true that Mr. Mackonochie is not charged with any disobedience to the law in these respects; his offence is that of unauthorized addition, of doing too much and not too little in his ministrations in the Church; but I refer to this notorious fact of general disobedience to the law in these respects, because a revived obedience to it, not unnaturally, excites the surprise and sometimes the anger of persons who have been habituated to a more relaxed and less

careful system. A compliance with the law has the effect of novelty upon them, and they are apt to consider as illegal not the desuetude of a prescribed usage, but the restoration of it.

This argument of disuse was most strongly urged in the Knightsbridge Church cases as conclusive against the Cross and the Credence Table; and it was truly said that the instances in which any trace of them could be substantiated by evidence, since the Reformation, were very few and inconsiderable,—not half a dozen I believe in number, and it was contended that such disuse amounted to a practical rejection of them by the Church. And this argument prevailed with the Judges of the Consistory of London and of the Arches Court, who accordingly pronounced these things to be unlawful. But it did not avail before the Judicial Committee of the Privy Council, who, looking to their innocent and primitive use, reversed the sentence of these Courts and pronounced them to be lawful.

The mere fact, therefore, that the practice complained of is novel, furnishes by no means an irrefragable argument that it is unlawful, and it can afford, in truth, but little assistance in solving the question whether the practices charged against Mr. Mackonochie are or are not contrary to the law.

In the second place, the alleged disuse or desuetude must be measured by a reference to the history of the institution during the period in which it has prevailed. The questions,—has that institution been during this period in its normal condition? has it been in a state of unconstrained freedom? of undisturbed liberty of action? or has it during this period been from time to time turned aside from its natural course? has it been oscillating between peril and disquiet and the apathy which is so often their reactionary successor? has it manifested wherever it has been in a state of freedom, peace and vigour, a desire to restore and reserve as much as it could of a lawful inheritance which had been forcibly put in abeyance, and had that desire and endeavour always accompanied a revival of life and energy?—these are questions which must be answered before the argument from disuse can be properly estimated. A careful examination of the history of this country,

and more especially of that part of it which relates to the Church, affords some explanation of the careless and imperfect compliance with the directions and orders of the Prayer Book to which I have adverted. To enter at length into this history would far exceed the limits of my present judgment, but I will make a very cursory reference to the principal epochs.

From the reign of Edward the Sixth to the reign of Her present Majesty the intervals during which the Church has been undisturbed by troubles from within or without have been few.

During the short reign of Edward the Sixth she underwent various trials. Her worship and her ritual were twice dealt with by Parliament, and not only her revenues but the ornaments and treasures within her fabrics were scandalously plundered in order to fill the purses of the corrupt courtiers of a precocious, well-meaning, but prejudiced and narrow-minded boy, who, during the few years of his reign, was little more than an instrument in the unscrupulous hands of the religious and political factions which surrounded and besieged his throne.

I will borrow the language of Fuller in his *Church History of Britain* (book 7. p. 329, edit. 1837).

Speaking of the year 1550, this quaint but faithful historian says: "Come we now to the saddest difference that ever happened in the Church of England, if we consider either the time how long it continued, the eminent persons therein engaged, or the doleful effects thereby produced. It was about matters of conformity. Alas! that men should have lesse wisdom than locusts; which when sent on God's errand, 'did not thrust one another' (Joel ii. 8), whereas here such shoving, and shouldering, and hoisting, and heavings, and justling, and thronging, betwixt clergymen of the highest parts and places. For now nonconformity in the days of King Edward was conceived, which afterward in the reign of Queen Mary (but beyond sea at Frankford) was born, which in the reign of Queen Elizabeth was nursed and weaned, which under King James grew up a young youth, or tall stripling, but towards the end of King Charles his reign, shot up to the full strength and stature of a man, able, not only to

cope with, but conquer the hierarchy its adversary."

Speaking of the year 1552, the same historian says: p. 347, "Lately information was given to the king's council, that much costly furniture, which was embezzled, might very seasonably (such the king's present occasions) and profitably be recovered. For private men's halls were hung with altar-cloths, their tables and beds covered with copes, instead of carpets and coverlets. Many drank at their daily meals in chalices, and no wonder if it came to the share of their horses to be watered in rich coffins of marble. And, as if first laying of hands upon them were sufficient title unto them, seizing on them was generally the price they had payed for them. Now although four years were elapsed since the destruction of colleges and chantries, and much of the best church ornaments was transported beyond the seas, yet the Privy Council thought this very gleaning in the stubble would richly be worth the while, and that, on strict inquisition, they should retrieve much plate in specie and more money for moderate fines on offenders herein. Besides, whereas parish churches had still many rich ornaments left in the custody of their wardens, they resolved to convert what was superfluous or superstitious to the king's use. To which purpose commissions were issued out to some select persons in every county," &c.

It was probably a like spirit of avarice which, using the honest fanaticism of the Geneva divines as its instrument, dictated the destruction of all the ancient service books as well as images, by the Order in Council of December 24, 1549, and the 3 & 4 Edw. 6. c. 10.

The bindings and cases of these books of devotion were often studded with gems of great value; and the images from their costly material, as well as their careful execution, offered a tempting prey to the spoiler.

During the succeeding reign of Mary the Church was altogether driven from her sanctuary. Elizabeth, indeed, exerted the great sagacity which she possessed in laying deep and wide the foundations of the establishment to which the Church was restored. But the foreign element, which the persecutions of Mary had much increased,

began to ferment, and to wage a ceaseless war with the principles upon which the Church had been reformed, and though the masculine sense and vigorous hand of this great Queen restrained the attacks of the innovators from Geneva and Germany, she was obliged to tolerate a practical laxity in all that related to the ritual of the Church, in order to secure the maintenance of the Catholic doctrine.

It cannot be doubted from her resolute retention of the ornaments of her chapel, including lights and a crucifix, from her avowed belief in the Real Presence, as well as from her language and conduct, that her desire and intention were to embrace the Lutheran and the Romanist within the wide and liberal pale of the National Church (31).

And I may observe in passing, that it was in the same spirit of liberality and comprehensiveness that our Bishops in 1661, said, "It was the wisdom of our reformers to draw up such a liturgie as neither Romanist nor Protestant could justly except against; and therefore, as the first never charged it with any positive errors, but only the want of something they conceived necessary, so it was never found fault with by those to whom the name of Protestants most properly belongs, those that profess the Augustine Confession; and for those who unlawfully and sinfully brought it into dislike with some people, to urge the present state of affairs as an argument why the book should be altered to give them satisfaction, and so that they should take advantage of their own unwarrantable acts, is not reasonable."—*Lathbury's History of the Book of Common Prayer*, chap. 13. p. 324.

Bishop Sandys writes to Archbishop Parker: "The last book of service is gone through with a proviso to retain the ornaments which were used in the 1st and 2nd year of King Edward until it please the Queen to take further order for these. Our gloss upon this text is that we shall not be forced to use them, but that others in the

mean time shall not convey them away, but that they may remain for the Queen."—*Strype Ann.*, vol. 1, part 1, p. 122; *Burnet*, vol. 1. part 2. p. 465.

The Puritans rejected with scorn the toleration which the Queen and Walsingham, with a rare wisdom unknown to their age, were ready to extend to them. Bishop Madox cites a declaration of this party as follows: "As for you dear brethren, whom God hath called into the brunte of the battle, the Lord keep you constant, that ye yield neither to toleration, neither to any other subtil persuasions of dispensations or licences, which were to fortify their Romish practices; but, as you fight the Lord's fight, be valiant. The matter is not so small as the world doth take it; it will appear, before all be ended, what an hard thing it is to cut off the rags of the Hydra of Rome. Let us not make the heritage of God as a bird of many colours, holding of divers religions; but rather let us take away, if we can, the names, memories, and all monuments of Popery." The Bishop goes on to say, "Who were meant by this description in the year 1570 needs no explanation. The bishops and clergy of the Church of England were then constantly represented as bearing the names and supporting the monuments of Popery. Agreeably to this exhortation of yielding to no toleration, nor accepting any indulgence, in all their petitions, admonitions, supplications, &c., we see nothing of a toleration for themselves only, but their single request or command, in whichever style they speak, is, the absolute overthrow of the established Government and worship, and the introduction of their own with penalties, even sharp punishments to be inflicted upon those who did not comply with it."

In 1597 Hooker wrote the fifth book of his *Ecclesiastical Polity*, in which he vindicated the rites and ceremonies of the Church of England against the attacks of the Puritans, and pointed out with a prophetic spirit, the confusion which would ensue "if it should be free for men to reprove, to disgrace, to reject, at their own liberty, what they see done and practised according to order set down" (32).

In the reign of Elizabeth's successor, the

(32) Hooker's *Eccles. Polity*, book 5. c. 10. p. 52. edit. 1836.

(31) The rubric, commonly called the black rubric, after the Communion, in the second Prayer Book of Edward the Sixth, explained that no adoration was due to the *real* and *essential* presence. Elizabeth struck it out. The rubric reappears in the last Prayer Book with the very material alteration of "or unto any *corporal* presence of Christ's natural flesh or blood."

Hampton Court Conference, and the canons of 1603, aided by the disposition of James, and the great power of his prerogative which then rested on the Statute of Elizabeth and the general tranquillity of the country, enabled the Church to put in force, in some degree at least, the provisions of her ritual.

The leaven of the Puritans, however, was at work, and is well illustrated by the language which they held respecting our Prayer Book at this time. I refer again to Bishop Madox (p. 73): "But Mr. Neale tells us, it would have obviated many objections, if the Committee had thrown aside the Mass Book, and composed an uniform service in the language of Scripture." This was an objection frequently made by the Puritans, with great variety of very severe and very coarse expressions. Thus in their first admonition to the Parliament, "Remove (say they, in great warmth) homilies, articles, injunctions, and that prescript order of service made out of the Mass Book." In their second admonition to the Parliament they express themselves after this manner: "We must needs say as followeth, that this book is an imperfect book, culled and picked out of that Popish dunghill, the Portuise and Mass Book, full of all abominations." Another of them is pleased to deliver his opinion in the following words: "The whole form of the Church Service is borrow'd from the Papists, pieced and patched, without reason or order of edification." Their famous leader, Mr. Cartwright, likewise declares his and his brethren's displeasure upon this head: "Before I come to speak of prayers (says he) I will treat of the faults that are committed almost throughout the whole liturgy and service of the Church of England, whereof one is that which is often objected by the authors of the admonition, that the form of it is taken from the Church of Antichrist."

During the early part of the reign of Charles the First the advance in ritual restoration was rapid, and was accompanied by great imprudence and little knowledge of, or attention to, the actual circumstances of the State. The Puritan religious element allied itself with the political element; and so it came to pass that a literal and strictly legal compliance with the rubric formed

no insignificant part of the impeachment which brought about the judicial murder of Archbishop Laud, one of the most distinguished writers against the pretensions of the Papacy (33).

Then was the wisdom, as well as the piety, of the principles upon which our Church was reformed demonstrated. In Protestant Germany and in Geneva, where the Apostolical order and primitive usages had been, from whatever causes, neglected or abandoned, and in this kingdom during the troubles of the civil wars almost every variety of sect which the vanity, presumption, and ignorance of man, under the influence of unchecked religious excitement, could devise, sprang into existence.

All these,

Who thought religion was intended
For nothing else but to be mended,

and whom the poem of Butler has rescued from oblivion, have furnished to Rome her strongest weapon for the defence of abuses equally without warrant from Scripture and tradition, and for attack upon the purer branches of the Catholic Church.

At the Restoration, the Church, with the full and hearty consent of the people, restored, with few exceptions, the primitive

(33) Whitelock. *Memorials of the English Affairs*. Folio. Tonson, 1732.

Anno 1643, p. 75.—The Commons "ordered copes and surplices to be taken away out of all Churches."

Anno 1644, p. 86.—Laud on his trial. Objected to him "that he caused superstitious pictures, images, and crucifixes to be set up in many churches, and in the King's chapel caused a popish crucifix to be hung up over the altar upon every Good Friday, which had not been there before since the reign of Queen Mary;" . . . "and his consecrating of churches, tapers, and candlesticks, organs, and particular prayers for those purposes."

The Commons "ordered the taking away of all such pictures, images, and crucifixes in the King's chapel at Whitehall."

Page 91.—"The Earl of Newcastle desired a treaty, which was admitted, and he demanded to march away with bag and baggage, &c., and that all within the town should have liberty of conscience, the prebends to enjoy their places, to have common prayer, organs, copes, surplices, hoods, crosses, &c."

"These things were denied by the Parliament," &c. This was at York, June, 1644.

"August, 1644, p. 98.—Col. Middleton sent up to the Parliament from Sarum many copes, surplices, tippets, hoods, plate, and the picture of the Virgin Mary, taken there; other relics being divided among the soldiers."

ritual, of which Cranmer and Ridley, the chiefs of a noble army of martyrs, had approved.

But the impoverished condition of the clergy, the dilapidated state of the desecrated churches, the profligacy (a reaction from Puritanism) and poverty of the land-owners, combined to prevent that moderate amount of ritual development which a strict obedience to the direction of the rubric required.

Lord Macaulay's picture of the miserable status of the parochial clergy during the seventeenth century ('History of England,' Vol. I. p. 327) is probably painted in too dark colours: but there is no doubt that it was one highly unfavourable to ritual ornament either in the dress of the priest or in the furniture of the church.

It was seldom that men connected with noble families entered into Holy Orders, and the adoption of that profession by Herbert was a remarkable phenomenon of the time.

Then came the struggle of James the Second, by God's good providence defeated, to reimpose the yoke of Rome upon the liberties of our Church.

The very learned Cave, in his *Epistle Dedicatory to the History of the Fathers of the Church* in 1683, observes,—“The Church of England, incomparably the best part of the Catholic Church at this day visible upon earth, is miserably torn in pieces, hated, and maligned; secretly undermined by enemies from abroad, and openly assaulted by pretended friends at home. *Altar* is erected against *altar*, and private congregations kept up in opposition to the publick constitution. The liturgy and forms of Divine administration derided, odiously traduced, and run down with nothing but noise and clamour. The rites and institutions, though the same that were used in the primitive ages of Christianity, derided as antichristian. The discipline and authority weakened, and, by the obstinacy and perverseness of men, made ineffectual.”

The great defection of the non-jurors, who were much attached to ritual observances, among whom were some of the most pious and learned prelates of the realm, at the beginning of William the Third's reign, must, I think, have been unfavourable to

ritual observances in the Church Establishment which they had left (34).

As we enter on the eighteenth century we trace the gradual increase of disobedience to all directions of the Church which had for their object not merely the ornament but the decency of Divine worship.

In 1710 good Bishop Fleetwood, in his charge to his clergy, observed, “that unless the good public spirit of building, repairing, and adorning churches prevails a great deal more among us, and be more encouraged, an hundred years will bring to the ground an huge number of our churches.”

During the reigns of the first two Georges, and the beginning of the third, a decay of piety and learning, with brilliant exceptions indeed, went hand in hand with slovenliness of ritual and habitual indifference to rubrical injunctions upon this subject; and in 1751, that is, forty years afterwards, not many months before his death, that great prelate, Bishop Butler, whose “Divine philosophy” (35) has charmed educated men of all creeds, referring to these words of Bishop Fleetwood, uttered this lamentation, “This excellent prelate made this observation forty years ago; and no one, I believe, will imagine that the good spirit he has recommended prevails more at present than it did then.”

In another part of the same charge he says: “Nor does the want of religion in the generality of the common people appear owing to a speculative disbelief or denial of it, but chiefly owing to thoughtlessness and the common temptations of life. Your chief business, therefore, is to endeavour

(34) Mr. Hallam observes: “Eight Bishops, including the Primate and several of those who had been foremost in the defence of the Church during the late reign, with about four hundred of the clergy, some of them highly distinguished, chose the more honourable course of refusing the new oaths: and thus began the schism of the Non-jurors, more mischievous in its commencement than its continuance, and not so dangerous to the government of William the Third and George the First as the false submission of less sincere men.” Having alleged reasons in favour of the imposition of the oath, he adds in a note: “Yet the effect of this expulsion was highly unfavourable to the new government; and it required all the influence of a latitudinarian school of Divinity, led by Locke, which was very strong among the laity under William, to counteract it.”—*Constit. Hist.*, vol. 3. p. 108. 7th edit.

(35) Butler's Works, pp. 372–376. edit. 1835.

to beget a practical sense of it upon their hearts as what they acknowledge their belief of, and profess they ought to conform themselves to. And this is to be done by keeping up, as we are able, the form and face of religion with decency and reverence, and in such a degree as to bring the thoughts of religion often to their minds; and then endeavouring to make this form more and more subservient to promote the reality and power of it. The form of religion may indeed be where there is little of the thing itself, but the thing itself cannot be preserved amongst mankind without the form. That which men have accounted religion in the several countries of the world, generally speaking, has had a great and conspicuous part in all public appearances, and the face of it has been kept up with great reverence throughout all ranks, from the highest to the lowest; not only upon occasional solemnities, but also in the daily course of behaviour. In the heathen world, their superstition was the chief subject of statuary, sculpture, painting, and poetry. It mixed itself with business, civil forms, diversions, domestic entertainments, and every part of common life. The Mahometans are obliged to short devotions five times between morning and evening. In Roman Catholic countries people cannot pass a day without having religion recalled to their thoughts, by some or other memorial of it, by some ceremony or public religious form occurring on their way; beside their frequent holidays, the short prayers they are daily called to, and the occasional devotions enjoined by their confessors. By these means their superstition sinks deep into the minds of the people, and their religion also into the minds of such among them as are serious and well-disposed. Our reformers, considering that some of these observances were in themselves wrong and superstitious, and others of them made subservient to the purposes of superstition, abolished them, reduced the form of religion to great simplicity, and enjoined no more particular rules, nor left anything more of what was external in religion, than was in a manner necessary to preserve a sense of religion itself upon the minds of the people. But a great part of this is neglected by the generality amongst us; for instance, the service of the Church, not only

upon common days, but also upon Saints' days, and several other things, might be mentioned. Thus they have no customary admonition, no public call to recollect the thoughts of God and religion from one Sunday to another." "Indeed in most ages of the Church the care of reasonable men has been, as there has been for the most part occasion, to draw the people off from laying too great weight upon external things, upon formal acts of piety. But the state of matters is quite changed now with us. These things are neglected to a degree which is and cannot but be attended with a decay of all that is good. It is highly seasonable now to instruct the people in the importance of external religion. And doubtless under this head must come into consideration a proper regard to the structures which are consecrated to the service of God. In the present turn of the age one may observe a wonderful frugality in everything which has respect to religion, and extravagance in everything else. But amidst the appearance of opulence and improvement in all common things, which are now seen in most places, it would be hard to find a reason why these monuments of ancient piety should not be preserved in their original beauty and magnificence. But in the least opulent places they must be preserved in becoming repair and everything relating to the Divine service be, however, decent and clean, otherwise we shall vilify the face of religion, whilst we keep it up. All this is, indeed, principally the duty of others; yours is to press strongly upon them what is their duty in this respect, and admonish them of it often, if they are negligent."

Then followed the great schism of which the pious Wesley was unwillingly and unwittingly the leader, but of which the apathy and sloth of the Church were the true cause. A resuscitation of Christian life was afterwards brought about by a school in the Church which, though with little knowledge of or care for ecclesiastical traditions or primitive usage, yet almost within the memory of the present generation represented the earnestness and energy of the establishment. Both these events were unfavourable to the maintenance of ritual observances.

The piety of this school is not incom-

patible with superior erudition and historical knowledge in persons more susceptible to the influences of external rites and ceremonies. A school has sprung up in our memory, which, having first restored the true ecclesiastical architecture in our churches, proceeded to inquire into the real meaning of the rubrical directions in our Prayer Book, examined them by the light of history and tradition, and arrived at the conclusion that a bare and unattractive service, sordid furniture, and the absence of all that was beautiful in art in the Temple of God, was not a necessary condition of a Church which had thrown off the corruptions and novelties of Rome. The Prayer Book referred them to the custom and usage which prevailed in the second year of Edward the Sixth. In the Lutheran and Swedish services they found crucifixes, incense, lighted candles, and gorgeous dresses. They thought it obvious, therefore, that no necessary connexion subsisted between these ornaments and usages of primitive antiquity, and the mediæval and false claims of the Papacy.

Recognizing the spirit of this movement in the Church, the late Bishop of London, in his Charge in 1842, used this emphatic language : " Every clergyman is bound by the plainest obligations of duty to obey the directions of the rubric. For conforming to them, in every particular, he needs no other authority than that of the rubric itself. We ought not to be deterred from a scrupulous observance of the rites and customs prescribed or sanctioned by our Church by a dread of being thought too careful about the externals of religion. If we are not to go *beyond* her ritual, at least we ought not to fall *short* of it ; nor to make her public services less frequent, nor more naked and inexpressive, than she intends them to be."

Again he says,—" An honest endeavour to carry out the Church's intentions, in every part of public worship, ought not to be stigmatized as Popish or superstitious. If it be singular, it is such a singularity as should be cured, not by *one* person's desisting from it, but by *all* taking it up. When I have been asked whether I approved of certain changes in the mode of celebrating Divine service, which were spoken of as novelties, but which were in fact nothing more than a return to the anciently esta-

blished order of the Church, my answer has been, far from questioning the *right* of the clergy to observe the rubric in every particular, I know it to be their *duty* ; and the only doubt is, how far are *we* justified in not *enforcing* such observance in every instance."

Bishop Stanley, in his Charge in 1845, says, " Speaking of the decorations of churches, I am aware of the reply ; they pander, it is said, to idolatry, and may again become the object of superstitious worship. In a former age, when the minds of men were under the control of a superstitious and designing priesthood, such reasoning might have weight, but I must confess I cannot now hear it without mingled sentiments of pain and surprise." . . . " We need not," he concludes, " like the Puritans of old, banish the influence of art from the sphere of religion, and return to that rude spirit which went forth as the destroyer of all that was beautiful, glorying in its barbarous mutilations."

I will conclude my observations on this subject in the words of the oldest and certainly not the least able and learned of our prelates. In 1851 the Bishop of Exeter said (from Appendix A. to the Report of the Ritual Commission, page 122), " Let me make one general remark. Where the congregation consists mainly of the poorest orders, there we commonly observe a great love of a majestic and even elaborate service. The ornaments of their church ; the storied glass ; the painted, and it may be gilded, walls ; the table of the Lord elevated above the rest, and decked with sober yet costly furniture ; the pealing organ ; the chanted psalms ; the surpliced choristers ; the solemnity of the whole ritual—gladdens, while it elevates their minds ; they recognize in it their own high privilege as Christians, and rejoice to find themselves equal participants with their richest neighbours in the homage thus paid to the common Lord and Father of all. In truth, when we consider the little which the poor man has to delight his heart and touch his imagination in his own squalid home, we ought to rejoice that he can find enjoyment in the house of prayer, his Father's house. For this reason few occurrences have affected me more than the lamentations of the poor worshippers, in one of the districts of the metropolis, when they saw, or thought they

saw, at the dictation of a riotous and lawless mob of strangers, the approaching surrender of the ritual which they loved, and which was their weekly, to many among them the daily, solace of that poverty to which the providence of God had consigned them."

It was in this spirit that the church of St. Alban's was, we know, built. In this spirit we must all hope that its services have been conducted. But it remains to be seen whether they have or have not gone beyond those bounds of ritual observance which the law of our Church has set.

General Principles for the Construction of Rubrics.

In the foregoing observations I have dealt with two heads of the arguments urged by the counsel for the promoter, which for the sake of clearness I will repeat; namely, that these particular practices are by necessary implication prohibited, inasmuch as they are connected with Roman or Popish doctrines. And that as such they have, as a matter of fact, been disused ever since the Reformation.

I am of opinion that neither of these arguments can avail to prove that the practices complained of are illegal.

I have now to consider the two other heads of their argument; namely, that, as by these practices a new rite or ceremony has been added to those which are prescribed by the Statutes of Uniformity, such practices are unlawful. And that these particular additions are expressly prohibited.

The due consideration of these arguments renders it expedient that I should previously determine upon what principles the rubrical directions of the Prayer Book should be construed.

It has been argued on the one side that the legal effect of express directions in the rubric is to shut out every rite, ceremony, utensil, or ornament which is not the subject of such express provision, or by necessary implication directly subsidiary to it. It has been argued, on the other side, that every ancient Catholic rite, ceremony, utensil, or ornament which is not the subject of an express prohibition is lawful. I am not disposed to assent to either of these propositions in their full latitude.

I believe the following rules to be well

founded in principle, reason, and law, and I shall endeavour to guide myself by them; namely, that what is expressly prohibited is prohibited altogether, and may not be evaded by any contrivance which, under a different name or appearance, attains the same end; that whatever is expressly ordered may not be evaded by an illusory or partial compliance; that whatever is subsidiary to what is ordered, and whatever, being in itself decent and proper, is in accordance with primitive and catholic use, and is not by any fair construction necessarily connected with those Roman novelties which the Church "cut away and clean rejected" (to use the language of the Prayer Book) at the Reformation, is, under restrictions to be mentioned, lawful.

There are, in other words, three categories of these things,—

- (1.) Things lawful and ordered.
- (2.) Things unlawful and prohibited.
- (3.) Things neither ordered nor prohibited expressly, or by implication, but the doing or use of which must be governed by the living discretion of some person in authority.

Construction of Rubric—As to the Discretion of the Ordinary.

I wish to say a word first upon this last category.

The compilers of our Prayer Book, and the legislature which clothed it with the authority of a statute, were well aware that such a living discretion was indispensably necessary for the government of the Church in the performance of her Divine service, as well as in the due discharge of her other functions.

In the Preface concerning the service of the Church, it is stated that "nothing can be so plainly set forth but doubts may arise in the use and practice of the same;" accordingly the first and every subsequent Prayer Book, including the present one, provided what must have been intended and believed to be a sufficient remedy for the evil which was thus contemplated as of possible, perhaps probable, occurrence.

It is important to notice the nature and character of the remedy proposed. It was one in perfect accordance with the principle upon which the order and discipline of the

Church had, in obedience to the will of Christ, been founded by his Apostles ; a principle which recognized the apostolical order of bishops as necessary for the due constitution of the Church ; and in perfect accordance with the great principle of the Reformation of the Church in England, that a duly consecrated bishop had a Divine authority, perfect and complete in itself, and wholly independent of the previous consent or subsequent ratification of that authority by the Pope.

The remedy was as follows : "To appease all such diversity (if any arise), and for the resolution of all doubts concerning the manner how to understand, do, and execute the things contained in this book, the parties that so doubt or diversely take anything shall always resort to the bishop of the diocese, who by his discretion shall take order for the quieting and appeasing of the same ; so that the same order be not contrary to anything contained in this book, and if the bishop of the diocese be in doubt, then he may send for the resolution thereof to the archbishop."

The words of this order deserve the closest attention ; it provides "for the resolution of all doubts concerning the manner how to understand, do, and execute the things contained in this book ;" terms which certainly appear to comprehend every conceivable difficulty or doubt which could possibly arise. The authority which is to resolve these doubts and remove these difficulties, is that officer in whose hands, previously to the statutory enactment of any Prayer Book, the Church had placed a supreme command over all that relates to her ritual.—"The parties that so doubt or diversely take anything shall always resort to the bishop of the diocese." The mode of resolution is not stated, but the language is such as to render it improbable that any formal proceedings in a court were contemplated. "The bishop by his discretion shall take order for the quieting or appeasing of the same,"—large, and, I think, wise expressions, making reference to a living authority, such as the nature of the thing seems to demand, and the Church had always recognized as having the power to deal with the circumstances of each case as they arose. Was there any limitation to this authority ?—One only, it appears ; that his order "shall not be con-

trary to anything contained in this book ;" leaving, therefore, in my judgment, within the domain of his authority that third category to which I have referred, namely, "things neither ordered nor prohibited expressly or by implication."

Was there any provision for controlling the exercise of this discretion ?—Yes, a provision not inserted it is true in the first Prayer Book, but equally in accordance with the discipline of the Catholic Church and with the denial of papal pretension,—the provision "that if the bishop be in doubt he may send for the resolution thereof to the archbishop."

Some construction must be placed upon this order. There are but three possible constructions which occur to my mind : one, that the order merely means that the minister or "party" may quiet his own conscience by having recourse to the private advice of the Ordinary, which advice, when given, he is conscientiously bound to follow ; a second construction is, that the order contemplates formal proceedings in the ecclesiastical courts of the diocese and the province ; the third is, that which I have suggested.

It is certainly remarkable that as far as I am aware this order has never yet received any judicial interpretation. I remember very well arguing before a very learned ecclesiastical Judge, Sir Herbert Jenner Fust, in "the Stone Altar case ;" (it was brought into the Court of Arches by appeal from the sentence of the Court of Ely, which Court had affirmed the legality of the stone altar,) that the question was one to be decided according to the discretion of the Ordinary, according to this order ; and, in his judgment, Sir H. J. Fust said, "After much consideration now given, I am of opinion the matter is not one of discretion but of law. Were it otherwise I should be desirous of consulting the wish of the parish (36). It was clearly, therefore, the opinion of Sir H. J. Fust, who was perfectly conversant with ecclesiastical law and practice, that this order was not to be treated as a dead letter, although, after much reflection, he was of opinion the questions as to the material and position of the altar-table did not come within its pur-

view. The structure of a stone altar he conceived to be "contrary" to the provisions of the Prayer Book. And in *Westerton v. Liddell*, the Lords of the Privy Council, after deciding that it was lawful to place upon the holy table cloths of various colours, observed, "whether the cloths so used are suitable or not is a matter to be left to the discretion of the Ordinary" (37).

There is a difficulty arising out of this construction, from the consideration of which I must not shrink. It may be said that the bishop, when he had taken order for appeasing the doubt, would have no legal means of enforcing that order, and that for the purpose of such enforcement he must have recourse to his court. But it appears to me that, on the supposition that the matter was one on which he could exercise his discretion, he could clothe his order with the character of a monition, and that a disobedience to such monition would subject the person disobeying to the penalties of contumacy.

I should observe that the canon law unquestionably placed in the hands of the bishop the authority to govern all questions of ritual.

"Et quidem" (Van Espen says) "quia dispares diversarum nationum mores et ingenia diversos ritus et cæremonias, ut in politicis ita in ecclesiasticis exigunt, hinc in ritibus magna ecclesiarum varietas; præsertim quia nullo extante de his Christi vel Apostolorum præcepto, libera potestas episcopis relicta erat, id sentiendi et discernendi quod unicuique salva fide magis expediens videbatur."

And citing the decree of a synod he says: "Novæ cæremoniæ nullæ in ecclesiis recipiantur sine episcopi judicio"—*Van Espen*, vol. 1. pp. 411, 412.

Upon this construction of the rubrics, it will be my duty to consider whether any of the charges preferred against Mr. Mackonochie ought to have been dealt with by the discretion of the Ordinary, and not to have been made the subject of a criminal proceeding against him in this or in any other court.

Construction of Rubrics generally.

With respect to the two other categories of rubrics, namely, those which relate to

(37) *Moore's Special Report*, 188.

NEW SERIES, 37.—ECCLES.

things lawful and ordered, and things unlawful and prohibited, there is a question *in limine* which must be considered. Is there a *common law* of the Church unwritten, living by usage, though partly expressed, perhaps, by judicial decisions; but still more, to use a common expression, taken for granted by all authorities in Church and State—filling up the void of positive provision in statute or formulary—a necessary part of an organized religious system and establishment, rendering the practical working of it possible, and, on the whole, harmonious?

That there has been such a usage in the Church at large, from its earliest foundation, is certain. "We know no such customs, neither we nor the churches of God," was the language which we learn from inspired authority she used as her shield against the earliest assaults upon her integrity. "Let the ancient customs prevail" was the maxim, fatal to the mediæval and modern pretensions of Rome, which the Church enunciated in her earliest œcumenical council. The canon law of the Western Church fully recognizes custom and usages as a distinct source of ecclesiastical jurisprudence. Was the branch of this Church, which the constitution and the legislature have established in this kingdom devoid of this subsidiary aid to her discipline and government?

In the case of *Wilson v. M'Math* (38), a very curious question was raised, whether the minister, as such, has a right to preside at a vestry meeting.

Sir John Nicholl, the Official Principal of the Archbishop of Canterbury, observed: "The case is said to be a new one, so far as regards any *express* law, or any judicial decision on the subject. There is no statute, no canon, no reported judgment, either expressly affirming or expressly negating the right. It nevertheless may exist as a part of the common law of the land, as a part of the *lex non scripta*, which is of binding authority, as much in the ecclesiastical as in the temporal courts. Indeed, the whole canon law rests for its authority in this country upon received usage; it is not binding here *proprio vigore*. Moreover, this Court upon many points is governed, in the absence of express statute or canon, by the *jus tacito et illiterato hominum con-*

(38) 3 Phill. 78.

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sensu et moribus expressum. It is true that generally the existence of this *jus non scriptum* is ascertained by reports of adjudged cases; but it may be proved by other means: it may be proved by public notoriety, or be deducible from principles, and analogy, or be shewn by legislative recognitions. Published reports of the decisions of the Ecclesiastical Courts (with one very recent exception) do not exist; and if they did, yet the particular right in dispute may never have been so much as doubted or questioned before." Upon this principle, in the time of James the First, the King's Bench refused to prohibit the Ordinary from compelling a woman to be churchd in a veil, because it was certified by divers bishops to be the common custom of the Church of England (39).

There is, therefore, a common law of the Church which runs by the side of the statute law, and which must assist in the construction of it.

It is often said that a rubric should be construed on the same principles as an act of parliament; but admitting this to be so, it is obvious that there are peculiar difficulties incident to the construction of a rubric which seldom, or in a much less degree, beset the construction of an ordinary statute. And it will appear from what has been already said, that the right understanding of the rules supplied by the rubric for the regulation of the services may often require a reference to the sources not only of historical, but to a certain extent theological knowledge.

There is one important rule applicable to the construction of all instruments, namely, that the construer should endeavour to place himself in the position of the framer of the instrument, and to gather from all the circumstances which surrounded him at the time when he framed it, and from the context of other portions of the instrument, what the real meaning and intention was, if the language which he has used have left that meaning and intention doubtful or obscure.

In the case of *Escott v. Mastin* (40), in

(39) Vin. Abr. 17, p. 231, tit. 'Prerogative of the King;' 'Ordinary, and Power of the Ordinary;' 1 Burn's Eccles. Law, edit. Phill., p. 318.

(40) 4 Moore P.C. 323.

which a question as to the lawfulness of baptism administered by a layman with water and the invocation of the Trinity, was mooted, the Lords of the Privy Council observed as follows: "The 68th canon being that upon which this proceeding is grounded, it is necessary to consider what the law was at the date of the canon, the year 1603. Without distinctly ascertaining this, we cannot satisfactorily determine what change the rubric of 1661, adopted into the 13 & 14 Car. 2. c. 4, made, and in what state it left the law on this head; because it is very possible that the same enactment of a statute, or the same direction in a rubric, bearing one meaning, may receive one construction when it deals for the first time with a given subject-matter, and have another meaning and construction when it deals with a matter that has already been made the subject of enactment or direction; and this is most specially the case where the posterior enactment or direction deals with the matter without making any reference to the prior enactment or direction. Still more it is necessary to note the original state of the law, when it is the common law that comes in question, as well as the statute. The words are plainly directory, and do not amount to an imperative alteration of the rule then subsisting. If lay baptism was valid before the new rubric of 1661, there is nothing in that rubric to invalidate it. Generally speaking, where anything is established by statutory provisions, the enactment of a new provision must clearly indicate an intention to abrogate the old, else both will be understood to stand together if they may. But, more especially, where the common law is to be changed—and, most especially, the common law which a statutory provision had recognized and enforced—the intention of any new enactment to abrogate it must be plain to exclude a construction by which both may stand together. This principle, which is plainly founded in reason and common sense, has been largely sanctioned by authority. The distinction which Lord Coke takes in one place between affirmative and negative words, giving more effect to the latter (*Coke, Littleton*, 115, a), has sometimes been denied, at least doubted (*W. Jones*, 270, *Lovelace's case*, before the Windsor Forest Court, in 1632, in which there is a

dictum of Lord Chief Justice Richardson,) Mr. Hargrave thinks upon a misapprehension (Note 154). But the rule which is laid down in 2 *Inst.*, 200, has been adopted by all the authorities, that 'a statute made in the affirmative, without any negative expressed or implied, doth not take away the common law.' So *Comyns's Digest*, tit. 'Parliament,' (R. 23); and he cites the case *De Jure Ecclesiastico*, in 5 *Rep.* 5 b, which lays down the rule in terms."

Let me apply this rule to the subject before me. The first Prayer Book of Edward the Sixth contains only one prohibition, the Elevation of the Blessed Sacrament; but it contains various directions respecting the articles to be used in the administration of the Holy Communion. It has been pointed out that the enumeration of these articles could not be exhaustive, inasmuch as the indispensable article of "a fair linen cloth" is omitted from it."

The argument is, I think, valid; the officiating priest must have supplied this article, and the legislature must have intended him to supply it. He must have looked to an unwritten *use*, the foundation of a common law for the Church, not less than for the State. So it must have been intended by the rubric in our present Prayer Book: "The priest shall then place upon the table so much bread and wine as he shall think sufficient," that there should be a table or place from which the elements should be then brought; and therefore the Judicial Committee of the Privy Council, reversing the sentence of the Consistory of London and the Court of Arches, decided that the Credence Table, which supplied this want, was a lawful ornament. Those who compiled the first Prayer Book of Edward the Sixth were not inventing a ritual for the first time, but were constructing one from the various service books, some English and some foreign, which they had before them. This ritual was to be placed in the hands of persons conversant with the older service books; and it seems highly unreasonable to suppose that it was not competent to the priest to supply any accidental omission in the new ritual by a reference to the previously existing usage and practice. In the same way, in the Sarum Missal no mention is to be found of the two lights to be placed upon the altar, but there is no

doubt that the constitution which ordered those two lights was legally binding upon, and such lights must have been a part of the furniture of, those churches which adopted the Use of Sarum, at least in the province of Canterbury. Another illustration is furnished by the very remarkable fact that the second Prayer Book of Edward the Sixth omitted all reference to the manual acts, ordered in the first and last Prayer Book, attending the consecration of the Holy Elements; and that during the whole period which elapsed between the date of the second Prayer Book in 1552 and that of the present Prayer Book in 1661, the officiating priest was left without any direction upon this subject in the Prayer Book which he was to use. Now, one of two consequences must follow: either the cup was never taken in the hand, the bread never broken as at present, or these manual acts were done without any specific order in the Prayer Book, as a matter of recognized usage and custom. No proof has been laid before me, and I can find none, as to the omission of these necessary acts during a period of more than a century, and I think the inference that they must have been still practised is reasonable and sound.

And in this opinion I am strengthened by observing that, at the Savoy Conference the Dissenters objected, "that the manner of the consecrating of the elements is not here" (*i. e.*, in the consecration prayer) "explicit and distinct enough, and ministers breaking of the bread is not so much as mentioned." The bishops replied by "conceding that the manner of consecrating the elements be made more explicit and express," which was the origin of our present rubric. — *Cardwell, Conferences*, pp. 321, 363.

The opinion of Bishop Cosin (vol. 5. p. 65, edit. 1854), a high authority upon this subject, appears to be sound. "The book" (he says) "does not everywhere enjoin and prescribe every little order that should be said or done, but takes it for granted that people are acquainted with such common things already used as such. Let the Puritans, therefore, give over their endless cavils, and let ancient custom prevail, the thing which our Church chiefly intended in the review of this service." This reasoning, therefore, brings me to the

conclusion, that from the mere silence of the rubric a positive prohibition cannot in all cases be inferred.

Something more is required to render the article supplied illegal. For instance, the mention of the article in a former Prayer Book, and the omission of it in the present, may furnish a presumption that it was intentionally rejected, even when it be in itself innocent, or apparently expedient. Or the article must have, as has been already observed, some necessary connexion with a use inconsistent with the principles upon which the formularies of the Church are founded.

I must repeat that the rubrics with respect to decorations and furniture of the church are not exhaustive. This point has been decided by the Judicial Committee of the Privy Council. They allowed on this principle the use of the Cross and the Credence Table and the various coloured cloths for the Holy Table. They allowed also the use of a movable ledge for the purpose of holding candlesticks upon the Holy Table. This question came before their Lordships as a corollary to their principal decision on the Knightsbridge Church cases. It was contended that the monition of the Court with respect to St. Barnabas Church had not been obeyed as to the Holy Table or as to the Cross.

The act on petition alleged, that the monition was still in part uncomplied with in the following particulars: First, that the metal cross which was standing in the church or chapel, on or attached to the super-altar, on the stone altar, which formerly stood therein prior to the delivery of the judgment of the Judicial Committee on the 21st of March, 1857, was then placed on the sill of the great eastern window of the church or chapel of ease of St. Barnabas, above the table then used as a Communion Table in the church or chapel. Secondly, that the table which had been substituted in the church or chapel for the stone altar which formerly stood therein was not a flat table, but had an elevation or structure placed thereon, so as to resemble what is generally known and described as a super-altar in Roman Catholic churches or chapels.

The answer on behalf of the Hon. and Rev. Robert Liddell and the then chapel-

wardens to this act on petition, denied that the monition was in any part uncomplied with, and pleaded, first, that the metal cross which was on the 27th of March, 1857, standing in the church or chapel of St. Barnabas (attached to the ledge of wood at the back of the stone altar, which then stood in the chancel of the church or chapel) was at the present time placed on the sill of the centre compartment of the eastern window of the chancel of the church or chapel, five feet ten inches above the surface of the Communion Table standing there, and wholly disconnected therewith; secondly, that the table which had been substituted in the church or chapel for the stone altar which formerly stood therein was a flat movable table of wood; and that the elevation or structure alleged in the second article of the act on petition as placed thereon was simply a movable ledge of wood placed in order that two candlesticks might stand thereon at the back of the table, and that the ledge was always raised up before the celebration of the Lord's Supper, in order that the decree of the Court might be complied with, namely, that a fine linen cloth should cover the Communion Table at the time of the ministration of the Lord's Supper, and that the cross was in the church or chapel at the time of the consecration thereof, and then formed one of the ornaments of the church or chapel.

Their Lordships were of opinion, "that no disobedience, no impropriety, no irregularity, has been established; and that the application, therefore, failed" (41).

In the same spirit, usages not prescribed by the Prayer Book during the service have been allowed,—such as turning to the east while the Creeds are read, the "Glory be to Thee, O Lord," before the reading of the Gospel, and the expression of thanks after the reading of it, the use of hymns—a use perhaps not only not ordered, but contrary to the order of the Prayer Book; and an inscription on a tombstone of "pray for the soul" of a departed person has been,

(41) Judgment delivered by Lord Justice Knight Bruce, 14th June, 1861, on appeal to the Judicial Committee of the Privy Council from the Archdeacon Court of Canterbury. The Hon. and Rev. Robert Liddell, William Parkes, and George Evans, appellants, and James Beal, respondent.

by express judicial decision, pronounced not to be "contrary to the articles, canons, constitutions, doctrine, and discipline of the Church"—*Brecks v. Woolfrey* (42).

And here I will notice what I may call the churchwarden argument. It has been said that one test of the legality of ornaments is whether the churchwardens can or cannot be compelled to provide them. I am of opinion, however, that this is not a conclusive test. The law upon this subject was well and clearly laid down by Dr. Lushington (43),—namely, that there are two classes of expenses for parochial purposes; one, necessary expenses, which the churchwardens may defray of their own authority out of a rate, without the sanction of the vestry; another, expenses not absolutely necessary, a class which requires, if they are to be defrayed out of a rate, the previous sanction of the vestry. Under this latter category would fall all expenses incurred for furniture of a decorative kind, which would also require the sanction of the Ordinary.

The Special Charges considered.

Having thus considered the principles of law which ought to guide me in adjudicating the charges preferred against the reverend defendant in the case before me, I will now consider and pronounce judgment upon each individual charge, which, for the sake of convenience, I will arrange in the following manner:

First, the Elevation of the Blessed Sacrament, including the Kneeling;

Secondly, the use of Incense during the administration of the Holy Communion;

Thirdly, the Mixing of Water with the Wine during the administration of the Holy Communion;

Fourthly, the use of Lights during the administration of the Holy Communion.

Elevation.

3rd Article.—The third of the articles in this suit charges the defendant, "That he, the defendant, had in his said church, and within two years last past, to wit, on Sunday the 23rd of December, on Christmas

Day last past, and on Sunday the 30th of December, all in the year 1866, during the prayer of consecration, in the order of the administration of the Holy Communion, elevated the paten in a greater degree than by merely taking the same into his hands, as prescribed by the Book of Common Prayer, and in a greater degree than is necessary to conform with the requirements of such book, and permitted and sanctioned such elevation; and had taken into his hands and elevated the cup during the prayer of consecration aforesaid in a manner contrary to the said statutes, and to the said Book of Common Prayer, and permitted and sanctioned the cup to be so taken and elevated; and knelt or prostrated himself before the consecrated elements during the prayer of consecration, and permitted and sanctioned such kneeling or prostrating by other clerks in holy orders."

Answer.—To this article the defendant has answered, "That whilst he admits that he, the defendant, did on the said two Sundays, and on Christmas Day, during the prayer of consecration, kneel, and sanction kneeling by other clerks, before the Lord's Table, he denies that his said party did on the said two Sundays, and on the said Christmas Day, kneel or prostrate himself before the consecrated elements, or permit and sanction such kneeling or prostration by other clerks in holy orders, as in the 3rd article pleaded. And he further alleges that whilst he admits that he did on the said two Sundays and Christmas Day, in the said 3rd article mentioned, elevate and sanction the elevation by other clerks of the paten and cup above his head, as in the said 3rd article pleaded, yet that such elevation of the paten and cup has been wholly discontinued by the said defendant during the administration of the Holy Communion ever since the said 30th of December, 1866, and long prior to the institution of this suit; that such practice was discontinued in consequence of legal advice, and in compliance with the expressed wish of the Lord Bishop of the diocese of London, and with a resolution of Convocation, as was well known to the promoter of this suit before he instituted the same."

4th Article.—The fourth article alleges "that such elevation of the cup and paten, and such kneeling and prostrating, are seve-

(42) 1 Curt. 880.

(43) 1 Burn's Ecclesiastical Law, p. 388 a., edit. Phillimore; *Gathercole v. Ward*; *Rand v. Green*, 6 Jur. N.S. 303.

rally unlawful additions to and variations from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer and administration of the sacraments and other rites and ceremonies of the Church, and are contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons, and also to an act of parliament passed in a session of parliament holden in the thirteenth year of Queen Elizabeth, cap. 12, and to the 25th and 28th of the articles of religion therein referred to."

Answer.—The defendant to this article answers, "That he denies that the elevation of the paten and the taking and the elevation of the cup so discontinued as aforesaid, and the kneeling and prostrating charged in the said third article, are severally unlawful additions to and variations from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer and administration of the sacraments and other rites and ceremonies of the Church, or that they are contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons, and also to an act of parliament passed in a session of parliament holden in the thirteenth year of Queen Elizabeth, cap. 12, and to the 25th and 28th articles of religion therein referred to, as in the 4th article alleged."

The elevation of the Blessed Sacrament was not incorporated formally into the law of the Western Church before the beginning of the thirteenth century. The account given by Cardinal Bona is clear and concise (*Rerum Liturgicarum*, lib. 2. cap. 3. s. 2.): "Latini peracta consecratione, Græci paulo ante communionem, ut ex Liturgiis Jacobi, Basilii, et Chrysostomi manifestum est, corpus Dominicum et calicem elevant, ut a populo adoretur. Idque ab antiquo tempore fieri solitum indicant scriptores Græci." He then cites a variety of authorities in support of this position, and mentions the introduction of the custom of ringing a bell at the time of the elevation, at first as it should appear in order to excite the devotions of the faithful, and not for the purpose of the worship of the Host—p. 349.

It was not till the year 1217, during the Papacy of Honorius the Third, that this peculiar doctrine of elevation became part of the canon law.

In lib. 3. tit. 42. Decret. Greg., cap. 10, the decree upon the subject is as follows: "Sane, cum olim (*ut infra*). Ne propter incuriam Sacerdotum divina indignatio gravius exardescat, districtè præcipiendo mandamus, quatenus a Sacerdotibus Eucharistia in loco singulari, mundo et signato semper honorifice collocata, devote ac fideliter conservetur. Sacerdos vero quilibet frequenter doceat plebem suam, ut, cum in celebratione missarum elevatur hostia salutaris, se reverenter inclinet, idem faciens, cum eam defert Presbyter ad infirmum. Quam in decenti habitu superposito mundo velamine ferat, et referat manifeste ac honorifice ante pectus cum omni reverentia et timore, semper lumine præcedente, cum sit candor lucis æternæ, ut ex hoc apud omnes fides et devotio augeatur. Prælati autem hujusmodi mandati graviter punire non differant transgressores: si et ipsi divinam et nostram volunt effugere ultionem."

William, Bishop of Paris, soon after the beginning of the thirteenth century, made an order that, "Sicut alias statutum fuit, in celebratione missarum, quando corpus Christi elevatur, in ipsa elevatione vel paulo ante campana pulsetur, ut sic mentes fidelium ad orationem excitentur."

And Archbishop Peckham, who was consecrated in the year 1278 and died in the year 1292, appears to have first introduced into England this custom by the following constitution (Constitutions at Lambeth, A. D. 1281, par. 1): "In elevatione corporis Christi ab una parte ad minus pulsantur campanæ, ut populares, qui celebrationi missarum non valent quotidie interesse, ubicunque fuerint, sive in agris sive in domibus, flectant genua, indulgentias concessas a pluribus episcopis habituri."

Lyndwood (writing, it is to be observed, about 1430) has this gloss: "*Elevatione*, quæ fit ut populus illud adoret."

This passage appears to me to dispose of the argument addressed to me, "that it had been the invariable practice of the Church of England not to connect adoration with elevation."

Nor am I satisfied by the difference between the canon of the Sarum Use and that of the Roman Missal upon this point, that at the time of the Reformation the adoration was separated from the elevation of the Host. The true proposition is, that

the original practice, in England as in other countries, had been to stir up the devotion of the people to God by the elevation of the Blessed Sacrament, until in this, as in so many other instances, the Church, or perhaps more strictly speaking the Curia, of Rome introduced an unwarrantable innovation upon an ancient and laudable usage.

The first prohibition of this custom, of elevating the Host in order that it might be adored, is to be found in the Order of the Communion of Edward the Sixth, which was published in 1548, and preceded the first Book of Common Prayer. The last "note" to that order, after providing for the case in which it has become necessary to consecrate more wine than had been originally consecrated, contains these words, "and without any levation or lifting up." This prohibition would seem from the context to be limited to the case of an additional consecration of wine. In the first Prayer Book, after the prayer of consecration, follow these words: "These words before rehearsed are to be said, turning still to the altar, without any elevation, or showing the sacrament to the people."

The Council of Trent, by the 6th canon of the 13th session, passed the 11th of October, 1561, decrees: "Si quis dixerit, in sancto eucharistiæ sacramento Christum unigenitum Dei Filium non esse cultu latræ, etiam externo, adorandum, atque ideo nec festiva peculiari celebritate venerandum, neque in processionibus secundum laudabilem et universalem ecclesiæ sanctæ ritum et consuetudinem solenniter circumgestandum, vel non publice, ut adoretur, populo proponendum, et ejus adoratores esse idololatrias, anathema sit."

The liberal and strong sense of Luther appear in his treatment of this question of elevation. In the "Formula Missæ et Communionis" for the church at Wittemberg he gives this direction: "(IV.) Finita benedictione chorus cantet sanctus et sub benedictum *elevetur* panis et calix, ritu hactenus servato, vel propter infirmos qui hac repentina (mutatione) hujus insignioris in missa ritus forte offendentur, *præsertim ubi per conciones vernaculas docti fuerint quid ea petatur elevatione.*"—*Cod. Liturg.* 2. 87, edit. Leipzig, 1848. Daniel, the learned German editor of the Codex Liturgicus,

observes, that the elevation was for a long time not only tolerated but approved of and defended by Luther. He thought it right that when the Sacrament was lifted up a bell should ring; for the priest and the bell spoke the same language, namely, "Hearken, ye Christians, and behold, then take and eat, take and drink, this is the body and blood of Christ." Afterwards Luther placed the elevation "*inter adia-phora quæ possunt servari vel omitti ad habitum ecclesiarum,*" and discontinued it in the church at Wittemberg. The rite appears to have prevailed during the sixteenth and seventeenth centuries in the churches of Sweden and Denmark.

By the 28th of the Thirty-nine Articles, which became part of the Statute Law in 1571, though passed in Convocation with the consent of the Crown in 1562, it is declared, "That the Sacrament of the Lord's Supper was not by Christ's ordinance reserved, carried about, lifted up, or worshipped."

It is true that these words contain a declaration only, and no specific order; but looking to the spirit as well as to the letter of our present Prayer Book, as well as to this article, and to the documents which illustrate the early period of the Reformation, it appears to me clear that those who guided the Church of England through this process of restoration to primitive antiquity were of opinion that the elevation was so connected with the repudiated doctrine of Transubstantiation, as distinguished from the Real Presence, that it ought not to be suffered to remain. And I am confirmed in this opinion by the authority of some of the greatest divines in our Church, of whom I will only cite two: one, the learned Grabe; the other, who received the thanks of Christendom for his defence of the Nicene Creed,—Bishop Bull.

The former says, "But if it should be asked, of what use the said form, with such annotations, can be at present, when it is out of use, I answer, that it will serve at least to shew, to the honour of our forefathers, the first reformers of this Church, how near they, concerning the celebration of that most holy Sacrament, kept to the primitive institution of it by our blessed Saviour, and to the practice of His Holy Apostles and the first Apostolical Churches,

although they changed and threw out many abuses and corruptions of this sacred ordinance which were crept in afterwards, and at last established by Popish decrees and councils of later ages. Such was, in the whole, the use of an unknown tongue in this holy office. . . . And not to mention the *elevation* of the consecrated elements to be worshipped by priest and all people as Jesus Christ himself, both God and man in person, whom the Church of Rome believeth to be substantially and wholly present under the outward figures of bread and wine"—*Grabe, MS. Adversaria*.

Bishop Bull, in a portion of his answer to the Bishop of Meaux, who had expressed his surprise that he was not a Romanist as well as a Catholic, says, "Come we now to the principal part of the Christian worship, the holy sacrament of the Eucharist. How lamentably hath the Church of Rome vitiated the primitive institution of that most sacred rite. She hath taken from the laity the blessed cup, contrary to our blessed Saviour's express command as expounded by the practice of the apostles, and of the universal Church of Christ for the first ten centuries, as hath been above observed.

"All the learned advocates of the Roman Church, with all their sophistry, have not been able to defend her in this matter from manifest sacrilege, and a violation of the very essentials of the sacrament, as to the laity administered, nor can they prove it so administered to be a perfect sacrament. He that would see this in a short compass fully proved, and all the weak evasions of the Romanists obviated, may consult our learned Bishop Davenant. Besides, the whole administration of it is so clogged, so metaphorized and defaced by the addition of a multitude of ceremonies, and those some of them more becoming the stage than the table of our Lord, that if the blessed apostles were alive and present at the celebration of the mass in the Roman Church they would be amazed and wonder what the meaning of it was; sure I am they would never own it to be that same ordinance which they left to the churches.

"But the worst ceremony of all is the elevation of the Host to be adored by the people as very Christ himself under the appearance of bread, whole Christ, Θεάνθρωπος, "God and man," while they neglect the old

sursum corda, the lifting up of their hearts to heaven, where whole Christ indeed is."

The kind of elevation which it is charged that at one time Mr. Mackonochie practised, and as to which witnesses were examined before me, amounts upon the evidence to the following acts: that after the consecration, both of the bread and of the wine, he elevated the paten and the cup respectively for an appreciable time, after which there was a pause before the service was continued; this evidence was taken at the beginning of the cause; but during the progress of the argument, at the desire and with the consent of both counsel, Mr. Mackonochie was examined by me upon the single point, whether when the elevation was made his face was or was not towards the people, Mr. Mackonochie said, "I do not turn round to the people, and I never have done so during any time of the consecration prayer."

I have said "with the consent and desire of both counsel," because such was the fact; but if Mr. Mackonochie was by law an incompetent witness, their consent in a criminal case would not render his evidence admissible; but I venture to think that he was a competent witness, and am emboldened to hold this opinion, though it be at variance with that of my predecessor, in consequence of the observation made by the Lords of the Privy Council in *Burney v. the Lord Bishop of Norwich* (44).

This elevation Mr. Mackonochie asserts, and it is not denied, that he discontinued after conference with his diocesan, and upon the other grounds to which I have already referred, before the institution of this suit.

I am very glad that he did so, because in my judgment that kind of elevation was unlawful, and I must and do admonish Mr. Mackonochie not to recur to it.

His present practice is not complained of, and some elevation the rubrics of the present communion service must contemplate when they order as follows, "Here the priest shall take the paten into his hands;" that is, into both his hands; subsequently to which he is ordered to break the bread. So also when he is directed to

take the cup into his hand there must be some elevation from the Holy Table.

Kneeling.

With respect to the charge against Mr. Mackonochie of kneeling or prostration before the Eucharist, I observed during the course of the argument that no charge of adoration of the Holy Sacrament itself, or of our Lord's body being present after a corporal manner in the Holy Sacrament was contained in these articles; that if it was intended to charge Mr. Mackonochie with either kind of adoration, the rules of pleading in criminal cases in this Court would have required that such adoration should have been distinctly and plainly averred.

The argument before me was confined to the allegation of improper or excessive kneeling; the evidence as to the fact was very far from being clear; Mr. Mackonochie was asked no question himself upon the subject.

Mr. Beames said, that after the elevation of the cup, Mr. Mackonochie prostrated himself on his knees with his head to the ground, and then that he knelt immediately after the cup was replaced, and that there was the same kneeling after the elevation of the paten. It was clear, however, from the evidence of this witness that Mr. Mackonochie remained on his knees, and that his head did not touch the ground, and that he did not really prostrate himself, supposing that such a gesture of devotion to be, which I do not pronounce it to be, illegal.

The only other witness, the Reverend Henry Malins, deposed that the clergy, already kneeling, threw their bodies forwards, and that the consecrating clerk knelt in the middle of the prayer, and then went on with the prayer. But on further examination he said that he was behind him all the time, that he could not in fact say that he prostrated himself, but to use his own words "there was a somewhat excessive bending forwards." He said he was kneeling himself at the time, and that it was his own practice, when not assisting, to kneel during the prayer of consecration.

It is true that the Rubric does not give precise directions that the celebrant himself should kneel at the times when it appears

that Mr. Mackonochie does kneel; but I am very far from saying that it is not legally competent to him, as well as to the other priests and to the congregation, to adopt this attitude of devotion. It cannot be contended that at some time or other he must not kneel during the celebration, although no directions as to his kneeling at all are given by the Rubric.

It is observable that at the Savoy Conference the Puritans asked to have it considered "Whether it will not be fit to insert a rubrick touching kneeling at the communion, that is, to comply in all humility with the prayer which the minister makes when he delivers the elements."

No notice of this request was taken by the bishops unless it be considered to be included in their concession, "That the general confession at the communion be pronounced by one of the ministers, the people saying after him, all kneeling humbly upon their knees."—*Cardwell's Conferences*, pp. 275, 363.

Moreover, in my opinion, if Mr. Mackonochie has committed any error in this respect, it is one which should not form the subject of a criminal prosecution, but belongs to the category of those cases which should be referred to the Bishop, in order that he may exercise thereupon his discretion, according to the Rubric to which I have already referred.

Incense.

The charge against Mr. Mackonochie as to the use of incense is twofold; the first part relates to what is technically called "censing persons and things," and is as follows:

7th Article.—The seventh article alleges, "that the said defendant has in his said church, and within two years last past, to wit, on Sunday, the 23rd December, on Christmas Day last past, and on Sunday the 30th December, all in the year 1866, used incense for censing persons and things in and during the celebration of the Holy Communion, and permitted and sanctioned such use of incense."

Answer.—And the defendant in answer to this article says, "that he admits that he (the defendant) on Sunday the 23rd December, on Christmas Day last past, and on Sunday the 30th December, used incense

for censuring persons and things in and during celebration of the Holy Communion, and permitted and sanctioned such use of incense ;” but he alleges, “that ever since the 30th December, 1866, he, the said defendant, as was well known to the promoter of this suit prior to the institution thereof, desisted from so doing, and has ever since discontinued the said ceremony on being apprised by the opinion of counsel that such usage was of a doubtful legality, and that he has never since re-introduced the said ceremony, as appears in the published address of the said defendant, dated January, 1867, and exhibited and appended to the articles brought in and admitted in the cause.”

I should here observe, that an objection was taken on behalf of Mr. Mackonochie that this charge of censuring persons and things was not specified in the decree issued under the letters of request, and therefore, that according to the practice of this Court, it could not be preferred in the articles. My learned predecessor overruled this objection, and I thought it right, whatever my opinion might be, to abide by his decision.

It appears that Mr. Mackonochie has discontinued, though under protest, this particular use of incense, upon the same grounds and for the same reasons that he discontinued the elevation, and also before the institution of this suit.

The other part of the charge relates to another use of incense, and is laid in the following words :

8th Article.—The eighth article alleges, “that the said defendant has in his said church, and within two years last past, to wit, on Sunday the 13th day of January A.D. 1867, unlawfully used incense in and during the celebration of the Holy Communion, and permitted and sanctioned such unlawful use of incense.”

Answer.—To this the defendant has answered, “that he admits that he has in his said church, to wit, on Sunday the 13th day of January A.D. 1867, caused and allowed incense to be burnt during the reading of the prayer of consecration, and afterwards until the time for the administration of the Communion to the people, and permitted and sanctioned such use of incense, but that he denies that he used the

same unlawfully, or that such use is unlawful.”

9th Article.—The ninth article charges, “that such uses of incense as in the two preceding paragraphs alleged are severally an unlawful addition to and variation from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer and administration of the Sacraments and other rites and ceremonies of the Church, and are contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons.”

Answer.—The defendant in his plea has answered, “that he denies that such use of incense as in the 7th and 8th articles alleged are severally an unlawful addition to and variation from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer and administration of the Sacraments and other rites and ceremonies of the Church, and are contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons, as in the 9th article alleged.”

The objection is not taken to the general use of incense for the purposes of ornament or fumigation of the church, for which purposes it appears to have been used at various times since the Reformation, and especially by the saintly Herbert, to whom Mr. Coleridge referred : “The country parson,” Herbert says, “hath a special care of his church, that all things there be decent and befitting His name by which it is called. Therefore, first, he takes order that all things be in good repair, as walls plastered, windows glazed, floor paved, seats whole, firm, and uniform, especially that the pulpit and desk, and communion table and font, be, as they ought, for those great duties that are performed in them. Secondly, that the church be swept and kept clean, without dust or cobwebs, and at great festivals strewed and stuck with boughs, and perfumed with incense. Thirdly, that there be fit and proper texts of Scripture everywhere painted, and that all the painting be grave and reverend, not with light colours or foolish antics. Fourthly, that all the books appointed by authority be there, and those not torn or fouled, but whole and clean, and well bound ; and that there be a fitting and

sightly communion cloth of fine linen, with a handsome and seemly carpet of good and costly stuff or cloth, and all kept sweet and clean in a strong and decent chest, with a chalice and cover, and a stoop or flagon, and a basin for alms and offerings; besides which, he hath a poor man's box conveniently seated to receive the charity of well minded people, and to lay up treasure for the sick and needy. And all this he doth, not as out of necessity, or as putting a holiness in the things, but as desiring to keep the middle way between superstition and slovenliness, and as following the Apostle's two great and admirable rules in things of this nature; the first whereof is, 'Let all things be done decently and in order;' the second, 'Let all things be done to edification.' " (45).

The burning of frankincense, probably on account of the grateful odour which it emits, and the graceful form which it assumes, may be traced, as an accompaniment of prayer, thanksgiving, and sacrifice, to the very earliest antiquity. All classical readers are aware of the *βωμὸς θυήεις* of Homer, (46), and of the "centum aræ Sabæo thure calentes" (47). The use of incense in the Jewish worship was divinely ordained (48). Nadab and Abihu were stricken with death because "they took either of them his censer and put fire therein, and put incense thereon, and offered strange fire before the Lord" (49). And Aaron, when he "made an atonement for himself and his house," was directed to take a censer full of burning coals of fire from the altar of the

Lord" (50). Solomon provided "censers of pure gold for the temple of the Lord" (51).

And it was truly urged that Zachariah was burning incense according to the custom of the priest's office, in the temple of the Lord (52), when he received the message from the angel; and that in many places in Holy Writ prayer is symbolized by incense. It appears to have been very early in use, though the exact date of it is uncertain, among the Christians; it is mentioned in the apostolical canons, and there is no doubt that it is warranted by the authority of the primitive Church.

It certainly was in use in the Church of England in the time of King Edward the Sixth's first Prayer Book. The visitation articles of Cranmer as to forbidding the censuring to certain images, &c., supplies one of the proofs of this fact. On the other hand, the use of it during the celebration of the Eucharist is not directly ordered in any prayer book, canon, injunction, formula, or visitation article of the Church of England since the Reformation. Bishop Andrewes, a very high authority, appears to have used it, though in what way is not clear, in his own private chapel; and probably traces of the use of it may be found in the private chapels of other bishops, and in the Royal chapels.

It is not, however, necessarily subsidiary to the celebration of the Holy Communion, and it is not to be found in the rubrics of the present Prayer Book, which describe with considerable minuteness every outward act which is to be done at that time.

To bring in incense at the beginning or during the celebration, and remove it at the close of the celebration, of the Eucharist, appears to me a distinct ceremony, additional and not even indirectly incident to the ceremonies ordered by the Book of Common Prayer.

Although therefore it be an ancient, innocent, and pleasing custom, I am constrained to pronounce that the use of it by Mr. Mackonochie in the manner specified in both charges is illegal, and must be discontinued.

(45) Works of G. Herbert, vol. 2. chap. 13, p. 192. Title, 'A Priest to the Temple.'

(46) Iliad, VIII. 48.

(47) Virg. Æn. I. 420.

(48) Incense.—'Dictionary of the Bible.' Looking upon incense in connexion with the other ceremonial observances of the Mosaic ritual, it would rather seem to be symbolical, not of prayer itself, but of that which makes prayer acceptable, the intercession of Christ. In Rev. viii. 3, 4, the incense is spoken of as something distinct from, though offered with, the prayers of all the saints (Luke i. 10), and in Rev. v. 8. it is the golden vials, and not the odours or incense, which are said to be the prayers of saints. Psalm cxli. 2. at first sight appears to militate against the conclusion; but if it be argued from this passage that incense is an emblem of prayer, it must also be allowed that evening sacrifice has the same symbolical meaning.

(49) Leviticus x. 1.

(50) Leviticus xvi. 12.

(51) 1 Kings vii. 50.

(52) Luke l.

Mixing Water with the Wine.

Article 10th.—The tenth article against Mr. Mackonochie alleges, “that he, the defendant, has in his said church, and within two years last past, to wit, on Sunday the 23rd day of December, on Christmas Day last past, on Sunday the 30th day of December, all in the year of our Lord 1866, and on Sunday the 13th day of January, A.D. 1867, during the celebration of the Holy Communion, mixed water with the wine used in the administration of the Holy Communion, and permitted and sanctioned such mixing, and the administration to the communicants of the wine and water so mixed.”

Answer.—The defendant admits this article to be true.

Article 11th.—The eleventh article states, “that such mixing and administration of the wine and water is an unlawful addition to and variation from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer and administration of the Sacraments and other rites and ceremonies of the Church, and is contrary to the said statutes, and to the 14th, 20th, 21st, 36th, and 38th of the said constitutions and canons.”

Answer.—The defendant has denied in his plea, “that such mixing and administration of the wine and water, as in the said tenth article alleged, is an unlawful addition to and variation from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer, and administration of the Sacraments and other rites and ceremonies of the Church, and is contrary to the said statutes, and to the 14th, 20th, 21st, 36th, and 38th of the said constitutions and canons, as in the said eleventh article alleged.”

It appears that from a very early period—the precise date is uncertain—a custom prevailed amongst Christians of adding a very small quantity of water to the wine which forms one element of the Blessed Sacrament. This custom, whether it arose from a belief that the wine used by the Jews at the Passover, and by our Lord at the Last Supper, was mingled with water, or from some reason symbolical of His passion, is wholly unconnected with any papal superstition, or any doctrine which the

Church of England has rejected. It has the warrant of primitive antiquity and of the undivided Church in its favour.

The whole subject will be found discussed with his usual perspicuity and subtilty by Thomas Aquinas in the third part of his *Summa Theologica*, quæstio 74, “*De materia Eucharistiae quantum ad speciem* ;” which is divided into eight articles ; the sixth of which is, “*Utrum sit admiscenda aqua* ;” the seventh, “*Utrum aqua sit de necessitate hujus sacramenti* ;” the eighth, “*De quantitate aquæ quæ apponitur*.” With regard to the sixth, he decides that some water shall be mixed with the wine ; with regard to the eighth, that it should be a very small quantity, “*paululum aquæ*,” and for this reason, “*quia si tanta fieret appositio aquæ ut solverentur species vini, non posset perfici sacramentum*.” And in accordance with this view, with regard to the seventh, it is important to observe that he decides, that “*aquæ admixtio non est de necessitate sacramenti*.” The mingling of water, therefore, with the sacramental wine is clearly within that category of ceremonies as to the adoption of which each branch of the Church has its own liberty.

In our own Church this custom prevailed before the Reformation ; and in the first order of the Communion, which preceded the first Prayer Book, the rubric directed that the priest should “*bless and consecrate the biggest chalice or some fair and convenient cup or cups full of wine with some water put unto it* ;” and the rubric to the Communion Service of the first Prayer Book directs that the minister shall “*take so much bread and wine as shall suffice for the persons appointed to receive the Holy Communion*” “*and putting the wine into the chalice or else in some fair and convenient cup prepared for that use (if the chalice will not serve), putting thereto a little pure and clean water, and setting both the bread and wine upon the altar*.” It is clear, therefore, that under the word “*wine*” might be comprehended the wine and water ; and in a subsequent rubric at the end of the service the direction is, that the pastors and curates shall find at their costs and charges “*sufficient bread and wine for the Holy Communion*.”

In all subsequent Prayer Books the mention of water is omitted ; perhaps from

the omission in the second Prayer Book no argument unfavourable to the use of water could fairly be drawn, as no manual acts of consecration are prescribed in that book. But in the present Prayer Book the manual acts are advisedly specified with great distinctness and particularity; exact directions are given when the priest shall take into his hands the bread and the wine, when he shall place them on the table, and how he shall administer them; and I must bear in mind that the compilers of our present Prayer Book had before them the first Prayer Book of Edward the Sixth and carefully considered the rubrics which it contained; and in my opinion the legal consequence of this omission, both of the water and of the act of mixing it with the wine, must be considered as a prohibition of the ceremony or manual act of mixing the water with the wine during the celebration of the Eucharist.

I am by no means insensible to the very remarkable argument addressed to me with respect to the analogy between the blood and water used in the prototypal service of the Passover, and the wine and water in the Eucharist; and, as I have already observed, the mingling a little pure water with the wine is an innocent and primitive custom, and one which has been sanctioned by eminent authorities in our Church, and I do not say that it is illegal to administer to the communicants wine in which a little water has been previously mixed; my decision upon this point is, that the mixing may not take place during the service, because such mixing would be a ceremony designedly omitted in and therefore prohibited by the rubrics of the present Prayer Book.

Lighted Candles on the Holy Table.

5th Article.—The fifth article against Mr. Mackonochie alleges, “that the defendant has in his said church, and within two years last past, to wit, on Sunday the 23rd December, on Christmas Day last past, on Sunday the 30th December, all in the year of our Lord 1866, and on Sunday the 13th day of January in the year of our Lord 1867, used lighted candles on the Communion Table during the celebration of the Holy Communion at times when such lighted candles were not wanted for the

purpose of giving light, and permitted and sanctioned such use of lighted candles.”

The answer to this article alleges, “that such charges are, in part, untruly pleaded, for the party proponent (the defendant) alleges that on the said three Sundays and Christmas Day, in the said 5th article mentioned, the said lighted candles were not placed on the Communion Table, but upon a narrow movable ledge of wood, resting on the said table, and that the said candles were so placed and kept lighted, not during the celebration of the Holy Communion only, as falsely suggested in the said 5th article, but also during the whole of the reading of the Communion Service, including the Epistle and Gospel, and during the singing after the reading of the Nicene Creed, and during the delivery of the sermon.”

6th Article.—The sixth article alleges, “that the use of such lighted candles is an unlawful addition to, and variation from, the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer, and administration of the Sacraments and other rites and ceremonies of the Church, and is contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons.”

And the defendant, in answer to this, “denies that the use of such lighted candles is an unlawful addition to, and variation from, the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer, and administration of the Sacraments and other rites and ceremonies of the Church, and is contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons, as in the said sixth article alleged.”

There is no express direction in the rubrics, or in the Statutes of Uniformity, or in the Canons of 1603 for the use of lights at all on the holy table. Nor is there, in these documents, any express prohibition of this ornament of divine service; and, adhering to the principle which has guided my judgment in the matters of the elevation, the mixing of water with wine, and of the incense, it becomes my duty to consider whether the use of lights on the holy table falls under the category of things indirectly, or by necessary implication, prohibited upon

the grounds which have been stated, or whether it be lawful either as indirectly ordered or innocently subsidiary to divine worship. But there is also another consideration peculiar to this subject, and which must in some degree distinguish the treatment of this ornament from that which the others have received, namely, the important consideration whether the use of lights has not been ordered by competent authority, and whether that order must not, upon legal principles of construction, be deemed a part of the present law of the church.

The rubric directs, "that such ornaments of the church and the minister thereof shall be retained and be in use as were in this Church of England by the authority of Parliament in the second year of the reign of King Edward the Sixth." The Judicial Committee of the Privy Council have instructed me as to the legal meaning of the word "ornament" in this rubric (53). Their Lordships say as follows: "All the several articles used in the performance of services and rites of the Church are 'ornaments.' Vestments, robes, cloths, chalices, and patens are amongst Church ornaments; a long list of them will be found extracted from Lyndwood in Dr. Phillimore's edition of Burn's Ecclesiastical Law (vol. 1. pp. 375-7). In modern times organs and bells are held to fall under this denomination." Their Lord-

ships go on to say, and I invite particular attention to their language, "When reference is made to the first Prayer Book of Edward the Sixth, with this explanation of the term 'ornaments,' no difficulty will be found in discovering, amongst the articles of which the use is there enjoined, ornaments of the church as well as ornaments of the ministers. Besides the vestments differing in the different services, the rubric provides for the use of an English Bible, the new Prayer Book, a poor man's box, a chalice, a corporas, a paten, a bell, and some other things." "That these articles were included in the term 'ornaments of the Church,' at the period in question is clear from two documents nearly contemporaneous, one before and the other after the establishment of the first Prayer Book.

"In a letter of the Council to Cranmer, dated the 30th of April, 1548, to be found in Strype's 'Memorials of Cranmer,' vol. 2. p. 90, they complain of the conduct of certain churchwardens, who sent away their chalices, crosses of silver, bells, and other ornaments of the church; and in a commission in 1552, 1 Card. Doc. Ann. p. 112, No. xxvii. (edit. 1844), the Commissioners are enjoined to leave 'in every church or chapel of common resort, one, two, or more chalices or cups, according to the multitude of people in every such church or chapel, and also such other ornaments as by their

(53) Their Lordships refer to Forcellini's Lexicon for the meaning of Ornamentum; it is clearly explained in Lyndwood:

Lyndwood, p. 52. (Walterus.) "Sint (sc. Archidiaconi) Ecclesiarum Rectores;" et infra. "Provideant Archidiaconi ut linteamina et alia (m) ornamentis altaris, sicut decet, (n) sint honesta; ut libros habeat ecclesia idoneos ad psallendum pariter et legendum: et ad minus duplicia sacerdotalia vestimenta: et ut honor debitus divinis officiis in omnibus impendatur. Præcipimus etiam ut qui altari ministrat, supplicio induatur."

(Gloss.) (m) Ornamenta altaris. Qualia sunt frontalia, cortine, et cætera hujusmodi.

(n) Sicut decet. Hæc decencia respici debet secundum qualitatem ecclesiæ et ipsius facultates; ut scilicet secundum quod ecclesiæ magis abundat in facultatibus, alio meliora et preciosa habent ornamenta.

Pp. 49, 50. (Title.) De Officio Archidiaconi. Archidiaconi est prospicere ut Sacramenta rite conserventur et administrentur, atque potissimum Eucharistia et sanctum oleum sub clavibus custodiantur. Ornamenta quoque Ecclesiarum ab eodem visitentur, et possessiones recensentur."

Stephanus. "Habeant etiam Archidiaconi in

scriptis redacta omnia ornamenta (t), et utensilia (u), Ecclesiarum. Vestes quoque et libros, quæ singulis annis suo facienti conspectui presentari, ut videant quæ fuerint adjecta per diligentiam personarum; vel quæ tempore intermedio per ipsarum malitiam vel imperitiam deperierunt."

(Gloss.) (t) Ornamenta. Quæ sic dicta sunt, quia eorum cultu Ecclesiæ ornantur et decorantur. Sunt namque ornamenta secundum Januæ. decus, gloria, laus, dignitas, sive preciosa vestimenta seu jocalia, quorum cultu Ecclesiæ decorantur.

(u) Utensilia, i. e. ad utendum apta sive necessaria. Hæc autem alibi vocantur Cimelia, sicut legitur extra de off. Arch. c. ea quæ et 12 q. 2 Apostolicos. Et per hæc Utensilia intelliguntur vasa Ecclesiæ quæcunque, sacrata vel non sacrata.

(Constitutio Domini Othonis), p. 52. (De Archidiaconis quoque statuimus ut ecclesiæ utiliter et fideliter visitent, de sacris vasis et (e) vestibus, et qualiter diurnis et nocturnis officiis ecclesiæ serviantur, et generaliter de temporalibus et spiritualibus inquirendo."

(Gloss.) (e) Vestibus. Repete sacris, dictis vulgariter vestimentis. Supple, et cæteris ecclesiæ ornamentis.

discretion shall seem requisite for the Divine Service in every such place for the time"—*Westerton v. Liddell* (54).

Edward the Sixth succeeded to the throne on January the 28th, 1547. His Privy Council shewed an early intention of carrying much further the Reformation begun in the preceding reign. For this object homilies were composed, mixed commissions of clergy and laity were formed, with circuits assigned to them and large visitatorial powers.

These royal visitations superseded and practically inhibited for a time diocesan visitations.

In 1547 the royal injunctions, the subject of so much discussion during the course of the argument, were issued. I refer to a very curious and rare edition with which I have been furnished, printed in London in 1547, contemporaneously therefore with the issue of the injunctions themselves. The injunctions begin as follows:—"The Kynges mooste royal majestie, by the advice of his most dere uncle the Duke of Somerset, Lorde Protector of all his realmes, dominions, and subjectes, and governor of his most roiall persone, and the residence of hys mooste honorable counsaile, intending the advauncement of the true honor of Almighty God, the suppression of idolatrie, and supersticion, throughout all hys realms or dominions, and to plant true religion, to the exterpacion of all hypocrisy, enormities, and abuses, as to hys duety apperteineth; doth minister unto his loving subjectes, these godly injunctions, hereafter folowing: Whereof, parte were geven unto them heretofore, by authoritie of his most derely beloved father Kyng Henry the eighte, of most famous memorie, and parte are nowe ministered and geven by hys Majesty; all which injunctions, his highness willet and commaundeth his saied louing subjectes, by his supreme authoritie, obediently to receaue, and truely to observe and kepe, euery man in their offices, degrees, and states, as they will avoyde his displeasure, and the paynes in the same incccions hereafter expressed."

The reference to the injunctions issued by Henry the Eighth is important, in its bearing upon an argument presently to be noticed.

(54) *Moore's Special Report*, 157-8.

I pass on to the injunctions more immediately affecting the present subject. Their general object it will be seen is to remove all ornaments that relate to superstition or idolatry.

"Besides this, to the intent that all supersticion and hypocrisy, crept into diverse menes hartes, may vanysh away, thei shal not set furthe or extolle any images, reliques, or miracles, for any supersticion or lucre, nor allure the people be any inticementes, to the pylgrimage of any saint or ymage; but reprovyng ye same, they shall teache, that al goodnesse, health, and grace, ought to be both asked and looked for only of God, as of the varye author and geuer of the same, and of none other.

Item.—"That they, the persones above rehersed, shall make or cause to bee made in their churches, and every other cure thei have, one sermon, every quarter of the yere at the least, wherein they shall purely and sincerely declare the woordes of God; and in the same, exhorte their hearers to the woorkes of faythe, mercye, and charitie, specially prescribed and commanded in scripture, and that woorkes devised by mannes phantasies, besides scripture, as wanderyng to pilgrimages, offeryng of money, candelles or tapers, to reliques, or images, or kysying and lickying of the same, praying upon beades, or such lyke supersticion, have not only no promise of reward in scripture, for doying of them: but contrariwise, great threatens and malediccions of God, for that they bee thynges, tendyng to idolatry and supersticion, which, of al other offences, God Almighty doth most detest and abhorre for that the same diminishe mooste his honor and glory."

The next injunction is the one which affects the question as to the lawfulness of these lights.

Item.—"That suche images as thei knowe in any of their cures, to bee, or have been so abused with pilgrimage or offrynges, of any thyng made thereunto, or shal bee hereafter censed unto, thei (and none other private persones) shall for the avoyding of that mooste detestable offence of idolatrie, furthewith take downe or cause to bee taken downe, and destroye the same, and shall suffre from hensefurthe, no torches, nor candelles, tapers, or images of ware, to bee sette afore any image or picture, but onely

two lights upon the high altar, before the Sacrament, whiche, for the signification, that Christe is the very true light of the worlde, thei shall suffre to remain still: admonishyng their parishioners that images serve no other purpose, but to bee a remembrance, whereby, man maie bee admonished of the holy lifes and conversacion of them that the said images doo represent; whiche images, if they doo abuse for any other intent, they commit idolotrie in the same, to greate daunger of their soules."

A variety of questions arise upon the subject of these injunctions; but they may be all, I think, comprehended under the following heads:

1. Were these injunctions lawfully issued under statutable authority?
2. If so, were they subsequently abrogated by statutable authority?

It could not have been accurately said, and it has very properly not been contended by the counsel for the promoter, that any judgment has been given upon this subject which is binding upon this Court.

In the *St. Barnabas case*, as regards the use of lighted candles during the Holy Communion Service, an opinion, which will presently be considered, adverse to their legality was expressed by the learned Judge of the Consistory of London, but during the progress of the suit it appeared that as a matter of fact the candles were not lighted as alleged, and no decree was made by the Court. The legality of lighted candles on the Holy Table, therefore, was not directly submitted to the judgment of the Court of Arches or of the Privy Council: but it will be seen that the latter tribunal expressed an opinion both in favour of the lawfulness of the injunctions and of the candlesticks upon the Holy Table.

First, let me consider whether these injunctions were lawfully issued: The question is one of no mean difficulty. To define with certainty the exact legal limits within which the Crown might in the time of Edward the Sixth exercise its prerogative in relation to the Church, is a task which no one cognizant of the difficulties which surround the subject would willingly undertake.

It is said in the books that the Crown has power to *visit, reform, and correct* abuses in the Church by the ancient

law (55) of the realm. What this power was, however, is very uncertain. When Henry the Eighth procured from Parliament the title of Supreme Head of the Church (though in fact, whatever servile courtiers might say, he did but regain the position from which the Pope had expelled the Crown), he no doubt asserted that this authority required no sanction of Parliament for its exercise, but it is remarkable that he obtained that sanction as well as that of Convocation for almost every important act which he did to the Church.

In truth our 37th Article 'Of the Civil Magistrates' fixes the bounds of the Royal authority in matters of religion: "The Queen's Majesty hath the chief power in this realm of England, and other her dominions, unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain, and is not, nor ought to be, subject to any foreign jurisdiction. When we attribute to the Queen's Majesty the chief government, by which titles we understand the minds of some slanderous folks to be offended, we give not to our princes the ministering either of God's word or of the Sacraments, the which thing the injunctions also lately set forth by Elizabeth our Queen do most plainly testify, but that only prerogative which we see to have been given always to all godly princes in Holy Scripture by God Himself; that is, that they should rule all estates and degrees committed to their charge by God, whether they be ecclesiastical or temporal, and restrain with the civil sword the stubborn and evil doers. The Bishop of Rome hath no jurisdiction in this realm of England."

When Cranmer was persecuted under the form of a trial at Oxford, Dr. Martin, who appeared as his judge, asked him (I take the account from the last volume of the Dean of Chichester's work), "Who was the supreme head of the Church of England?"

(55) 2 Rol. Abr. 220, tit. 'Prerogative le Roy.' (E.) *Quel person visitera.*

- (1) Per l'auncient Ley de Realm le Roy ad power de visit, reform et correct toutes abuses et enormities en l'Eglise (Davis 1, Proxies 4.)
- (2) Per le statute temps H. 8. le corone fuit lorsque remit et restore a son auncient jurisdiction que fuit usurp per l'Evesque de Rome. (Davis 1, Proxies 4.)

The Archbishop was glad to have an opportunity of explaining his former rather strong assertions on this point. "Marry," he said, "Christ is head of this member, as He is of the whole of the body—of the universal Church." "Why," quoth Dr. Martin, "you made King Henry the Eighth supreme head of the Church." "Yea," said the Archbishop, "of all the *people* of England, as well ecclesiastical as temporal." "And not of the Church?" asked Martin. "No," said Cranmer, "*for Christ is only head of this Church, and of the faith and religion of the same. The King is head and governor of his people, which are the visible Church.*" "What!" quoth Martin, you never durst to tell the King so?" "Yea, that I durst," quoth he, "and did, in the publication of his style; *wherein he was named supreme head of the Church there was never other thing meant*" (56).

It is, to say the least, extremely doubtful whether, at any period of our constitution, the Crown had power to issue, of its own authority, injunctions of this kind.

It becomes, therefore, important to consider the language of what is called the Supremacy Act.

The statute of 26 Hen. 8. c. 1. was passed A.D. 1535, and enacts as follows: "Albeit the King's Majesty justly and rightfully is and ought to be the supreme head of the Church of England, and so is recognized by the clergy of this realm in the convocations, yet nevertheless for corroboration and confirmation thereof, *and for increase of virtue in Christ's religion within this realm of England, and to repress and extirp all errors, heresies, and other enormities and abuses heretofore used in the same*, be it enacted by authority of this present Parliament, that the King our Sovereign Lord, his heirs and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head on earth of the Church of England, called *Anglicana Ecclesia*, and shall have and enjoy, annexed and united to the imperial crown of this realm, as well the title and style thereof, as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits, and commodities

to the said dignity of supreme head of the same Church belonging and appertaining; and that our said Sovereign Lord, his heirs and successors, kings of this realm, shall have full power and authority from time to time to *visit, repress, redress, reform, order, correct, restrain, and amend* all such errors, heresies, abuses, offences, contempts, and enormities, whatsoever they be, which by any manner, spiritual authority, or jurisdiction, ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquillity of this realm, any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding."

There is no doubt that under the authority of this statute the three royal injunctions in the years 1536 and 1538 were issued. The statute of 31 Hen. 8. c. 8, intituled 'An Act that Proclamations made by the King shall be obeyed,' commonly called the Proclamation Act, was not passed till the year 1540—*Strype's Memorials*, vol. 1. part 1. pp. 494-7.

Strype remarks "that these last injunctions were given out by reason of the negligent observation of the former, which the clergy took little heed to."

There is no reason for surprise, therefore, in finding some of them repeated in the next reign (*see p. 496 in fine*), such especially as that which orders the ministers to preach against "offering candles and tapers to reliicks."

It has been argued by Mr. Stephens, adopting the opinion of Sir John Dodson, that this statute, as well as every statute "relating to doctrine or other matters of religion," has been repealed by 1 Edw. 6. c. 12, passed in the year 1547. The proposition appeared to me at the time, having regard to the necessary consequences flowing from it, to be of an alarming character; and, after very mature deliberation, I have arrived at the conclusion that it cannot be sustained. The section which it is alleged possesses this great power of abrogation and repeal (section 2.) is as follows: "And also be it enacted by thauctoritie aforesaide, that all Actes of Parliament and

(56) Hook, *Lives of the Archbishops of Canterbury*, vol. 2. (N.S.) p. 373.

Estatutes towching mencyoning or in anny wise concernynge religion or opynions, that is to saie aswell the statute made in the first yere of the reigne of the King's noble progenitor Kinge Richarde the Second, and the statute made in the second yere of the reigne of King Henry the Fyfthe, and the statute allso made in the xxvth yere of the reigne of Kinge Henry theight concerninge punishment and reformation of Heretykes and Lolardes, and everie provision therein conteyned, and the statute made for the abolishment of diversitie of opinions in certaine artycles concernynge Christian Religion commonlie called the Sixe Articles, made in the Parliament begonne at Westminstre the xxviiijth daie of Apryll in the xxxijth yere of the reigne of the moste noble and victorious Prynce of moste famous memorie Kinge Henry theight, father to our saide moste drad Sovereigne Lorde the Kinge that now is, and allso the Acte of Parliament and statute made at the Parliament begonne at Westminstre the xvj daye of Januarye in the xxxiiijth yere of the reigne of the saide late King Henry theight, and after that proroged unto the xxijth daye of Januarye in the xxxiiijth yere of the reigne of the saide late King Henry theight, touching, mentioninge, or in anny wise concerninge bookes of the Old and New Testament in Englishe, and the pryntinge, utteringe, selling, giving, or delivering of bookes or writtings, and reteyninge of Englishe bookes or writtings, and reading, preaching, teaching, or expownding of Scripture, or in anny wise touching, mentionynge, or concerninge anny of the same matters : And allso one other statute made in the Parliament holden at Westminstre in the xxxvth yere of the reigne of the saide late King Henry theight, concerninge the qualificacion of the Statute of Sixe Articles, and all and everie other Acte or Acts of Parliament concerninge doctryne and matters of religion, and all and everie braunche, artycle, sentence, and matter, paynes, and forfeitures conteyned, mentioned, or in anny wise declared in anny of the same Acts of Parliament or Estatutes, shall from hensfurthe be repealed and utterlie voyde, and of none effecte."

It was truly observed that the object of this statute is to repeal laws which inflicted severe punishments and penalties, imprisonment, fine, and death, on account of opinions

entertained "concerning doctrine or matters of religion," such as had been enforced in the reigns of Richard the Second, Henry the Fifth, and Henry the Eighth, against heretics of various kinds.

If the wider signification which has been contended for be given to this statute, it would in truth repeal the principal statutes enacted during the reign of Henry the Eighth for establishing the independence of the Church of England.

It will be difficult to maintain that the statutes against the payment of annates (23 Hen. 8. c. 20), the restraint of appeals (24 Hen. 8. c. 12), and even the Act of Supremacy (25 Hen. 8. c. 19), would not fall under the category of enactments concerning "doctrine or matters of religion : " but in truth the number of statutes which this construction would repeal might amount to forty-two, and certainly would include a great many of grave importance (57). I remember that Sir W. Maule (one of the members of the Judicial Committee) observed, "that if there were anything in Magna Charta about religion, it would on this construction be repealed."

I am of opinion that the operation of this statute of Edward the Sixth must be confined within the limits which I have stated, and that it has not repealed any power to issue royal injunctions which Henry the Eighth derived either from the Supremacy or the Proclamation Statute.

The legal authority of these injunctions of Edward the Sixth was discussed in the *Westerton v. Liddell* cases. The Judge of the Consistory of London held that the burden of proving their legal authority lay upon those who asserted it, and that the burden had not been discharged, and he treated the injunctions as invalid ; and on that ground, among others, decided that the "Cross" was not a lawful ornament of the Church.

The Court of Arches, however, held that Edward the Sixth had power to issue these injunctions under the authority of the Proclamation Act, 31 Hen. 8. c. 8, and the learned Judge decided that the Cross was an illegal ornament because it was forbidden under the name of an "image"

(57) Perry on Lawful Church Ornaments, App. pp. ix—xxxv.

by these very injunctions of Edward the Sixth.

When the case of *Westerton v. Liddell* was appealed to the Judicial Committee of the Privy Council, they decided that the Cross was a lawful ornament, and that it was not an "image" forbidden by these injunctions (58).

In arriving at this conclusion they certainly treated the injunctions as valid, whether or not they agreed with Sir John Dodson's opinion that their validity was derived from the powers conferred on the Crown by the Proclamation Act: and referring to the 28th section of these very injunctions, they say, "The section could not mean that all candlesticks should be removed from Churches, for two were to be retained" (namely, by the 3rd section) "on the high altar" (59).

If this be so, their decision is binding upon me, and the general question as to the legal validity of these injunctions has been decided in the affirmative. It may be as well, however, to look a little more closely into this question.

It has been argued that these Injunctions were not lawfully issued under the Proclamation Act, because it related only to temporal and not to spiritual matters, and also because the orders which it prescribed for the preparation and issue of instruments under its authority were indispensable conditions, and had not been complied with.

Mr. Stephens, in his argument upon this subject, laid down four propositions. First, if these injunctions were issued under the Proclamation Act, which was repealed in November, 1547, they would not have had any force by the authority of Parliament in the second year of Edward the Sixth. Secondly, if they were intended to be issued under the Proclamation Act of Henry the Eighth, they were not issued in accordance with their provisions; (1.) because there is no time limited during which the injunctions were to continue in force; (2.) because the copies of those injunctions which were printed and circulated were not signed by thirteen members of the King's Council, as required by 31 Hen. 8. c. 8, and

there is no evidence of their having been proclaimed in accordance with the 3rd section of that statute. Thirdly, that instead of the punishment by fine and imprisonment which the Council, under section 4. of 31 Hen. 8. c. 8, were empowered to inflict, the injunctions of 1547 only threatened ecclesiastical punishments, which the Council had no power to inflict under the Proclamation Act; and those ecclesiastical punishments are to be inflicted by the ordinary, and not by the thirteen members of the King's Council. Fourthly, it appears from the earliest historians of the Reformation, Fox, Fuller, and Heylin, that the injunctions were not issued under the Proclamation Act, but by virtue of the King's supremacy.

From the first of these propositions I have already expressed my dissent. With regard to the second, I think there is every presumption of law, and that a court of justice must, after this distance of time, act upon that presumption, that these injunctions were signed by the requisite number of members required by this statute, and the absence of a specified time during which the injunctions were to be in force would not, in my opinion, invalidate their validity. As to the objection that they were not duly proclaimed in the market-place by the sheriff, the clause which requires this seems to be directory only, and to whatever penalty non-compliance with it might render the sheriff amenable, such non-compliance would not invalidate the injunctions. The contrary position was, indeed, maintained by Bishop Gardner (60) when he was imprisoned for disobedience to these injunctions, which he considered to have been issued under the Proclamation Act. It is remarkable, however, that he does not dispute the power of the Crown to issue the injunctions, nor that the proper number of counsellors had not signed the instrument, but maintains that he ought not to be imprisoned by virtue of the Proclamation Act; and it might be that the Injunctions were valid under the "Supremacy Act," but that the additional power of secular punishment given by the Proclamation Act could not be put in force against him, and that he was only liable to ecclesiastical punishment

(58) Moore, 161 *in fin.*

(59) *Ibid.* 165, 166.

(60) Collier's *Ecclesiastical History*, vol. 5. p. 199.

under the injunctions. This was probably the opinion of Fox, Fuller, and Heylin, to whom Mr. Stephens referred in his fourth proposition.

I have made these observations upon the Proclamation Act out of deference to the argument which was addressed to me ; but after all, whether these observations are well founded or not is of small moment, because it seems to me impossible to doubt that these injunctions were recognized by the legislature, not only because they would derive validity from the Supremacy Act, but also because they are specially recognized in the first Prayer Book, which is part of the first Statute of Uniformity, in the following words : " Upon Wednesdays and Fridays the English Litany shall be said or sung in all places after such form as is appointed by the King's Majesty's injunctions, or as is or shall be otherwise appointed by His Highness "—*Liturgical Services*, p. 97, *Rubric after the Communion Service*.

I should mention that in the year 1548-49 the Visitation Articles for the diocese of Canterbury in the second year of Edward the Sixth repeat this injunction in the following inquiry : " Whether they have not . . . destroyed in their churches, chapels, and houses all images, all shrines, coverings of shrines, all tables, candlesticks, trindles or rolls of wax, pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, and superstition, so that there remain no memory of the same in walls, glass windows, or elsewhere ; " and also the inquiry : " Whether they suffer any torches, candles, tapers, or any other lights to be in your churches, but only two lights upon the high altar. "—*Cardwell, Doc. Ann.* p. 49.

Before I leave this subject let me observe that I cannot find that the legal authority of these injunctions *per se* was ever seriously questioned before the judgment of Dr. Lushington in the *St. Barnabas case*, Nor am I aware of any statute,—none has been cited to me,—by which they have been deprived of their original authority. There were many occasions on which those who were adverse to them would gladly have impugned their original validity, and there was no lack of learned advisers versed in legal and constitutional lore to have prompted or maintained such a proposition.

In the interval between 1547 and 1549 no objections whatever appear to have been taken to these injunctions ; but in that year a paper appeared, the authority of which is extremely questionable ; it was unsigned, and the author is unknown : it is headed " Articles to be followed and observed according to the King's Majesty's injunctions and proceedings ; " and the second of these articles forbad, among a variety of other things, " setting any light upon the Lord's board at any time. "—*Cardwell, Doc. Ann.* vol. 1, 75.

It is clear, however, that these articles (perhaps Visitation Articles, and only binding, like those of Ridley in 1550, if at all, in a particular diocese) cannot affect the question of whether lights were an ornament " in use in this Church of England by authority of Parliament in the second year of the reign of King Edward the Sixth. "

Here I must notice two remarkable letters which throw the light of contemporary history on this subject ; the first is a letter written by Martin Bucer and Paul Fagius to the ministers at Strasburg (' Original Letters ' published by the Parker Society, p. 535) ; it is dated April 26, 1549. " We yesterday waited upon the Archbishop of Canterbury, that most benevolent and kind father of the Churches, who receives and entertains us as brethren. The cause of religion as far as appertains to the establishment of doctrines and the definition of rites is pretty near what could be wished. " . . . " As soon as the description of the ceremonies now in use shall have been translated into Latin we will send it to you. We hear that some concessions have been made both to a respect for antiquity and to the infirmity of the present age, such, for instance, as the vestments commonly used in the Sacrament of the Eucharist and the *use of candles*, so also in regard to the commemoration of the dead and the use of chrism, for we know to what extent or in what sort it prevails. They affirm there is no superstition in these things, and that they are only to be retained for a time, lest the people, not having yet learned Christ, should be deterred by too extensive innovations from embracing His religion, and that rather they may be won over. "

The second letter is from John Hooper to Henry Bullinger, 7th December, 1549 ('Original Letters, Parker Society,' p. 71); it is, "The altars are here in many churches changed into tables. The public celebration of the Lord's Supper is celebrated three times a day. Where they used heretofore to celebrate in the morning the Mass of the Apostles, they have now the Communion of the Apostles; where they had the Mass of the Blessed Virgin, they have now the Communion, which they call the Communion of the Virgin; where they had the principal or High Mass, they now have, as they call it, the High Communion. They still retain their vestments and the candles before the altars."

Surely during the reign of Elizabeth the legal invalidity of these injunctions would have been urged by those who were adverse to the use of lights.

Bishop Cox, writing to Gaultier on February 12, 1571, says of the Queen, that she "has always been so exceedingly scrupulous in deviating even in the slightest degree from the laws prescribed"—*Zurich Letters*, 1st series, No. 94, p. 234. And it is an admitted fact that the two lights were used in her chapel at the celebration of the Holy Communion. It is no less certain that many of her counsellors, temporal and spiritual, pressed her to discontinue the use of these lights, an object they were most anxious to effect, but in no one single instance did they ever allege to Her Majesty that the burning of these lights upon the Holy Table was contrary to the law. I say this with some confidence, not only because I have been unable to find any instance myself, but because the leading counsel for the promoter whose industry and whose acquaintance with these subjects no one will gainsay, having been so good, in compliance with my request, as to make search into the authorities upon this point, was unable to find that any such argument had ever been adduced.

The lawfulness of placing these two lights upon the Holy Table appears to me established by these injunctions, unless they are, as has been contended, by necessary implication abolished, inasmuch as they are significant of a papal superstition, which was rejected by the Church at the time of the Reformation.

To this argument there are various answers:

First. These lights, in their original institution, were not significant of any rejected papal superstition, but of the fundamental truth of Christianity, namely, the light of the Gospel. The origin of them in the canon law I will presently refer to.

Secondly. They were suffered to remain because of their strictly Evangelical character; they were for the honour of Christ, not of the Blessed Virgin or of Saints, as lights on bye altars might be.

About the year 376 (A.D.) Vigilantius spoke with derision of the practice of Christians to burn candles during Divine Service at mid-day. St. Jerome wrote a defence of the Church, and of this practice: "Non diffiteor (he says) omnes nos, qui in Christo credimus, de idololatriæ errore venisse, non enim nascimur, sed renascimur Christiani, et quia quondam colebamus idola, nunc Deum colere non debemus, ne simili eum videamur cum idolis honore venerari? Illud fiebat idolis, et idcirco detestandum est; hoc fit martyribus, et idcirco recipiendum est. Nam et absque martyrum reliquiis per totas orientis ecclesias, quando legendum est evangelium, accenduntur luminaria, jam sole rutilante, non vtique ad fugandas tenebras, sed ad signum lætitiæ demonstrandum, unde et virgines illæ evangelicæ semper habent accensas lampades suas; et ad apostolos: *Sint lumbi vestri præcincti, et lucernæ ardentes in manibus vestris*. Et de Joanne Baptista: *Ille erat lucerna ardens, ut lucens: ut sub typo luminis corporalis illa lux ostendatur, de qua in psalterio legimus: Lucerna pedibus meis verbum tuum Domine, et lumen semitis meis*."—*Hieronym. Stridonensis Opera. Adversus Vigilantium*, t. 1. p. 160, edit. Colon. 1516.

Dr. Donne, in his defence of the use of lights in the daytime during Divine service, relies much upon the early Christian practice: "I would not (he says) be understood to condemn all use of candles by day in Divine service, nor all churches that have or do use them, for so I might condemn even the primitive church in her pure and innocent estate. And therefore that which Lactantius, almost three hundred years after Christ, says of those lights, and that which Tertullian, almost a hundred years before Lactantius, says in reprehension thereof,

must necessarily be understood of the abuse and imitation of the Gentiles therein; for that the thing itself was in use before either of these times I think admits little question. About Lactantius's time fell the Eliberitan Council, and then the use and the abuse was evident; for in the 34th canon of that council it is forbidden to set up candles in the churchyard; and the reason that is added declares the abuse, . . . that the souls of the faithful departed should not be troubled. Now the setting up of lights could not trouble them, but these lights were accompanied with superstitious invocations, with magical incantations, and with howlings and ejaculations which they had learned from the Gentiles, and with these the souls of the dead were in those times thought to be affected and disquieted. It is in this ceremony of lights as it is in other ceremonies: they may be good in their institution, and grow ill in their practice. So did many things which the Christian Church received from the Gentiles in a harmless innocency, degenerate afterwards into as pestilent superstition there as amongst the Gentiles themselves. For ceremonies which were received but for the instruction and edification of the weaker sort of people were made real parts of the service of God and meritorious sacrifices. To those ceremonies, which were received as helps to excite and awaken devotion, was attributed an operation and an effectual power, even to the ceremony itself, and they were not practised, as they should, *significative*, but *effective*, not as things which should signify to the people higher mysteries, but as things as powerful and effectual in themselves as the greatest mysteries of all, the Sacraments themselves. So lights were received in the primitive church to signify to the people that God the Father of Lights was otherwise present in that place than in any other; and then men came to offer lights by way of sacrifice to God; and so that which was providently intended for man, who indeed needed such helps, was turned upon God, as though He were to be supplied by us. But what then? Because things good in their institution may be depraved in their practice . . . shall therefore the people be denied all ceremonies for the assistance of their weakness?

. . . We must not be hasty in con-

demning particular ceremonies, for in so doing, in this ceremony of lights, we may condemn the primitive church that did use them, and we condemn a great and noble part of the reformed church which doth use them at this day."—*Dr. Donne's Sermons*, p. 80, folio, 1640, vol. 1. 15 Oct.

Thirdly, as to the averment that the words "before the Sacrament" denote the *reserved Sacrament*. (See the Injunctions, *ante*, p. 72.)

The practice of reserving the Holy Sacrament, it has been truly said, is unlawful according to the present law of the Church of England.

In the Office for the Communion of the Sick in the Prayer Book of Edward the Sixth, it is provided by the prefatory rubric as follows: "And if the same day there be a celebration of the Holy Communion in the church, then shall the priest reserve (at the open Communion) so much of the Sacrament of the body and blood as shall serve the sick person, and so many as shall communicate with him (if there be any); and so soon as he conveniently may, after the open Communion ended in the church, shall go and minister the same, first, to those that are appointed to communicate with the sick (if there be any), and last of all to the sick person himself."—*Liturgical Services*, edit. Camb., 1844, p. 141.

In the present Prayer Book it is ordered: "And if any of the bread and wine remain unconsecrated, the curate shall have it to his own use; but if any remain of that which was consecrated, it shall not be carried out of the church, but the priest, and such other of the communicants as he shall then call unto him, shall, immediately after the Blessing, reverently eat and drink the same."

The light which burnt before the reserved Sacrament was generally a lamp.

This light was continually burning, and therefore probably oil was used, whereas these two lights were only burning during the celebration.

The lights before the reserved Sacrament appear to have been always of an uneven number when the light was not, as it usually was, single.

The lights "before the Sacrament" in England were necessarily, for mystical reasons, or more properly fancies, enumerated by Lyndwood, but which it is not

necessary to recapitulate here, made of wax.

The words "before the Sacrament" are omitted in Cranmer's Visitation Articles intended to execute the injunction, but that clearly means "tempore quo missarum solennia peraguntur," while the ceremony was being performed. The candles might be lighted before the elements have been consecrated, and before the Sacrament is therefore complete, "accedit verbum elemento et fit sacramentum," as St. Augustine says, but they are not the less burning before it when it is complete.

The reserved Sacrament was not in the time when Lyndwood wrote his Commentary (in 1430) placed upon the "High Altar." It was one of the usages peculiar to the Church of England to suspend the reserved Sacrament above the altar.

The account given by Lyndwood clearly shows that *two wax candles* (the number and the quality it is important to notice) ought properly to accompany every celebration of the Mass, because Christ is the splendour of eternal light.

In a constitution of Archbishop Walter, under the following title, "Sacerdos curet, ut omnia Eucharistiæ deservientia sint integra et munda, atque verba consecrationis debite pronunciet, nec celebret antequam matutinas primam et tertiam perlegerit, nec sine clerico superpellicio induto, nec sine tunica, nec in peccato mortali," we find this order: *Lyndwood*, p. 236, *Walterus*.—"Nullus insuper sacerdos parochialis præsumat missam celebrare, antequam matutinale persolverit officium, et primam et tertiam de die. Item nullus clericus permittatur ministrare in officio altaris, nisi indutus sit superpellicio, et tempore quo missarum solennia peraguntur, accendentur (*) *duæ candelæ*, vel ad minus una."

Upon this constitution the gloss of Lyndwood is as follows:

(*) *Duæ candelæ*.—"Est enim a parte juris ordinatum quod sacerdos sine lumine ignis non celebret missam. (*Extra eo c. ult. ubi de hoc.*) Si tamen faciat, nihilo minus conficit, licet graviter peccet, secundum *Hostien.* ibi, et concordant alii *doctores.* Et nota, quod candelas in celebratione missæ arsuras convenit esse de cera potius quam de alia materia. *Candela namque sic ardens*

significat ipsum Christum, qui est splendor lucis æternæ. (Extra eo c. sane)" (61).

The Devonshire rebels, when in 1549 they demanded the restoration of Roman Catholic rites, drew up a series of articles in which their grievances were stated; they said in their 4th article: "We will have the Sacrament hang over the high altar, and there to be worshipped, as it was wont to be; and they which will not thereto consent, we will have them die like heretics against the Holy Catholic Faith."

The answer of Cranmer is very remarkable:—"Is this the Holy Catholic Faith, that the Sacrament should be hanged over the altar and worshipped? and they be heretics that will not consent thereto? . . . Innocent the Third, about 1215 years after Christ, did ordain that the Sacrament and Chrism should be kept under lock and key. But yet no motion he made of hanging the Sacrament over the high altar, nor of the worshipping of it. After him came Honorius the Third, and he added further, commanding that the Sacrament should be devoutly kept in a clean place, and sealed, and that the priest should often teach the people reverently to bow down to the Host when it is lifted up in the mass time, and when the priest should carry it to the sick folks. And although this Honorius added the worshipping of the Sacrament, yet he made no mention of the hanging thereof over the high altar as your article proposeth. Nor, how long after, or by what means, that came first up into this realm, I think no man can tell. And in Italy it is not yet used until this day."—*Strype's Cranmer*, App. 97.

The inference to be drawn from this letter is that the two lights ordered by the Injunctions of 1547, and which Cranmer had enforced by his Visitation Article in 1548, could not have been placed before the re-

(61) Unde et candela in sua compositione significat Christum propter tria: componitur namque candela ex cera, lychno, et lumine. Sic quoque Christus constat ex carne virginis sine semine generatus, sicut procedit cera ex ape sine generatione vel coitu apis. Lychnus, qui est candidus, significat in Christo animam candore innocentie adornatam. Lumen vero significat ejus divinitatem carni unitam. De his sic dicitur *Cantic. 5*: "*Dilectus meus candidus propter animam candidam et rubicundus propter divinitatem fulgidam. Electus ex millibus propter carnem sine peccato genitam.*"

served Sacrament, inasmuch as the complaint of the rebels in 1549 is that, the Sacrament was not suspended over or placed upon the high altar. It is remarkable that Dr. Rock, whose knowledge as an antiquary in the matter of Church rites and ceremonies is supposed to be considerable (*The Church of our Fathers*, vol. 3, part 2, p. 208), says, "That the first wooden or stone tabernacle resting on the altar seen in this land was put up in Queen Mary's reign."

It appears from Lyndwood's gloss upon the Provincial Constitution of John of Peckham, that according to the English custom the reserved Eucharist was placed in a *Pix*, and the *Pix* in a *Tabernaculum*, and the *Tabernaculum*, instead of being placed stationary as it afterwards was in conformity with later Roman usage upon the altar, was hung up over it. And in support of Dr. Rock's assertion that in Queen Mary's reign the reserved Sacrament was placed upon the altar is the inquiry of Cardinal Pole in 1557, "Whether they do burn a lamp or a candle before the Sacrament;" and referring to his injunctions in 1566 this would appear to have been "a tabernacle set in the midst of the high altar."

With respect to the custom of the Greek Church, Goar says: "A lamp, kept perpetually burning, is suspended in such a manner as to hang between the altar and the place for the Blessed Sacrament, and is regarded by the Greeks as a becoming token of reverence towards the word of God inscribed within the sacred volume, and the Word made flesh, Christ Jesus dwelling in us, but veiled under the appearance of the sacramental species"—*Goar, Eucha. Græc.* p. 15; *Hierurgia*, p. 507.

I was referred by Mr. Prideaux to a treatise in French upon the exposition of the Holy Sacrament of the Altar. It was published in 1673, and the account which the author, a Roman Catholic of course, gives of the practice as to the reserved Sacrament, the importance especially of having a lamp perpetually burning before it, is interesting, and bears upon the subject now under consideration. "Néanmoins," (says the author) "on ne se met pas en peine comment la très-Sainte Eucharistie est logée dans les églises de la campagne, n'y comment elle est portée aux malades, dans

presque tous les villages, où elle y est portée dans un si pauvre appareil, qu'il est plutôt capable d'exciter de la douleur et de l'indignation dans le cœur des véritables fidèles, que de la dévotion et du respect. La plus part de ces églises sont ou désolées, ou découvertes, ou sans lambris, ou sans vitres, ou sans luminaires, ou sans livres, ou enfin destituées, sans ornements nécessaires pour célébrer dignement les saints mystères et les divins offices. Leurs vaisseaux sacrez ne sont que d'estain, ou de cuivre, ou même de plomb en quelques endroits; leurs tabernacles sont ou rompus, ou déformés, ou mal ornés; ou enfin leurs fabriques n'ont point de revenu pour entretenir une lampe toujours ardente devant le Sacrament où repose l'Eucharistie. Et l'on fait tous les jours de grandes dépenses dans les villes pour l'exposition, fréquente de ce divin mystère." The author regrets this expense, and continues: "Ne vaudroit-il pas mieux les employer à la décoration, ou aux réparations des églises de la campagne, et à l'achat des vaisseaux sacrez, des livres, des meubles et des ornements dont elles ont si grand besoin? N'a-ce pas été l'intention de Paul III. qu'elles y fussent employées, comme on le peut voir par les paroles de sa bulle que nous avons rapportées?"—*Traité de l'Exposition du St. Sacrement de l'Autel*, édit. 1673, p. 171.

It is surely most improbable that Cranmer, who was advancing tentatively in the path of reform, and who was the real author of the injunctions, should have ordered two lights to be continued perpetually burning before the reserved sacrament, having regard to his desire to abrogate the custom of reservation, and also on account of the expense which the ordering would have entailed upon the parishioners.

Gavanto (vol. 5. p. 65), writing in Italy his "*Prævia Compendiaria Visitationis Episcopalis*," and describing the duties of the bishop on his visitation, under the heading "*De Sanctissima Eucharistia*," says: "Observet Episcopus, et Notarius describat, an sint, qualia sint, quæ sequuntur;" and among these articles is to be found "*Basim Tabernaculi vacuam*" and "*Lampadem ardentem*," which is clearly the one lamp before the reserved Sacrament.

Symbolism and the worship of symbols

are distinct things, "is confirmat usum qui tollit abusum."

I am disposed to assent to the opinion expressed by Mr. Stephens in his elaborate and useful edition of the Book of Common Prayer: "It may, however," that learned person says, "be argued that a distinction is to be taken between (1.) the lights burning before shrines and images, (2.) the symbolical lights formerly placed on the altar during the communion, and (3.) those which are for actual use for the decent enlightenment of the house of God. The lights mentioned in King Edward's Injunctions are not to be confounded with the lamp or cresset, a single light, burning before the suspended Pyx. King Edward's mention of the Sacrament appears to be merely circumstantial: two lights (which are known to be of wax, not one lamp) were to be on the altar before the Sacrament or Pyx, 'for the signification that Christ is the very true light of the world.' The Pyx was then considered to contain the actual body of Christ. The removal of the Pyx, in consequence of the purified doctrine of the Church, did not weaken the force or propriety of the symbol, as Christ is spiritually present in His own house. It is to be remarked that Archbishop Cranmer omits the words 'before the Sacrament'" —*Book of Common Prayer*, vol. 2. p. 1120 (62).

The usages with respect to the custody of the Reserved Sacrament appear then to have been these:

- (1) The use which Lyndwood refers to as existing in Holland, Portugal, and other places, and which apparently existed too in Italy, of keeping it in a place in the wall under lock and key:
- (2) The peculiar English custom of suspending it in a pyx in a tabernaculum over the high altar:
- (3) Cardinal Pole's order in Queen Mary's time, that it should be placed upon the altar.

In *Westerton v. Liddell*, Dr. Lushington came, apparently not without reluctance, to the conclusion that candlesticks upon the holy table were lawful ornaments.

(62) Dr. Hook seems to be of the same opinion on this point. See his *Church Dictionary*, article *Lights*.

It seems to me difficult to suppose that the use of candlesticks does not bear witness to the partial retention,—no uncommon fact in the history of ritual observances,—of the custom of burning lights upon the altar embodied in the earliest usages of the Church in the provincial constitutions of our own country, and in the Injunctions of 1547 (63).

I should not omit to notice the argument, much referred to by counsel, from the inventories made by order of the Government of Edward the Sixth, in order to stop the wholesale sacrilege and plunder of the furniture and goods of parish churches by those who humbly imitated the rapine which, on a large scale, had been carried on by the courtiers, out of their zeal for the Reformed Religion.

I am not inclined to rely very much, on the one hand, upon the fact that certain ornaments are proved by these inventories to be *de facto* in existence after the second year of Edward the Sixth, nor, on the other hand, that only certain of these ornaments were retained, by the Commissioners who caused these inventories, for the use of parish churches.

However, the fact is not to be laid wholly out of consideration that two or three years after the date of the first Prayer Book there should be in twenty-one counties no less than 1,400 churches which possessed each two candlesticks. Such is the result, I believe, of an investigation of the inventories in the Record Office, which were taken in 1552, when the second Prayer Book was in course of preparation.

Inasmuch, therefore, as I think that the injunctions which order these two lights were issued under statutable authority, and have not been directly repealed by the like authority; inasmuch as they are not emblematical of any rite or ceremony rejected by our Church at the time of the Reformation; inasmuch as they are primitive and catholic in their origin, evangelical in their proper symbolism, purged from all superstition and novelty by the very terms of the injunction which ordered their re-

(63) It is true that candlesticks possess, as Archdeacon Freeman observes, (*Rites and Ritual*, p. 76), a symbolism of their own, and that St. John saw in his vision "golden candlesticks," not burning candles or lamps (St. John v. 35; Rev. v. 8; viii. 3).

tention in the Church;—I am of opinion that it is lawful to place two lighted candles on the holy table during the time of the Holy Communion “for the signification that Christ is the very true light of the world.”

Conclusion.

These are the conclusions at which I have arrived, and this is the judgment which I am about, in formal language, to pronounce, after a most anxious, painful, and, I may be allowed to add, conscientious, however inadequate, examination of the law applicable to the facts of the case. I have not been able to conceal from myself that this exposition of the law may wound the feelings of some, whose love for the Church of Christ is as unquestionable as their loyalty to the Church of England,—men, who think no ornament too costly, no service too magnificent, for the house of God,—capable of any act of self-denial and self-sacrifice to promote these objects;—to whom it may at first appear harsh and illiberal to be told that the sentence of the law bids them forego any symbolical act, or incident of Divine worship, with which they have accustomed themselves to associate in any way the administration of the Blessed Sacrament of the Body and Blood of our Lord; but I have good hope that further and deeper consideration will convince them of the truth of the proposition, which I stated at the outset of my judgment, that no matter of doctrine or faith is affected by this decision, the true result of which is simply to pronounce, that by those statutes, ordinances, and canons which form the compact of union between the Church and the State in this country, it has been determined that certain usages, however in themselves innocent, laudable and primitive, shall, for the sake of general peace and harmony, form no part of the rites and ceremonies of the Church of England.

In *Westerton v. Liddell*, the Privy Council said, “Their Lordships are not disposed in any case to restrict within narrower limits than the law has imposed, the discretion which within those limits is justly allowed to congregations by the rules both of the Ecclesiastical and the Common Law Courts.”

The basis of the religious establishment in this realm was, I am satisfied, intended by the constitution and the law to be broad and not narrow. Within its walls there is room, if they would cease from litigation, for both parties; for that which is represented by the promoter and for that which is represented by the defendant; for those whose devotion is so supported by simple faith and fervent piety that they derive no aid from external ceremony or ornament; and who think that these things degrade and obscure religion; and for those who think with Burke, that religion “should be performed, as all public solemn acts are performed, in buildings, in music, in decorations, in speech, in the dignity of persons according to the customs of mankind taught by their nature, that is, with modest splendour and unassuming state, with mild majesty and sober pomp;” who sympathize with Milton the poet rather than with Milton the Puritan; and who say that these accessories of religious rites

... dissolve them into costliness,

And bring all Heaven before their eyes:

St. Chrysostom and St. Augustine represented different schools of religious thought; the Primitive Church held them both. Bishop Taylor and Archbishop Leighton differed as to ceremonial observances, but they prayed for the good estate of the same Catholic Church; they held the same faith “in the unity of spirit, in the bond of peace, and in righteousness of life”; and the English Church contained them both.

There is surely room for both the promoter and the defendant in this Church of England, and I should indeed regret if, with any justice, it could be said that this judgment had the slightest tendency either to injure the Catholic foundations upon which our Church rests, or to abridge the liberty which the law has so wisely accorded to her ministers and her congregations.

I must say a word as to costs. This is a matter to be governed by the discretion of the Court, that is, by a discretion judiciously exercised.

It appears that the promoter is not a churchwarden, nor a resident parishioner.

Of the ~~alms~~ charges brought against Mr. Mackonochie, in which I include the excessive kneeling, upon these there have been adverse decisions to Mr. Mackonochie. With respect to the elevation, Mr. Mackonochie submitted the question to his Ordinary, and discontinued, under his direction, the practice before the institution of this suit, though it is true, he has done so under protest.

With respect to the incense, he had discontinued, though also under protest, the censuring of persons and things, before the institution of this suit.

With respect to the excessive kneeling, I have decided that it was a matter that ought to have been referred to the discretion of the Ordinary.

With respect to the mixing water with the wine, the decision is in favour of the promoter; and with respect to the lights, in favour of the defendant.

Taking all these circumstances into my consideration, I shall make no order as to costs in this case.

I admonish Mr. Mackonochie to abstain for the future from the use of incense, and from the mixing water with the wine, as pleaded in these articles. And I further admonish him not to recur to the practices which he has abandoned under protest, with respect to the elevation of the Blessed Sacrament, and the censuring of persons and things.

Proctors—Moore & Currey, for promoter; G. H. Brooks, for defendant.

[IN THE CONSISTORY COURT OF LONDON.]

1867.

Dec. 23.

1868.

Jan. 10.

LIDDELL AND OTHERS v.
RAINSFORD.

Criminal Suit—Civil Proceedings—Retaining Alms—Practice.

The Court declined to order a decree or citation in a criminal suit to issue against a clergyman officiating in a chapel to which no district is assigned, for refusing to pay over

to the incumbent and churchwardens of the church of the district in which such chapel is situated the alms collected at the offertory in such chapel, there being no satisfactory evidence before the Court that the district had become a separate parish. It ordered a citation to issue in a civil suit, calling upon the clergyman to shew cause why he should not pay over to the incumbent and churchwardens of the district church the moneys he had received at the offertory in his chapel.

It is doubtful whether the disposing to pious and charitable uses of the alms of the parishioners, is the exercising of a civil right under 3 & 4 Vict. c. 86, s. 19, so that a suit in a criminal form can be brought in a Consistorial Court to ascertain to whom such right belongs.

This was an application to the Official Principal of the Consistorial Court of London, to cause to be cited before him the Rev. Marcus Rainsford, clerk, the officiating minister of St. John's Chapel, situated in Halkin Street, Belgrave Square, to answer to certain articles touching and concerning his soul's health and the lawful correction of his manners, to be administered to him by virtue of the office of the Judge, at the voluntary promotion of the Hon. and Rev. Robert Liddell, clerk, the incumbent, and George Sheward and John Osborne, the churchwardens, of the church of St. Paul, Knightsbridge, for refusing to pay over to the said incumbent and churchwardens the alms collected at the offertory in the said chapel, and for appropriating the said alms contrary to law and the express orders and injunctions of the Hon. and Rev. Robert Liddell, and further to do and receive as unto law and justice shall appertain.

Dr. Tristram appeared for the incumbent and churchwardens of St. Paul's, Knightsbridge.—He depended upon the Church Discipline Act (3 & 4 Vict. c. 86), s. 19, which enacts, that nothing in the act contained shall prevent any person from instituting, as voluntary promoter, or from prosecuting in such form and manner, and in such court as he might have done before the passing of the act, any suit which, although in form criminal, shall have the effect of asserting, ascertaining or establishing any civil right,

SIR T. TWISS (Jan. 10).—It cannot be disputed, upon the face of the proposed citation, that the present application is for leave to institute a criminal suit against a clerk in holy orders of the United Church of England and Ireland, and that he is charged with an offence against the laws ecclesiastical. The first question, therefore, which must be considered is, whether the Consistory Court of the Bishop of London, which, before the passing of the Church Discipline Act, had undoubted jurisdiction to entertain a criminal suit of this character, is not precluded by that statute from acceding to the present application. That statute enacts (s. 23), that no criminal suit or proceeding against a clerk in holy orders of the United Church of England and Ireland, for any offence against the laws ecclesiastical, shall be instituted in any ecclesiastical court otherwise than is thereinbefore enacted or provided, that is to say, otherwise than by letters of request, addressed by the Bishop of the diocese to the Judge of the Arches Court of Canterbury. *Prima facie*, then, as this is a criminal suit, the statute precludes the present applicants from instituting proceedings in the Consistory Court of the Bishop. But it has been contended very forcibly by their counsel that the present case is within the exception of the 19th section, which provides that nothing thereinbefore contained shall prevent any person from instituting, as voluntary promoter or from prosecuting, in such form and manner, and in such courts as he might have done before the passing of this act, any suit which, though in form criminal, shall have the effect of asserting, ascertaining or establishing any civil right, and that as Mr. Liddell is the incumbent of the district in which Belgrave Chapel is situated, it is a civil injury to withhold from him and the churchwardens of St. Paul's Church the offertory-money received in Belgrave Chapel, as the distribution of the alms received at the offertory in private chapels belongs of right to the incumbent and churchwardens of the parish in which the chapel is situated. If no other question were involved in this suit than the duty of the Rev. Mr. Rainsford to pay over the offertory alms to the incumbent and churchwardens of the parish in which Belgrave Chapel is situated, it

might be necessary for me to decide the question whether the spiritual charge of disposing to pious and charitable uses of the alms of the parishioners is to be regarded as a civil right within the 19th section of the statute, the denial of which would entitle the incumbent and churchwardens to proceed against Mr. Rainsford by promoting the office of the Judge. There is, however, a preliminary difficulty which cannot be overlooked. In the affidavit, which has been sworn by the incumbent of St. Paul's, I observe that the word *parish* has been struck out, and that the words *district chapelry* have been substituted in its place; and I had occasion in the course of the argument to inquire what was the precise character of this district chapelry, whether it had become a separate parish from the parish of St. Peter's, Pimlico, either under an Order in Council or under Lord Blandford's Act (19 & 20 Vict. c. 104); inasmuch as there might be some grounds for Mr. Rainsford to dispute whether, if it were a district chapelry, the collection of the alms at the offertory at Belgrave Chapel was a parochial matter as regards the incumbent and churchwardens of St. Peter's, Pimlico, or as regards the incumbent and churchwardens of St. Paul's, Knightsbridge. Under these circumstances, it seems to me that some injustice might be worked, if I were to allow these proceedings to be instituted in the criminal form; and that the more convenient course will be for the incumbent and churchwardens of St. Paul's, Knightsbridge, to take out a citation in a civil suit against the Rev. Mr. Rainsford, calling on him to shew cause why he should not pay over to the incumbent and churchwardens of St. Paul's Church the money received at the offertory in Belgrave Chapel, to be disposed of according to the rubric. The form of the citation can be settled in the registry.

Proctors—G. H. Brooks, for plaintiff; Moore & Currey, for defendant.

[IN THE COURT OF ARCHES.]

1868.
 April 18, 27; } THE BISHOP OF WINCHESTER
 May 2. } v. RUGG.

Criminal Suit — Non-Performance of Divine Service in a Parish Church—Two Chapelries United—13 & 14 Car. 2. c. 4.

Two chapelries, each having a church within its limits, were united in one benefice by an order in Council; the incumbent of the benefice on certain Sundays omitted to perform any service in one of the churches, but had two full services on those days in the other. The bishop of the diocese gave him notice that he would require him to perform alternate morning and evening service in each church; which notice the incumbent disobeyed:—Held, that the bishop has a discretion in such a matter, and that the incumbent's disobedience to his orders was an ecclesiastical offence.

This was a cause of the office of the Judge promoted by the Bishop of Winchester against the Rev. Lewis Rugg, clerk, the incumbent of the perpetual curacy of Ecchinswell-with-Sydmonton, in the county of Southampton and diocese of Winchester, brought into the Court of Arches by letters of request. The offence, as stated in the letters of request and citation, was as follows: That the Rev. Lewis Rugg had offended against the laws ecclesiastical by having omitted to perform or to provide for the performance of public divine service as prescribed in the Book of Common Prayer and the administration of the sacraments and other rites and ceremonies according to the use of the Church of England, in the church of St. Mary, Sydmonton, within the said perpetual curacy of Ecchinswell-with-Sydmonton, on three successive Sundays in May, 1867, and on Sunday the 2nd of June, 1867. Mr. Rugg appeared under protest to this citation, but his protest was overruled (*ante*, p. 11), and he then appeared absolutely. The articles were as follows: 1. That by the common ecclesiastical laws of the realm, and by the statute 13 & 14 Car. 2. c. 4. s. 2, every clerk in holy orders of the United Church of England and Ireland is bound on every Sunday, otherwise called the Lord's

Day, in the year to perform or provide for the performance of public divine service as prescribed in the Book of Common Prayer and administration of the sacraments according to the use of the Church of England, in every consecrated church or chapel of the ecclesiastical parish or benefice of which he is the incumbent. 2. That the Rev. Lewis Rugg was and is a clerk in holy orders of the United Church of England and Ireland, and was on or about the 29th of September, 1852, lawfully licensed to be perpetual curate and incumbent of the perpetual curacy and benefice of Ecchinswell-with-Sydmonton, in the county of Southampton, the diocese of Winchester and province of Canterbury, and has continued to be such perpetual curate and incumbent up to the present date. 3. That the said perpetual curacy and benefice consists of two separate parochial chapelries now and for many years past known by the respective names of Ecchinswell and Sydmonton, in each of which has been from time out of mind a consecrated church or chapel, to wit, the church or chapel of St. Lawrence, Ecchinswell, and the church or chapel of St. Mary, Sydmonton. That such ancient parochial chapelries up to the 18th day of August, 1852, belonged for all ecclesiastical purposes to the vicarage and parish church of Kingsclere, but were separated therefrom by an Order in Council bearing date on that day, and since that date they have been and are a separate parish for ecclesiastical purposes and a perpetual curacy and benefice by the name or style of Ecchinswell-with-Sydmonton. 4. That the said Lewis Rugg has within two years last past offended against the said common ecclesiastical laws and the said statute by having omitted to perform or to provide for the performance of public divine service as prescribed by the Book of Common Prayer, &c. in the said church or chapel of St. Mary, Sydmonton, on Sundays the 12th, 19th and 26th days of May, and the 2nd day of June, 1867. 5. In part supply of proof the following letter was set out:

"27, Parliament Street, Westminster,
 28rd May, 1867.

"Sir,—The Bishop of Winchester has received a complaint that on the 5th of May you gave notice in the church of Sydmonton that there would be no more services

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in that church, and that on the Sundays the 12th and 19th inst. divine service was not performed there. The Bishop desires to know whether the above information is correct, and if so, on what grounds you have suspended the service.

“Burder & Dunning, Secretaries.”

“Ecchinswell, May 27, 1867.

“Gentlemen,—In answer to your letter addressed to me at the request of the Bishop, I have to inform you that I have discontinued the service of Sydmonton, and have returned to the two full services in the church at Ecchinswell as performed by me during the first four years of my charge of this parish. I think I shall best discharge my duty to my parishioners generally by the return to two full services (morning and evening) here, and this will be more strictly in accordance with the requirements of both the common and ecclesiastical law than holding only one service in order that there may be one in a building which I cannot recognize as ever having been lawfully consecrated, and for the sake merely of one family (not much resident) and their immediate dependents, whilst the great bulk (more than nine-tenths) of my parishioners live nearer to Ecchinswell Church, where they can better and more conveniently attend than by having to go out of their way a mile or two more distant to Sydmonton.

“Lewis Rugg.”

On the 30th of May, 1867, the Bishop's secretaries again wrote to Mr. Rugg: “We are desired to inform you that the Bishop requires you to resume the services in Sydmonton Church on Sunday next, and to continue performance of such services in future; and we beg to add, that we have forwarded a copy of this letter to the churchwarden requesting him to inform the Bishop whether the order has been complied with.” In reply, on the 31st of May, Mr. Rugg says, “I beg to inform his Lordship, with all due deference to his authority, that I see neither the necessity nor the obligation under existing circumstances of performing divine service at Sydmonton, and it is not my intention to resume the service there until every impediment be removed and the church, so called, has been judicially decided to be lawfully consecrated. I have moreover to inform you that there is no

churchwarden at Sydmonton, and therefore no need to wait for a reply to any copy of a letter or request to know whether his Lordship's order has been complied with.”

6. That on being informed of such breach of the common and Ecclesiastical law, and of the said statute, by the said Lewis Rugg, the Bishop, by virtue of the 3 & 4 Vict. c. 86, sent the case in the first instance by letters of request under his hand and seal to the Judge of the Arches Court of Canterbury, which said letters of request have been duly presented and accepted in this cause, by reason whereof and other premises the said Lewis Rugg was and is subject to the jurisdiction of the Court. The articles prayed that Mr. Rugg should be admonished to abstain from offending for the future, and should be condemned in the costs. Mr. Rugg filed a responsive allegation, the material parts of which are stated in the judgment.

Dr. Deane and *Dr. Swabey* appeared for the Bishop of Winchester.

Mr. Rugg argued his own case in person.

SIR R. PHILLIMORE.—This is a cause instituted in this court by letters of request from the Bishop of Winchester, under the Clergy Discipline Act, 3 & 4 Vict. c. 86. The Bishop of Winchester is himself the promoter of the office of the Judge. The defendant is the Rev. Lewis Rugg, and the object of the suit is to compel Mr. Rugg, who is the incumbent of Ecchinswell-with-Sydmonton, to perform one service every Sunday in the chapel of the latter benefice. It is not necessary to consider whether or not previously to August, 1865, the old church which occupied the site of the present church, which was built in 1853, had been consecrated or not. The Order in Council, which dates from the 18th of August, 1852, severs the chapelries of Ecchinswell and Sydmonton from the vicarage and parish church of Kingsclere, and forms them into a separate parish for ecclesiastical purposes, and a perpetual curacy and benefice by the name or style of the perpetual curacy of Ecchinswell-with-Sydmonton. The same order recites that there is in each of the said chapelries a church or chapel, that of Ecchinswell being nearly two miles, and that of Sydmonton about

three miles, distant from the parish church of Kingsclere. It further recites that each of the chapelries has its own churchwardens; that the tithe rent-charge of Ecchinswell was commuted at 60*l.* and that of Sydmonton at 50*l.* 8*s.* 6*d.*; and that the fees of both chapelries amounted to about 2*l.* per annum. These recitals in the Order in Council furnish evidence which the Court is bound to accept as far as they affect the question now before it. Mr. Rugg was, in September, 1852, instituted as incumbent of Ecchinswell-with-Sydmonton. Mr. Kingsmill, the principal owner of land in the parish, rebuilt the chapel at Sydmonton in 1853. It appears, from the pamphlet printed by Mr. Rugg, which has been admitted as evidence in this cause, that for eleven years divine service was performed by him at Sydmonton, and that, in 1863, he had an unfortunate quarrel with Mr. Kingsmill about sittings in the chapel, and in consequence, as Mr. Rugg says, he was under the necessity of suspending the services until his wishes were respected. On the 5th of September, 1863, he wrote to Mr. Kingsmill complaining of his conduct "in intimidating, as you have done, the inmates of my house from sitting in the pew which was appropriated to my household at the vestry meeting held prior to the opening of the church." "I think, indeed," he adds, "it is high time the church should be closed when it is come to such a pass as this, coupled with the conduct which has generally been characterized by so much injustice towards your pastor. You cannot, I am sure, spiritually benefit by the services therein performed, nor, as far as your influence is permitted to operate, can it be otherwise than detrimental to the bearing of religion on the hearts of other worshippers." The Court much regrets to discover from this letter that a priest of the Church of England should suppose that he is justified, on account of a dispute about a sitting in a church with a particular person, in refusing to administer spiritual services to the whole parish, and in actually closing the church. It is clear that such an act was illegal as well as wrong. The quarrel seems to have been made up for a short time; for, on the 7th of September, Mr. Rugg wrote to Mr. Kingsmill, "I hope to resume the duty at Sydmonton next Sunday, and, sincerely

regretting as I do that any disturbance should have arisen from so trivial a matter, I remain, &c." On the 17th of December, the Bishop wrote to Mr. Rugg, inclosing a letter from one of the churchwardens of Sydmonton, complaining that on various Sundays there had been no service at Sydmonton; that Mr. Rugg had said he was not well or strong enough sometimes to perform service; and further, that he, Mr. Rugg, was not compelled to perform the service at Sydmonton because the church was not consecrated when rebuilt, that is, in 1853. On the 21st of December, 1863, Mr. Rugg wrote a long answer to the Bishop, in which he maintained that, as the church had not been consecrated, he was not legally bound to perform service in it; and observed, that "the portion of the endowment, as regards Sydmonton, does not amount, after the outgoings are deducted, to more than 20*l.* a year." A further correspondence ensued between Mr. Rugg and the Bishop, in which the former maintained that he was not bound to officiate in an unconsecrated church. Early in August, 1865, Mr. Rugg received notice that the Bishop intended to consecrate the chapel. Mr. Rugg declared that he would not consent to the consecration, and refused the use of the key to open the door of the church. The Bishop, however, proceeded to perform his duty, and consecrated the church on the 7th of August, 1865. Mr. Rugg maintains that this consecration has no legal effect, and admits he performed no divine service on the days laid in the articles, and, indeed, for a whole year from the present month (May). Mr. Rugg's position, in my opinion, is untenable and erroneous. I have no doubt that the church was duly and legally consecrated; that Mr. Rugg by withholding his consent in no way affected the legal validity of the act. It is not necessary that I should again advert to the Order in Council; but I listened with surprise to Mr. Rugg's assertion that Sydmonton is unendowed, whereas it is plain that he derives nearly as much income from it as from Ecchinswell. However, the question of the validity of this consecration has been determined by the Privy Council, whose decision is binding upon me—*Rugg v. Kingsmill* (1).

They decided, not only in express terms, but by their act, so to speak, for they granted a faculty to Mr. Kingsmill for a vault under the chancel of this chapel on the condition that an additional piece of ground were first consecrated; but every one acquainted with ecclesiastical law must know that a faculty cannot be granted for a vault in an unconsecrated building. As to the objection of Mr. Rugg, that there is no right of way to this chapel, and that therefore he is excused from performing service therein (to pass over the fact that this objection is not sustained by any evidence, but is clearly an after-thought to support Mr. Rugg's resolution, taken upon other grounds, not to perform service in this chapel), the law seems to me clear that if there is no access to this chapel, except through the land of Mr. Kingsmill, there must be what is called a *way of necessity* over such land, for the chapel is a public building to which all the parishioners of Sydmonton have a right to resort. The only question as to which there really can be anything like a serious argument, arises on the second branch of Mr. Rugg's defence, namely, that where an incumbent has a parish made out of two benefices, with a chapel or church in each, is it competent for him to perform service in one of these chapels or churches alone, and by so doing will he satisfy the requirements of the Statute of Uniformity and the general ecclesiastical law. Can it be argued that a discretion in this matter is vested in the incumbent and not in the bishop? and that the parishioners, whatever may be said in the Order in Council, have no right or title to claim to have divine service performed at all in their chapel? The consequence, if the last point be answered in the affirmative, would be, that they would be altogether deprived of their strict right to attend divine service, for if the accommodation at Ecchinswell be only sufficient for the parishioners of that chapelry, the parishioners of Sydmonton can have no legal right to be seated in Ecchinswell Church. Again, if Mr. Rugg has a discretion as to which chapel he may perform service in, he may do so in Sydmonton chapel only, and so exclude the majority of his parishioners. It is not denied that by the existing law, 13 & 14 Car. 2, c. 4. s. 2, every minister,

and Mr. Rugg amongst others, is bound to say and use the morning prayer, evening prayer, celebration and administration of both the sacraments, and all other the public and common prayers, in such order and form as is mentioned in the Prayer Book, on every Lord's day, and upon all other days and occasions, and at the times therein appointed; and that such prayers are to be openly and solemnly read by all and every minister and curate in *every church, chapel* or other place of public worship within the realm. By 1 & 2 Vict. c. 106. s. 80. the bishop may order two full services, including a sermon or lecture, to be performed on every Sunday throughout the year, in the church or chapel of every or any benefice within his diocese. Some restraint, however, is placed upon the bishop's discretion if the benefice is composed of two or more parishes or chapelries, in each of which there is a church or chapel, and the value of the living and the amount of the population do not reach a certain limit. The 17 Car. 2. c. 3. s. 1. par. 4. was cited by Mr. Rugg; but, in the first place, the statute applies to only a very particular class of churches, namely, those in cities and towns corporate; and in the second place, the principle of the act is directly opposed to Mr. Rugg's argument, for the discretion as to the performance of divine service is expressly vested in the bishop, and not in the minister. There are in this kingdom many parishes which contain united benefices, with a church in each, and it is, I believe, the very first time that it has been contended by the incumbent of such a parish that it is competent to him to perform divine service in one of those chapels only, and that the inhabitants of the district, in which the other church is situated may be deprived of the right, equally recognized by the common and ecclesiastical law of this realm, to the performance of divine service by their minister in their own church. To whom are these parishioners to look for redress for this wrong done to them? How are they to obtain the performance of divine service in their church? Surely by an appeal to the authority of their bishop. He has the *cura animarum* within his diocese. It is his bounden duty to enforce in every church within his diocese the performance of the

services prescribed in the Book of Common Prayer; and where the circumstances of the parish are unfortunately such as not to permit of the performance of full divine service in every church of united parishes, it is clearly, in my opinion, the intendment of the law, ancient and modern, common and ecclesiastical, as well as of the particular Order in Council under which these parishes were united, that a service should be performed every Sunday in each church, so that the inhabitants of both parishes should have access on that holy day, at least, to their respective churches, and there receive the benefits of the ministrations of the church, according to such a distribution of the duty of the incumbent as may best secure that object. According to the opinion of the bishop in this case, that object is best secured by alternate morning and evening service in the two churches. I see no reason to doubt that the general authority of the Ordinary in matters of this kind, which has been recognized by the ecclesiastical law as inherent in his office, and necessary for the performance of his duties, has been properly exercised in this instance. I think that the parishioners of Sydmonton are entitled to the performance of a service by their minister in their own church every Sunday; that the bishop has rightly exercised his discretion in commanding Mr. Rugg to perform such service; and I must formally admonish Mr. Rugg, as I now do, to obey the directions of his Ordinary. I think it right to call Mr. Rugg's serious attention to the necessity of his obeying the order of this Court. He has the assistance of an experienced proctor, who will inform him that disobedience to such an order will be attended with the grave penal consequences which the law attaches to the offence of contumacy. I must further, in the execution of my duty, condemn Mr. Rugg in the costs of these proceedings.

Proctors—Moore & Currey, for the Bishop of Winchester; Brooks & Du Bois, for Mr. Rugg.

[IN THE COURT OF ARCHES.]

1868. }
May 25. } MOSS v. EDWARDS.

Criminal Suit — Negative Issue—Evidence—Practice—Rules and Orders, 1866, 9, 10.

In a proceeding under the Church Discipline Act, 3 & 4 Vict. c. 86, against a clergyman, if a negative issue be filed on his behalf without any defensive plea, evidence may nevertheless be given of all material facts necessary to the defence, but not of special circumstances which do not immediately arise out of the charges made against the defendant.

This was a cause of office promoted by William Moss, of the city of Lincoln, gentleman, against the Reverend Joseph Charles Edwards, clerk, rector of the parish of Ingoldmells, in the county of Lincoln. It was brought in the Court of Arches by letters of request from the Bishop of Lincoln. The articles charged the defendant with undue familiarity with and lewd and incontinent conduct towards two females. The defendant filed a long statement, of a very informal character, as an answer to the articles.

Dr. Spinks (Dr. Tristram with him) moved that the answer should be rejected. It was so informally drawn that the Court could not admit it as a responsive allegation.

Mr. Edwards appeared in person.

SIR R. PHILLIMORE.—I must reject this answer, but if Mr. Edwards will give in a negative issue, under the New Rules he may prove all the material parts of this statement by evidence at the hearing without any plea at all. Under the negative issue all material facts may be proved, but not such special circumstances as would come by surprise upon the promoter, of which, therefore, he should be apprised beforehand. I may also inform Mr. Edwards that at the hearing it will be competent for him, if he thinks proper, to offer himself as a witness, and give his own account of the matter on oath. In accordance with my ruling in another case—*The Bishop of Norwich v. Pearce*, I shall hold such evidence to be

admissible.—[See the next case, in which Sir R. Phillimore, upon the defendant being tendered as a witness and objected to, admitted his evidence, and on a subsequent day stated his reasons for so doing.]

Proctors—Dyke & Jenner, for promoter; defendant appeared in person.

[IN THE COURT OF ARCHES.]

1868. }
May 25, 26; } THE BISHOP OF NORWICH v.
June 4. } PEARSE.

Witness—Criminal Suit—Evidence of Party Accused.

The Court held, reversing the decision in Burder v. O'Neil (1), that in a criminal suit against a clergyman, under 3 & 4 Vict. c. 86, the defendant is competent and may be compelled to give evidence.

This was a suit instituted under the Church Discipline Act against the Rev. Robert Wilson Pearse, clerk, rector of Gaywood, in the county of Norfolk and diocese of Norwich. It was sent by letters of request to the Arches Court, under the hands of and was promoted by the Bishop of Norwich. The charge against the defendant was, that within the two years previous to the institution of the suit he had indecently assaulted three young men. At the hearing the defendant was examined and cross-examined.

Dr. Deane and Dr. Tristram appeared for the Bishop of Norwich.

Ballantine, Serj., Dr. Spinks and Dr. Middleton, for the defendant.

SIR R. PHILLIMORE in the course of his judgment said: The hearing of this cause has been attended with one remarkable circumstance. It furnishes, practically speaking, the first instance in which the accused clerk has been allowed to give his own personal evidence as a part of his defence. It is right that I should state fully the grounds upon which I came to the conclusion that such evidence was admissible, because the consequences of this decision, if it be correct, are obviously very

(1) 9 Jur. N.S. 1109.

important. It materially affects, for good or for evil, the administration of justice in these proceedings against criminous clerks. In my opinion, the protection of innocence and the detection of guilt are promoted by the admissibility of this evidence, and the discovery of the truth—the proper end, I think, of all rules of evidence and legal procedure,—facilitated. But such, I regret to say, was not the opinion of my predecessor in this seat, and this fact alone would render a statement of the reasons for a contrary opinion imperative upon me. The question stands in this way: By 6 & 7 Vict. c. 85, entitled 'An act for improving the law of evidence,' and which recites that, whereas the inquiry after truth in courts of justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue, both in criminal and in civil cases, should be laid before the persons who are appointed to decide upon them, and that such persons should exercise their judgment on the credit of the witnesses adduced, and on the truth of their testimony, it is enacted, "That no person offered as a witness shall hereafter be excluded, by reason of incapacity from crime or interest, from giving evidence, either in person or by deposition, according to the practice of the Court, on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action or proceeding, civil or criminal, in any Court, or before any judge, jury, sheriff, coroner, magistrate, officer, or person having, by law or by consent of parties, authority to hear, receive and examine evidence; but that every person so offered may and shall be admitted to give evidence, on oath, or solemn affirmation in those cases wherein affirmation is by law receivable, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question or inquiry, or of the suit, action or proceeding in which he is offered as a witness, and notwithstanding that such person, so offered as a witness, may have been previously convicted of any crime or offence. Provided that this act shall not render competent any party to any suit, action or proceeding individually named in the record, or any lessor of the plaintiff or tenant of premises sought to be recovered

in ejectment, or the landlord or other person in whose right any defendant in replevin may make cognizance, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part, or the husband or wife of such persons respectively." This act was followed by 14 & 15 Vict. c. 99, and Dr. Lushington, after commenting upon these two acts, came to the conclusion, in *Burder v. O'Neil* (1), that he could not allow a defendant, in a suit instituted under the Church Discipline Act, to be examined as a witness. In a subsequent case, *Berney v. the Bishop of Norwich* (2), this ruling of my learned predecessor was brought to the attention of the Judicial Committee of the Privy Council, as a reason for not having examined Mr. Berney upon a point as to which his evidence would have been very material. Their Lordships, in the course of the judgment they delivered, observed that this question might be worth re-considering, if need should hereafter arise. This is the first case which has happened since this observation was made, and I have thought myself not only authorized but bound to re-consider the question. In the first place, I think that the plain and true construction of 14 & 15 Vict. c. 99. does not leave me at liberty to discuss the question of the expediency of admitting the evidence in question. As I read that statute, the second clause renders *all parties* in all suits competent witnesses, except those mentioned in the two following clauses, which contain a catalogue of exceptions to the principle of general admissibility. In that catalogue parties to criminal suits in the Ecclesiastical Courts are not enumerated, and are therefore admissible as witnesses. But it is said that, if this proposition were generally true, it does not apply to cases where the offences charged against the clerk are (like the present) indictable or punishable by summary conviction; but, again, I am obliged to dissent from this construction of the statute. I think that the words "in any criminal proceeding" contained in the 14 & 15 Vict. c. 99. s. 3. refer to proceedings in which the Crown, as guardian of the public weal, is prosecutor, and not to suits which the Canon

Law denominates *criminal*, and in which the prosecutor is the ordinary or his representative, especially having regard to the 4th section, in which the Ecclesiastical Court is specifically mentioned, which it is not in the 3rd section. Another objection is, that the statute 13 Car. 2. c. 12. is a special statute which forbids the examination of parties to these criminal suits; and the authority of Lord Justice Turner, in *Hawkins v. Gathercole* (3) is given for the position that a special statute can only be repealed by a special statute. The oath, *ex officio*, referred to in 13 Car. 2. c. 12. s. 4. was an oath whereby any person might have been obliged to make any presentment of any crime or offence, or to confess or accuse himself or herself of any criminal matter or thing, whereby he or she might have been liable to any censure, penalty or punishment whatever—3 *Burn* (by Phillimore), 14. The 4th section (13 Car. 2. c. 12.) enacted that "no person having or exercising spiritual or ecclesiastical jurisdiction shall tender or administer unto any person whatsoever the oath usually called the oath *ex officio*, or any other oath, whereby such person to whom the same is tendered or administered may be charged or compelled to confess or accuse, or to purge himself or herself of any criminal matter or thing, whereby he or she may be liable to any censure or punishment; anything in the statute or any other law, custom or usage heretofore to the contrary thereof in anywise notwithstanding." I have read with care the judgment in *Hawkins v. Gathercole* (3). Not to go into it at length, I will only say that I do not think that the principles of construction which it lays down warrant the conclusion that any restriction on the admissibility of evidence prescribed by 13 Car. 2. c. 12. could not be taken away by the language of the statute 14 & 15 Vict. c. 99. Lastly, the learned Judge alleges the evil that would ensue, if a clerk were to be allowed to give evidence, "where the penalty may be disgrace and the loss of valuable preferment." I have already expressed my opinion upon this general subject: I must add, that the other side of the question does not seem to have been considered, namely, the extreme hardship, I should say injustice, of allowing

(2) 36 Law J. Rep. (N.S.) Eccl. 10.

(3) 6 De Gex, M. & G. 1; s.c. 24 Law J. Rep. (N.S.) Chanc. 332.

a clerk to be accused of any offence, however infamous, alleged to have been committed in the presence of the accuser alone, and supported by his testimony alone, and of sealing up the mouth of the accused, who, if innocent, may give a satisfactory refutation of the charge, and who, if guilty, ought not to be protected by a technical rule from exposure, more especially in a case where third parties, the parishioners, have a right to demand that the cure of their souls should not be entrusted to a wicked pastor. At this moment, in the Divorce Court, a husband accused of cruelty, which may include the commission of an unnatural crime, of impotency, of adultery, if the suit be instituted in a particular form, is a competent witness. Under what temptation is he placed to exculpate himself by perjury? In the Probate Court, Dr. Smethurst was admitted, in a case where he was the party benefited under a will, to give evidence on the subject of it, although he had been found guilty of poisoning the maker of that will by a sentence afterwards remitted by the Crown; and, in the civil suit, he was cross-examined by Mr. Serjeant Ballantine as to all the circumstances of the alleged crime, as to which it is true, when tried for his life, his lips had been sealed by the law. But the other day, a party accused of obtaining by undue influence nearly half-a-million of money from an insane testatrix gave evidence in favour of the will. Under what temptations were these persons to commit perjury? Certainly, according to the reasoning of *Burder v. O'Neil* (1), their evidence ought to have been inadmissible. I will not pursue the subject further. In my opinion the statute renders this species of evidence in this Court admissible; and I do not think that this Court should endeavour to discover an ingenious construction of the statute for the purpose of excluding such evidence, on the ground of the mischief consequent on its admission; but, on the contrary, that, for the sake of the administration of justice both to the individual and the Church of which he is a minister, it ought to be ready to receive it. Therefore, when the counsel for the defendant in this case tendered him as a witness, I overruled a formal objection made by the counsel for the promoter, and I allowed the defendant

to be examined. In considering, however, the evidence of the defendant, I must remember that the law which made his evidence admissible did not, of course, remove those objections to its credibility which arise from the strong bias under which it must be given. It must be admitted that in this case the defendant has the very strongest motives of interest by which a man can be swayed to deny the charges now preferred against him. On the other hand, the improbability that an educated gentleman and a clergyman of mature years and long standing in his profession should deliberately commit the sin of perjury has been strongly urged upon me; and it has been truly said that that sin has been committed by him if the story he has told be untrue. The argument deserves consideration; but I am afraid that, on the assumption of guilt, the man who committed these various abominations at various periods, and with deliberate purpose, must have so polluted his mind and defiled his conscience as to render the commission of the additional sin of perjury, in the hope of thereby escaping the loss of character, fortune and station, not an impossible act; certainly not an act of such manifest improbability as to induce the Court on that ground alone to discredit, much less discard, the adverse testimony. The accused clerk is indeed entitled to the full benefit of those legitimate presumptions of innocence which arise from his character, his social position, and still more from his holy calling. These presumptions are to be constantly borne in mind by the Court, and to be weighed in the same scale against the inducements to perjury which, on the assumption of guilt, the fear of detection and of punishment would suggest.

The COURT then proceeded to examine the evidence given for the promoter and for the defence, and determined that each of the charges made was established, and pronounced a sentence of deprivation against the defendant, which he ordered to be certified to the Bishop, and further condemned him in the costs of the proceedings.

Proctors—Brooks & Du Bois, for the promoter;
Clarkson, Son & Cooper, for defendant.

INDEX

TO THE REPORTS OF CASES

DECIDED IN THE

ECCLESIASTICAL COURTS.

MICHAELMAS TERM, 1867, TO MICHAELMAS TERM, 1868.

ALMS. See Criminal Suit.

ARTICLES—By whom to be signed. See Church Discipline Act.

BELL RINGING—*consent of incumbent*—The control of the church bells belongs to the incumbent; but to constitute an ecclesiastical offence, it is not sufficient to allege that the ringing complained of took place without his consent; it must be against his wishes, expressed either in a general or particular prohibition. *Daunt v. Croker*, 1

BURIAL GROUND—Refusal to restore remains improperly removed. See Contempt. And see Vault.

CHURCH DISCIPLINE ACT—*signature of articles by advocate practising at Doctors' Commons*—The Church Discipline Act requires that when the bishop of the diocese in which an offending clergyman holds preferment, or the party complaining, after the report of the Commissioners appointed under the act, shall think fit to proceed against the party accused, articles shall be drawn up, and shall be approved and signed by an advocate practising in Doctors' Commons:—*Held*, that the approval and signature of any barrister practising in the Arches Court of Canterbury will satisfy the statute. *Mouncey v. Robinson*, 8

— *neglect to perform divine services in consecrated building in the parish*—The 109th section of the 1 & 2 Vict. c. 106, which enacts that in every case in which jurisdiction is given by the act to the bishop of the diocese for the purposes thereof, and the enforcing the due execution of the provisions thereof, all other and concurrent jurisdiction in respect thereof shall wholly cease, does not apply to prevent the bishop instituting proceedings against a beneficed clergyman, under the Church Discipline Act, for omitting to perform, or provide for the performance of public divine service in a consecrated building within his parish; the provisions of 1 & 2 Vict. c. 106, s. 77, only applying to cases where the services of any benefice have been inadequately performed, not where they have been omitted altogether. *Bishop of Winchester v. Rugg*, 11

Although the incumbent of a parish has a right to object to the consecration of a building within his parish, if the bishop overrules such objection, and proceeds to consecrate the building, such consecration will not be invalid by reason of the dissent of the incumbent. *Ibid*.

NEW SERIES, 37.—ECCLES.

— *criminal suit: non-performance of divine service in a parish church*—Two chapelries, each having a church within its limits, were united in one benefice by an order in Council; the incumbent of the benefice on certain Sundays omitted to perform any service in one of the churches, but had two full services on those days in the other. The bishop of the diocese gave him notice that he would require him to perform alternate morning and evening service in each church; which notice the incumbent disobeyed.—*Held*, that the bishop has a discretion in such a matter, and that the incumbent's disobedience to his orders was an ecclesiastical offence. *The Bishop of Winchester v. Rugg*, 85

— *rites and ceremonies in the Church of England: elevation of paten cup: lighted candles: incense: water mixed with the wine*—There is a legal distinction between a rite and a ceremony. The former consists in services expressed in words; the latter, in gestures or acts preceding, accompanying, or following the utterance of these words. As regards ceremonies, no sound argument against their lawfulness can be deduced merely from their identity with those in use before the Reformation, nor from their disuse since; the real test is, are they, on a fair construction, necessarily connected with those novelties which the Church of England rejected at the Reformation? *Martin v. Mackonochie*, 17

Force and effect of the Rubric. *Ibid*.
The elevation of the paten and cup being connected with the doctrine of transubstantiation is not permissible in the Church of England. *Ibid*.
The amount of kneeling is matter for the regulation of the bishop. *Ibid*.

Incense during the celebration of the Communion is unlawful. So is the mixing of water with the wine. *Ibid*.

Two lights on the table during the administration of the Communion are lawful. *Ibid*.

CONTEMPT—*removal of human remains from churchyard to a field adjoining: monition to restore: field not in occupation of defendant*—The Court having determined that the defendant had offended against the laws ecclesiastical by removing without lawful authority human bones from the churchyard of his parish to an adjoining field, issued a monition to him to replace such bones and the earth with them in the burial-ground before a certain day. The defendant failed to comply with this monition, alleging as a reason that the field in which such bones and earth had been placed was no longer

O

in his occupation or possession:—*Held*, that his conduct amounted to a contempt of the Court, and that unless he obeyed the monition within six days and certified the same, the Court would pronounce him to be in contempt, and signify the contempt to the Court of Chancery. *Adlam v. Colthurst*, 3

CRIMINAL SUIT—*criminal suit or civil proceedings: retaining alms*—The Court declined to order a decree or citation in a criminal suit to issue against a clergyman officiating in a chapel to which no district is assigned, for refusing to pay over to the incumbent and churchwardens of the church of the district in which such chapel is situated the alms collected at the offertory in such chapel, there being no satisfactory evidence before the Court that the district had become a separate parish. It ordered a citation to issue in a civil suit, calling upon the clergyman to shew cause why he should not pay over to the incumbent and churchwardens of the district church the moneys he had received at the offertory in his chapel. *Liddell v. Rainsford*, 83
It is doubtful whether the disposing to pious and charitable uses of the alms of the parishioners, is the exercising of a civil right under 3 & 4 Vict. c. 86. s. 19, so that a suit in a criminal form can be brought in a consistorial court to ascertain to whom such right belongs. *Ibid*.

— *negative issue: evidence*—In a proceeding under the Church Discipline Act, 3 & 4 Vict. c. 86, against a clergyman, if a negative issue be filed on his behalf without any defensive plea, evidence may nevertheless be given of all material facts necessary to the defence, but not of special circumstances which do not immediately arise out of the charges made against the defendant. *Moss v. Edwards*, 89

EVIDENCE. See Criminal Suit. Witness.

FACULTY. See Pulpit. Vault.

JURISDICTION. See Church Discipline Act.

PRACTICE—*notice of objection to a pleading*—When it is intended to oppose the admission of a pleading in the Court of Arches, a notice must be filed stating the grounds of the objection. *Daunt v. Croker*, 1

— *Signing articles.* See Church Discipline Act.

PULPIT—*faculty to erect: opposition of the parishioners: conditional grant*—At the time of the erection of a new church, which on con-

secration became the parish church of A, the foundations were laid and the designs prepared for a stone pulpit, but, from want of funds at the time, a temporary wooden pulpit was placed in the church. Some years afterwards, certain persons connected with the parish gave directions for the execution of the new pulpit, and, having raised a portion of the estimated cost of it by voluntary contributions, and given security for the rest, so that the parish could not incur any liability in the matter, they applied to the proper Court for leave to fix it in the church. The defendants, acting on a resolution of the vestry of the parish, refused to consent to the erection of the new pulpit until the debt for the building of the church itself had been paid off. No objection was made to the character or ornamentation of the proposed new pulpit:—*Held*, that, as the parish had already provided a substantial pulpit, which continued in good order and was in no way dilapidated, the Court could not, against the expressed objection of the vestry, order the removal of such temporary pulpit, and that it should be replaced by a new one; but it might allow a faculty to issue on the terms proposed by the vestry. *Jackson v. Singer*, 9

VAULT—*faculty where entrance not on consecrated ground: variation of former decree, on appeal*

—A. applied for a faculty to secure to himself and his family whilst resident in a particular house the exclusive use of a vault which had been constructed under the chancel of a consecrated church, but the sole entrance to which was in his own garden, on unconsecrated ground. The faculty was ordered to issue by the local Ordinary. On appeal, it was determined that such order must be varied by adding a condition that before the faculty issues a sufficient space of ground around the aperture of the vault be consecrated and so placed under the jurisdiction and control of the Ordinary. *Rugg v. Kingsmill*, 13

It is only under very exceptional circumstances that the Ordinary should grant permission for burials to take place under the chancels or the bodies of churches. *Ibid*.

WITNESS—*evidence of party accused in criminal suit*—The Court held, reversing the decision in *Burder v. O'Neil*, that in a criminal suit against a clergyman, under 3 & 4 Vict. c. 86, the defendant is competent and may be compelled to give evidence. *The Bishop of Norwich v. Pearce*, 90

TABLE OF CASES.

Adlam v. Colthurst, 3
Daunt v. Croker, 1
Jackson v. Singer 9
Liddell v. Rainsford, 83
Martin v. Mackonochie, 17

Moss v. Edwards, 89
Mouncey v. Robinson, 8
Norwich, Bishop of, v. Pearce, 90
Rugg v. Kingsmill, 13
Winchester, Bishop of, v. Rugg 11, 85



THE
LAW JOURNAL REPORTS

FOR
THE YEAR 1868:

CASES

DECIDED BY THE
JUDICIAL COMMITTEE AND THE LORDS OF
Her Majesty's Privy Council.

REPORTED BY
EDWARD BULLOCK, Esq., BARRISTER-AT-LAW.

[THE CASES ON APPEAL FROM THE ADMIRALTY AND ECCLESIASTICAL COURTS ARE
PUBLISHED WITH THE CASES OF THOSE COURTS RESPECTIVELY.]

MICHAELMAS TERM, 1867, TO MICHAELMAS TERM, 1868.

FORMING PART VII. OF
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MDCCCLXVIII.

CASES ARGUED AND DETERMINED

BY THE

JUDICIAL COMMITTEE AND THE LORDS OF

Her Majesty's Privy Council.

COMMENCING WITH

MICHAELMAS TERM, 31 VICTORIÆ.

1867. { JEAN BAPTISTE RENAUD, ap-
Dec. 12. { pellant, JOSEPH GUILLET (dit
TOURANGEAU) respondent.*

*Lower Canada—Old French Law—Will
— Devise — “Défense d’aliéner pure et
simple,” Validity of.*

*A testator devised certain lands in Lower
Canada to the respondent, with a proviso
that the devisee should not in any manner
incumber, affect, mortgage, sell or exchange or
otherwise alienate the lands until after twenty
years from the death of the testator. There
was no substitution of the devise in the event
of alienation:—Held, that such a proviso
being by the law of Canada a “défense
d’aliéner pure et simple,” amounted merely
to advice by the person making the pro-
hibition, and was not legally binding on the
devisee.*

This was an appeal from the Court of
Queen's Bench of Lower Canada.

The appellant was a judgment creditor
of the respondent.

* Present, the Right Hon. Lord Romilly, Sir
J. W. Colville, Sir E. V. Williams and Sir R. T.
Kindersley.

NEW SERIES, 37.—PRIV. COUN.

The present appeal was brought to
decide the right to certain lands and tene-
ments of the respondent which were
taken in execution by the sheriff, under
a writ of *fiery facias* issued upon the
appellant's judgment, under the following
circumstances.

The respondent, on the 29th of Novem-
ber, 1856, confessed judgment in favour of
the appellant for the sum of 1,884*l.* 18*s.* 3*d.*,
together with interest thereon from that
date until payment and costs, and the
judgment was duly entered and registered
on the 15th of December, 1856.

On the 6th of April, 1859, a writ of
fiery facias was issued against the respon-
dent for the sum of 1,892*l.* 14*s.* 5*d.*, being
the amount of principal, interest and costs
due upon the said judgment, under which
execution the net sum of 105*l.* 15*s.* 4*d.*
was levied and paid to the appellant.

On the 23rd of November, 1860, a writ
of *alias fiery facias* was issued against the
respondent to recover the sum of 1,782*l.*
9*s.* 9*d.*, being the balance then due on the
said judgment, and under that writ the
sheriff seized certain lands and tenements
of the respondent.

On the 1st of April, 1861, the respon-
dent filed an opposition *afin d'annuler*

this seizure, alleging that the property had come to him under the will of his father, and that a clause in the said will expressly ordered that the testator's children should not in any manner incumber, affect, mortgage, sell, exchange or otherwise alienate the immovables being in their respective lots under the said will, until after twenty years from the death of the testator; that the testator had died in the year 1855, and that the lands and houses therefore could not be alienated by the respondent, and were therefore not liable to seizure.

The clause in question was as follows: "Je veux et j'ordonne expressément que mes dits enfants ne puissent en aucune manière engager, affecter, hypothéquer, vendre, échanger ou autrement aliéner les biens immeubles étant dans leurs lots respectifs d'après les deux partages que j'en ai faits comme ci-dessus qu'après vingt ans, à compter du jour de mon décès, sous peine de nullité de tous actes qu'ils feront contraires à mon intention, à l'exception toutefois de l'emplacement situé en la paroisse de St.-Roch de Québec, sur le niveau nord de la rue des Fossés, et décrit en le présent testament, dont le détenteur et possesseur pourra disposer en toute propriété quand et comme bon lui semblera du jour de mon décès."

On the 17th of December, 1861, the appellant filed a *défense au fonds en droit*, and an *exception péremptoire* to the said opposition.

The *défense au fonds en droit* was first argued; and on the 5th of May, 1862, the Judge of the superior Court, Mr. Justice Taschereau, gave judgment in the appellant's favour, on the ground that the clause in the testator's will prohibiting alienations was void according to Canadian law, and dismissed the opposition with costs.

From this judgment the respondent appealed to the Court of Queen's Bench, which Court, on the 16th of March, 1863, reversed the decision of the superior Court, on the ground that the restriction being limited to twenty years was valid (Mr. Justice Duval and Mr. Justice Meredith dissenting), and remitted the record to the superior Court.

Mr. Justice Meredith assigned, for his judgment, the following reasons: "The

principal question to be decided in this cause is, as to the effect to be given to a testamentary disposition made subject to a provision to the following effect: 'Avec défense d'engager, affecter, hypothéquer, vendre, échanger, ou autrement aliéner les dits biens immeubles qu'après vingt ans, à compter du jour du décès du testateur, sous peine de nullité de tous actes qu'ils feront contraires à la dite intention du testateur.'

"Property held by the appellant under the foregoing provision has been seized; an opposition founded on it was filed by the appellant in the Court below; and it is from a judgment of the superior Court dismissing the opposition so filed that the present case comes before us.

"On the part of the respondent it is contended that a simple *défense d'aliéner* does not create a substitution, and is not in any respect binding in law, and therefore that notwithstanding such a prohibition the donee or legatee may make a valid alienation of the property to which it refers. In support of this view the respondent has referred to Ricard, who says:—"Les Lois ont résolu par une décision générale que lorsque la prohibition est pure et simple et sans cause qu'elle ne produit aucun effet, et que non-seulement les héritiers *ab intestat* du testateur, ni de celui à qui les défenses ont été faites, n'ont droit de prétendre aucun *fidei-commis* en leur faveur, mais aussi que l'institué ou le légataire ne laisse pas, nonobstant la prohibition, d'avoir la liberté d'aliéner" (1). The opinion of Henrys on this subject is to the same effect. His words are as follows:—"Donc, s'il y a quelque distinction à faire c'est entre la prohibition d'aliéner pure et simple et la prohibition d'aliéner faite en faveur de quelqu'un. La première n'opère rien et le testateur n'ayant pas passé plus avant, elle ne passe que pour un simple conseil; mais au contraire si le testateur, en prohibant à ses héritiers et successeurs d'aliéner les biens qu'il leur a délaissés, déclare que c'est afin qu'ils soient conservés à ceux qu'il désigne: par exemple, à ses descendants, ou à ceux de sa famille, en ce cas la prohibition d'aliéner emporte un *fidei-commis*, et c'est la même chose que si les descen-

(1) 2 Ricard, des Donations, p. 322, Traité de Substitutions, titre III. ch. 7, partie 1, No. 329.

dants ou ceux de sa famille avaient été substitués à l'héritier; il faut donc que la prohibition soit faite en faveur de quelqu'un, pour empêcher que l'héritier ne puisse pas vendre. C'est la disposition du droit en la loi 38, § 4, et de la loi 93 ff. De légat. 3, mais plus expresse en la loi *Filius familias* 114, § Divi, 14 ff. De légat. 1, où le jurisconsulte dit que les Empereurs avaient décidé qu'il ne suffisait pas de prohiber l'aliénation, mais qu'il fallait encore exprimer la cause et déclarer la personne en faveur de laquelle on recherchait cette précaution; qu'autrement *nisi inveniatur persona cujus respectu hoc a testatore dispositum sit, nullius esse momenti scripturam quasi nudum præceptum reliquerit* (2)."

"Pothier also says:—'La simple défense d'aliéner, lorsque le testateur n'a pas témoigné en faveur de qui il faisait cette défense, ne passe, à la vérité, que pour un simple avis *nudum præceptum*, auquel celui à qui la défense est faite peut impunément ne pas déférer (3)."

"According to the foregoing authorities a *défense d'aliéner* is to be considered *pure et simple* unless it be stipulated in the interest either of the party making the donation or legacy or of some third person; and a *défense d'aliéner pure et simple* as above defined is to be deemed merely advice on the part of the person making the prohibition and not binding upon the person to whom it is addressed. The reason upon which as I believe the above rules are founded being that in the case of a *défense d'aliéner pure et simple* there is no person

interested except the donee or legatee, and that a provision which cannot be enforced except at the will and by the party intended to be bound by it cannot in law be held legal and binding.

"The appellants on their part have drawn our attention to the opinion of Troplong and Demolombe as shewing that a *défense d'aliéner*, when made the condition of a legacy may in certain cases be unobjectionable, and in such cases ought to be enforced by the Courts."

"Troplong, in the passage cited in the factum of the appellant, says: 'Que dirons-nous de la clause portant défense d'aliéner par vente, échange ou engagement pendant un certain temps? Les opinions sont partagées, mais je ne vois rien qui vicie cette condition, qui souvent est imposée par le testateur pour des bonnes raisons de prévoyance, de convenance, d'économie domestique. Le donateur en donnant un immeuble à une personne de sa famille, peut cependant éprouver le regret de le voir de son vivant sortir des mains de celui qu'il considère comme un autre lui-même, il lui impose alors l'obligation de ne pas aliéner de son vivant. Dans d'autres circonstances le testateur peut craindre que le légataire ne soit trop pressé de jouir et qu'il n'abuse du droit de propriété dont il le gratifie; pour l'accoutumer à être propriétaire pour l'affectionner à sa propriété, il lui impose la condition de la garder pendant cinq ans. Ne sont-ce pas là des mesures sages et prudentes? Pourquoi les repousser avec une sévérité sans règle? La prohibition d'aliéner n'est censée contraire à la liberté qu'autant qu'elle est absolue; c'est alors qu'elle est considérée comme non écrite (4).'

"And Demolombe expresses his opinion as to this point in nearly the same words.

"In considering the above observations of Troplong and the opinion of Demolombe to the same effect, it is necessary to bear in mind that a very wide difference exists between the law of France and our own law as to the subject under consideration. The article 896. of the Code Civil declares: 'Les substitutions sont prohibées. Toute disposition par laquelle le donataire, l'héritier institué, ou le légataire, sera chargé

(2) 3 Henrys, p. 219, liv. 5, ch. 4, quest. 49, p. 2.

(3) 5 Pothier, des Substitutions, p. 518. See also 6 Toullier, p. 521, No. 488. 6 Nouveau Denisart, p. 74. See also the case of Fafard and Bélanger, 4 Lower Canada Reports, p. 215, and more particularly the remarks of Mr. Justice Caron in that case: "Je considère cette défense d'aliéner obligatoire parce qu'elle comporte la condition de transmettre ses biens aux héritiers du côté et ligne; il en serait autrement si la défense était pure et simple. 2 Bourjon, p. 164, tit. 5, c. 5, s. 7, Nos. 53, 54. 1 Despeisses, p. 19, part 1, tit. 1, s. 2. Dictionnaire des Arrêts (Brillon), p. 156, verbo Aliénation, Nos. 25 et 37. 2 Despeisses, p. 188, part 1, tit. 2, des Substitutions, s. 6, art. 2, No. 32. Rousseau de Lacombe (Ed. 1769), p. 674, verbo Substitution, s. 1. Dist. 2, No. 5; Merlin Rep. (Ed. 1828), pp. 152, 153, verbo Substitution, Fid. s. 8, No. 5. Poujol, Traité des Donations (Ed. 1836), p. 90.

(4) 1 Troplong, Donations et Testaments, No. 271. 1 Grenier, Donations, p. 188.

de conserver et de rendre à un tiers sera nulle même à l'égard du donataire, de l'héritier institué ou du légataire (5).'

"These provisions being altogether at variance with our own law on the subject, it is plain that the observations of Troplong and Demolombe must be read by us with great caution ; and bearing this in mind, it appears to me that all that Troplong and Demolombe are to be understood as saying in the passages relied on by the appellant, is simply that a prohibition to alienate in a donation or will, if made for a short time and from reasonable motives, is not absolutely null even under the provisions of the *Code Civil*. Those learned writers shew that such a provision can be enforced if made in the interest of the donee or legatee, or of a third party, and that if accompanied by a penal clause the penalty may be enforced in the event of a violation of the prohibition to alienate. But I am not aware that there is anything in the writings either of Troplong or of Demolombe tending to establish that a prohibition to alienate, when made exclusively in the interest of the donee or legatee, can be enforced by the donee or legatee against his own acts and to the prejudice of his own creditors.

"In the present case the appellant relies on a *défense d'aliéner*, in which, in so far as regards the property in question, no person but himself is interested ; and the object of his opposition is to prevent the sale of the property in question for the satisfaction of a judgment rendered against himself to enforce the payment of a debt which, it may be observed, to the extent of above 1,100*l.*, appears to have been contracted after the death of the testator whose will contains the *prohibition d'aliéner* relied on by the appellant. There is not, I repeat, so far as I know, anything in the works of Troplong or of Demolombe to justify the pretensions of the opposant. On the contrary, Demolombe says, 'Il nous paraîtrait impossible d'admettre le donataire ou le légataire qui aurait consenti l'aliénation à se prévaloir ensuite contre les tiers auxquels il aurait concédé des droits, de la *défense d'aliéner* qui aurait été imposé et qu'il aurait lui-même enfreinte ; car il ne se peut pas qu'il évince ceux-là même auxquels il doit garantie.'

(5) 18 Demolombe, p. 328, No. 803.

"Troplong, also, in his *Traité du Contrat de Mariage*, No. 3060 *et seq.*, maintains the same doctrine.

"The foregoing observations I think suffice to prove that the opinions of Troplong and Demolombe are not in reality opposed to the authorities from our own law upon which the judgment of the superior Court is based ; but in order to remove any doubt as to the point, I shall cite one further passage from the works of each of those authors."

"Troplong puts the question, 'La prohibition d'aliéner forme-t-elle une substitution?' And he then continues: 'Il faut répondre négativement à cette question ; car cette prohibition ajoutée à une substitution est nulle en loi et ne forme qu'un précepte, un *nudum præceptum*, qui ne lie point, qui ne donne d'action à personne et dont on peut dire avec Papinien qu'il a été donné *obtusum consilii* (6).'

"And Demolombe says: 'On paraît avoir de tout temps reconnu que la défense ou prohibition d'aliéner ne constitue qu'un simple précepte, non obligatoire, *nudum præceptum*, lorsqu'elle est pure et simple, c'est à dire, lorsqu'elle n'est pas faite en faveur d'une personne qui est appelée à en profiter, *nisi inveniat personam cujus respectu hoc a testatore dispositum est.*' L. 114, s. 14, art. de *Leg. Trevenot*, Nos. 129, 130. *Coin-Delisle*, art. 896, No. 32 (7)."

"It has, however, been said, and will, I believe, be maintained, that the authorities relied on by the respondent have no bearing upon the present case, because they relate to prohibitions to alienate in connexion with the doctrine of substitutions, and not (it is said) to prohibitions to alienate unconnected with a substitution such as the case before us presents. The answer, I believe, to this objection is, that the two subjects are so closely connected as to make it impossible to treat of them separately. A *défense d'aliéner*, if made in favour of a third person, is (as has already been observed) in effect a substitution, and is therefore in law obligatory. Whereas, if the *défense d'aliéner* is not made in favour of a third person, it is not a substitution. In one very important point of view, there-

(6) Troplong, *Donations et Testaments*, Nos. 136, page 198.

(7) 18 Demolombe, No. 147, p. 172.

fore, in order to ascertain whether a *défense d'aliéner* is or is not valid, it is necessary to inquire whether it does or does not amount to a substitution."

"This probably is one of the reasons which have caused the two subjects to be considered together by the most eminent French jurists, who, I may observe, were not likely to treat as closely connected questions really independent of each other.

"There is another view which may be taken of this case, and which was strongly pressed upon our consideration by the learned counsel for the respondent."

"The testator in the will under consideration, without assigning any cause or reason for the *défense d'aliéner* which it contains, has extended it to all his legatees and over the whole of his property for a period of twenty years; and it has been contended by the learned counsel for the respondent, and I think with reason, that if such a clause is good for a period of twenty years, there are no grounds for saying that it could not be legally good for forty years or for the lifetime of the legatee."

Now, the policy of our law is and ought to be that property over which a man has full control should be subject to the payment of his just debts, whereas the effect of the provision in question, if it be valid, is to enable legatees to hold property over which they have in reality unlimited control free from the payment of their debts, and this, irrespective of the nature of the debt sought to be enforced or of the extent of the property held subject to such condition.

It has, therefore, been further contended by the respondent, that the provision of the will upon which the appellant rests his claim ought to be held null on the ground of public policy.

It may, however, be answered, that a testator may, by an express provision to that effect, bequeath property so as to be free from seizure for the debts of the legatee, and that property left expressly *pour aliments* (as the authors say) is not liable to be brought to sale for the debts of the legatee.

"But admitting for the sake of argument, and subject probably to certain limitations, that the law sanctions the two descriptions of bequests just mentioned when expressly made, still it is not the less true that

bequests tending to prevent the alienation of property and to enable the party holding it either to pay his debts or not, just as it may please him, are not entitled to favourable consideration; and I think that in giving effect to such clauses we ought not to go beyond the limits established by the authorities, or to add by reasoning from analogy to the number of exceptional cases which on special grounds are already sanctioned by law; and this I think we practically would do were we to give effect to the testamentary provisions relied on by the appellant."

"But although I think the point just adverted to ought not to be passed wholly unnoticed, I wish it to be understood that the ground upon which I would deem it my duty to confirm the judgment of the Court below is that, in my opinion, it is a well-established rule of law that a *défense d'aliéner pure et simple*, such as that contained in the will before us, is inoperative."

"This rule, which, having its foundation in the Roman law, appears to have been acted upon for centuries in France, has been transmitted to us as law by jurists such as Ricard, Henrys, and Pothier, and is not controverted, so far as I know, by any writer upon the ancient or modern law of France."

"I therefore think that the learned Judge of the superior Court was justified in taking that rule as his guide, and that his judgment, which purports to be founded upon it, and is in all respects in accordance with it, ought to be confirmed."

The appellant applied for leave to appeal to Her Majesty in Council, but leave was refused, on the ground that the proceeding was interlocutory.

On the 16th of October, 1863, the appellant, by leave of the Court, filed a *défense au fonds en fait*, and also an amended exception *perpétuelle*, which alleged that by a contract of marriage made between Joseph Guillet, *dû* Tourangeau the elder, and Judith Kenmer, *dû* Laflamme, it was agreed that there should be between them a community of goods according to the custom of Paris; that the lands and tenements in question formed part of the possessions so held in common by them; that the said Judith Kenmer, *dû* Laflamme, died before her husband, and by her will left her share of the

property absolutely to her children, of whom the respondent was one; and that therefore if the clause in the will of Joseph Guillet, *dû* Tourangeau the elder, were valid and of force, which the appellant by the said exception expressly denied, it could only affect the one-half of the property which passed by that will; and that, as to the other half of the said property, the opposition should be dismissed.

To the above exception the respondent filed, on the 5th of October, 1863, a special answer, which alleged: first, that by a deed dated the 25th of November, 1856, he had conveyed all the profits of the houses and lands in question that should accrue within twenty years from the decease of his father, and to which he was entitled under the will of his father, to the appellant; who had accepted the same, and had thereby recognized the will of the said Joseph Guillet, *dû* Tourangeau the elder; secondly, that, subsequently to the seizure of the lands in question, the appellant had taken in execution and sold goods of the respondent to the value of 3,000*l.*, which had come to him under the will of his father and the division of property made in accordance therewith; and that the appellant having so recognized the will of the said Joseph Guillet, *dû* Tourangeau the elder, and the partition of goods thereunder, and having received advantage under it, was not entitled now to dispute its effect; thirdly, that if the provisions of the said will of Joseph Guillet, *dû* Tourangeau the elder, were not to be carried out with respect to the said lands, the appellant should first have compelled a new division of the property, under the wills of the said Joseph Guillet, *dû* Tourangeau, and his wife, between their children; and that, if such division had been made, the respondent would have received a much smaller share of the property to the injury equally of the appellant and his other creditors.

Upon this answer issue was joined.

The cause was heard upon the merits on the 10th and 11th of March, 1864, before the Honourable Mr. Justice Taschereau, who, on the 15th of April, 1864, gave judgment for the appellant, on the same grounds as those expressed in his former judgment, stating that the judgment of the Court of Queen's Bench having been inter-

locutory, and an appeal to Her Majesty in Council having been refused, on that ground the judgment was not binding on him, and that he adhered to his former judgment.

From this judgment the respondent again appealed to the Court of Queen's Bench, before which Court the cause came on for hearing on the 17th of March, 1865, when the majority of the Court were of opinion that the judgment of the Court below, as to the invalidity of the restriction contained in the will in question, was well founded, but, on the 29th of September, 1865, the Court of Queen's Bench gave judgment for the then appellant, on the ground that the former judgment of the Court of Queen's Bench was binding between the parties, subject only to revision by Her Majesty in Council.

From this judgment Mr. Justice Meredith dissented. Mr. Justice Mondelet also dissented from so much of the judgment as decided that the former judgment of the Court of Queen's Bench was binding upon the superior Court.

It was from the judgment of the Court of Queen's Bench, so rendered, and from the former interlocutory judgment of the 16th of March, 1863, that this appeal was brought.

Sir Roundell Palmer and Mr. Bompas, for the appellant.—The judgment appealed from was clearly erroneous and ought to be reversed. Upon the first appeal from the judgment of Mr. Justice Taschereau, two of the Judges of the Court of Queen's Bench in Lower Canada dissented from the judgment of the rest of the Court, and Mr. Justice Meredith delivered a very learned judgment in favour of the appellant. The case was then remitted to the superior Court, to be heard on the merits; and, on appeal to the Court of Queen's Bench from both judgments, the majority of the Court were of opinion that the restriction on alienation was invalid. The opinion of the Judges in Lower Canada may, therefore, be said to be equally balanced; and the reasons given by Mr. Justice Meredith in the course of his judgment are of great value, both on the consideration of the authorities on the old French Law and also for the reasons why the construction sought to be put on the will in question must be correct in point of

law. The clause in the will of Joseph Guillet can have no force or effect beyond a mere expression of the will of the testator. The clause in question amounts, by the Canadian law, to a "*défense d'aliéner pure et simple*." It does not create any substitution in favour of the testator himself, or of any other person in the event of alienation by the devisee. The restraint on alienation, even if valid in law, cannot be enforced; because there is no person interested in the will, except the devisee in whose favour the devise must operate absolutely. Such a proviso can only operate as a request or direction to the devisee. There are, no doubt, authorities to the effect that a restraint on alienation for a period of twenty, or even forty, years may be valid; but all those authorities must have reference to restraints on alienation, with a substitution in favour of the testator or some third person in the event of alienation by the first or other object of the testator's bounty; but here there is no resulting trust in favour of the deviser or of any other person, for there is no further devise under the will. The authorities which appear at first sight to favour the respondent's position are, in fact, in favour of the appellant. But there are numerous authorities, all of which will be found in the judgment of Mr. Justice Meredith, which shew that a *défense d'aliéner pure et simple* does not create a substitution, and is not therefore legally binding on the devisee. The testator has, in the will in question, extended the proviso in question to the whole of his property; and if such a restraint on alienation be good for a period of twenty, it may be for forty years, or for any period extending to the life of the devisee; and if a restraint on alienation is to relieve a devisee from the payment of his just debts, and even from judgment debts, as is contended by the respondent in the present case: the proviso in the will ought for these reasons to be held void, as being contrary to public policy. It is said that such a devise would, in some cases, be valid by the Canadian law, and therefore, as in the case of lands left "*pour aliments*"; but, even if this be so, there is every reason for not extending such a licence. Besides the clause in question, if valid, could affect only one-half of the lands seized, and the opposition should have been dismissed as

to the residue of the said lands. The prohibition is only against alienation by the act of the devisee, and is not operative against the right of the appellant, who is an execution creditor coming in by operation of law and not by the act of the devisee.

The authorities referred to are all contained in the judgment of Mr. Justice Meredith.

The respondent did not appear.

The MASTER OF THE ROLLS (LORD ROMILLY) stated that their Lordships were of opinion that the judgment of the Court of Queen's Bench of Lower Canada was erroneous, for the reasons assigned by Mr. Justice Meredith, in his judgment delivered on the 16th of March, 1863; and that their Lordships would humbly recommend to Her Majesty that the judgment of the Court of Queen's Bench of Lower Canada be reversed.

Attorneys—Bischoff, Cox & Bompas, for appellant.

1868. { NEELKISTO DEB BURMONO,
Feb. 24. { appellant, BEERCHUNDER
THAKOOR respondent.*

Practise — Appeal — Receiver pending Appeal,

On a petition praying that a receiver might be appointed of certain estates pending an appeal, it appeared that a District Court of Bengal decreed in favour of the petitioner, but that the High Court reversed the decree. It also appeared that the property in question was of great extent, paying a large revenue to the Government. Their Lordships refused to appoint a receiver.

This was a petition by an appellant claiming the Zemindary of Tipperah, praying that the collector of Tipperah might be appointed receiver of the Zemindary pending the appeal.

The petition stated that the Rajah of Tipperah died on the 31st of July, 1862.

* Present, the Right Hon. Sir W. Erle, Sir J. Colville, Sir E. V. Williams, the Judge of the Admiralty Court (Sir R. Phillimore) and Sir Lawrence Peel.

That upon his death the respondent took possession of the estates of the Zemindary, allowing himself to be installed as Joobaraj. That the petitioner claimed the said estates as elder brother of the Rajah deceased. That on the 12th of June, 1862, the petitioner commenced an action in the Zillah Court of Tipperah against the respondent to obtain possession of the Zemindaries. That the Government revenues on the said Zemindary is 161836 12 9 rupees per annum. That the respondent pleaded that he had been appointed by the deceased rajah to the office of Joobaraj, by virtue of which office he succeeded on the death of the rajah, and he denied the petitioner's being next-of-kin to the rajah. That the petitioner replied that the deceased had not appointed Beerchunder Thakoor Joobaraj, and that the petitioner, by virtue of seniority and the custom of the family, was entitled to the succession and the estates. That on the 15th of June, 1864, the Principal Sudder Ameen decreed in favour of the petitioner, declaring that the deceased rajah did not appoint the respondent Joobaraj, and that the petitioner was entitled to the estates, and the petitioner applied for execution of the said decree, which was ordered. That on the 22nd of June, 1864, after such order, the respondent applied to the Principal Sudder Ameen to stay execution until the petitioner should have given security in the event of an appeal, which the respondent intended to prefer, being successful, whereupon the Principal Sudder Ameen ordered that the respondent himself should give security, or else that the execution should not be stayed. That no security was given, but on the 8th of July, 1864, the respondent petitioned the High Court for leave to appeal; and on the 9th of July, 1864, the High Court made an order calling upon the petitioner to shew cause why all further proceedings in execution should not be stayed, and ordering the Principal Sudder Ameen in the mean time to stay execution. That on the 16th of July the petitioner was turned out of possession, and on the 30th of July the petitioner consented to an order being made by the High Court that the property in dispute should, pending the appeal to the High Court, be attached and placed under the management of the collector of Tipperah. That on the 26th of September, 1864, the High Court

on the hearing of the case reversed the decree of the Principal Sudder Ameen, and ordered the attachment to be withdrawn. That the petitioner applied for and obtained leave to appeal to Her Majesty in Council, and on the 6th of February, 1865, applied to the High Court for an order calling upon the respondent to give security or to have the properties placed under the collector, but the said Court refused the petitioner's application. The petition then stated that the case on appeal was not filed, but would be filed in a short time, and that the said appeal would be ready for hearing in July. That the instalments of Government revenue on the property according to the regulations of the Board of Revenue fall due in March, June and September, so that two instalments would fall due before the expected hearing.

Mr. Field and Mr. Bell, for the petitioner. — The estates in question are of great value. Unless the estates of the Zemindary be put under some control, default will be made in the payment of Government revenue. Besides, the petitioner, even if he succeeds in the appeal, will lose the mesne profits of the Zemindary. The petitioner will therefore be irretrievably injured. We only ask your Lordships to make a similar order to that made by the High Court. — They referred to the *Indian Civil Code*, ss. 92, 338, *The Mayor of Gloucester v. Wood* (1), *Barrs v. Fewkes* (2) and *Daniel's Chanc. Prac.*, 2nd edit. p. 1592.

Mr. Forsyth and Mr. Leith, for the respondent, were not heard.

SIR J. COLVILLE. — Their Lordships do not see any special ground in this appeal for departing from the ordinary practice of the Committee. No precedent has been referred to in which such an order was made. It is said that such an order was made by the High Court pending the appeal to that Court, but that order was made by consent. Their Lordships must therefore dismiss this petition, and with costs.

Attorneys — T. L. Wilson, for petitioner; Desborough & Son, for respondent.

(1) 3 Hare, 150.
(2) 35 Law J. Rep. (N.S.) Chanc. 188; s.c. 1 Law Rep. Eq. 392.

1868.
March 13.

ELIZABETH WEBSTER AND
OTHERS, *executors of JAMES
WEBSTER, appellants*; HER-
BERT POWER, GEORGE HENRY
DAVENPORT AND ROBERT
BURKE, *respondents*.*

*Mortgage Deed—New South Wales—
Sheep Station—Increase of Sheep—Con-
struction—Pleading.*

By an indenture of mortgage made between the respondent B. and the appellants' testator, certain flocks of sheep and certain herds branded B, then depasturing on a certain station in the colony of Victoria, "together with all and singular the issue, increase and produce of the said sheep and cattle respectively," were assigned by B. to the appellants' testator by way of mortgage. By a subsequent indenture of mortgage reciting the former indenture, B. assigned "all the issue, increase and progeny of the sheep" on the said station to the respondents P. and D, with a power of sale. Previous and subsequent to the latter indenture, B. purchased and brought upon the station large additions to the flock of sheep, and branded them with the letter B. B. also obtained a lease of the station, and deposited it with P. and D. as additional security:—Held, on a bill filed by the appellants, after a sale, by P. and D, both of the sheep and the lease, praying for payment of advances out of the proceeds of the sale of all the sheep and the lease, first, that by the words "increase of the sheep" in the first indenture was meant the natural increase or offspring of the original sheep mortgaged, and that such words did not include additions made to the flock by purchase; secondly, that the mortgagees under the first indenture of mortgage were precluded from claiming the proceeds of the sale of the lease or any personal equity to have the sheep purchased substituted for the original sheep, no such claim having been raised by the original bill.

This was an appeal from an order or decree of the Supreme Court at Victoria, sitting as a Court of appeal in equity.

* Present Sir William Erle, Sir J. W. Colville, Sir E. V. Williams, and Sir R. J. Phillimore (Judge of the Admiralty Court).

NEW SERIES, 37.—PRIV. COUN.

The bill was filed by the appellants in their character of executrix and executors of James Webster.

The bill stated that by an indenture of mortgage, dated the 1st of December, 1853, made by the respondent Robert Burke of the one part, and James Webster, deceased, of the other part, certain flocks of sheep amounting to about 15,000, and branded "B," and certain herds of cattle amounting to about 2,000, and then depasturing upon a station known as Mount Shadwell Station, in the county of Hampden, in the Portland Bay district, together with the issue, increase and produce of such sheep and cattle respectively, were assigned unto the said James Webster, his executors, administrators and assigns, by way of mortgage, to secure the sum of 18,560*l.* secured by certain bills of exchange for the sums of 6,613*l.* 6*s.* 8*d.*, 6,186*l.* 13*s.* 4*d.* and 5,760*l.* respectively; that such indenture of mortgage was duly registered; that the respondent Robert Burke paid the said two sums of 6,613*l.* 6*s.* 8*d.* and 6,186*l.* 13*s.* 4*d.*; and by a memorandum of agreement, dated the 21st of September, 1857, made between James Webster of the one part, and Robert Burke of the other part, James Webster agreed to extend the term for the payment by Burke of his bill for 5,760*l.*, secured by the mortgage of the stock on the Mount Shadwell station, and to receive payment thereof by three equal payments on the 1st of December in each of the years 1858, 1859 and 1860, together with interest thereon, at the rate of 10*l.* per cent. per annum; and in consideration of such extension Robert Burke agreed that the said sums and interest should, on the demand of the said James Webster, his executors, administrators or assigns, be secured by a fresh deed of mortgage by the said Robert Burke of 10,000 sheep and 1,000 head of cattle, if there were any doubt of the then present mortgage being a valid security. That before signing such agreement the said Robert Burke remained in possession of the said station and sheep, and by means of the increase, which were always branded "B," the said respondent Burke kept up the original number of stock until the end of the year 1857, when, in accordance with the said agreement, he reduced the said

C

stock to the number of 10,000 sheep, or thereabouts, and 1,000 head of cattle. That in or about the month of July, 1861, the respondent Burke, being indebted to the other respondents, Power and Davenport, to a considerable amount, by an indenture of mortgage, dated the 15th of July, 1861, made between the respondent Burke of the one part, and the said Power and Davenport, representing the firm of "Power, Rutherford & Co.," of the other part, all the flocks of sheep of the said respondent Burke, amounting in number to 10,000, and branded "B," and depasturing upon the Mount Shadwell station, were assigned unto the respondents Power and Davenport, their executors, administrators and assigns (but subject and without prejudice to the before-mentioned indenture of mortgage of the 1st of December, 1853), by way of mortgage, to secure the payment of the sum of 4,330*l.*, and other moneys amounting to the sum of 2,117*l.* 10*s.*, and such mortgage was duly registered; that shortly after the execution of the said last-mentioned mortgage, the respondents Power, Rutherford & Co. sent a notice addressed to the executors of James Webster, setting forth the last-mentioned mortgage of the 15th of July, 1861, of the flocks of sheep of the respondent Burke, of different sexes and ages, amounting to 10,000, or thereabouts, branded respectively with the mark or letter "B," depasturing and being at or upon Mount Shadwell station, which were thereby assigned and transferred unto the respondents Power and Davenport, their executors, administrators and assigns (subject and without prejudice to the thereinbefore mentioned indenture of mortgage of the 1st of December, 1853, made between the respondent Burke of the one part, and Webster of the other part), for securing the payment of a bill of exchange for the sum of 4,330*l.*, and other moneys, amounting to the sum of 2,117*l.* 10*s.*, by certain instalments, together with interest, as therein mentioned; and also all and every sums of money (if any) which the said respondents Herbert Power and George Henry Davenport, or the survivor of them, or the executors or administrators of such survivor, their or his assigns, might since the making of a certain advance therein mentioned have lent, advanced or paid, or which they

or he might thereafter lend, advance or pay, to or for the use or on the account of Robert Burke, his executors or administrators, or which might thereafter be coming or owing from them or him to the said mortgagees, or the survivor of them, or the executors or administrators of such survivor, their or his assigns, on any account whatsoever, including interest, commission and all other lawful or accustomed charges. That by an indenture, dated the 8th of April, 1862, made between the respondent Burke of the one part, and the said respondents Herbert Power and George Henry Davenport, representing the firm of "Power, Rutherford & Co.," of the other part, after reciting the indenture of the 15th of July, 1861, and that the mortgagor had, with the consent of the mortgagees, sold 4,370 of the sheep in the said indenture comprised, and had purchased 6,410 other sheep or thereabouts, which said 6,410 sheep were branded "B," and were substituted for the 4,370 sheep so sold as aforesaid, as security for the money so owing to the mortgagees as aforesaid. That by divers payments made by Burke, the said debt of 5,760*l.* had been considerably reduced, and that there was then due, in respect of the said mortgage debt, the sum of 1,353*l.* only, together with arrears of interest. That Webster died on the 29th of March, 1859, having by his will duly appointed the appellants his executrix and executors, to whom probate was granted, whereby they became the sole legal personal representatives of the said testator. That on or about the 29th of September, 1863, the respondents Power, Rutherford & Co., in virtue of their mortgage, took possession of all the sheep and cattle depasturing on the said station, and had either sold the same or retained them in their possession. That, upon the appellants applying to the respondent Burke for the payment of the balance then due to the testator, Webster, they were referred by him to the other respondents, and the appellants accordingly applied to them for payment of the amount due, namely, 1,356*l.* 13*s.* 4*d.* That Messrs. Power, Rutherford & Co., in answer thereto, denied that they were in any way liable for the respondent Burke's payments, and stating that they held a mortgage over some sheep

on the Mount Shadwell property, which were purchased by him from them and were then in their possession. The bill alleged that the appellants were entitled to the said sum of 1,353*l.*, or what might be due to them in respect of the said mortgage debt out of the proceeds of the said sheep, if they had been sold by the said respondents; or to have the said sheep sold, and the proceeds applied towards payment of the said sum; or what might be due to them on the said mortgage. That Messrs Power, Rutherford & Co. took their said security, subject to the security to Webster as aforesaid, and that the respondents Power, Rutherford & Co. held the said sheep or the proceeds of the sale thereof, as trustees for the benefit of the appellants, to the extent of the money so due to them as aforesaid. That the said respondents, trustees and mortgagees in possession, were bound, when they took possession of the sheep, to keep separate and distinct the sheep which the respondents say were or might have been subject to the mortgage to the said testator from those which the respondents claimed as not subject thereto, and that the respondents were bound to ascertain which of the said sheep were exclusively mortgaged to them, as they allege, and were bound to keep distinct accounts of the proceeds of the sale of such sheep respectively and of the said leasehold premises. That the respondents had sold all the said sheep and leasehold premises, but that such accounts had not been kept by the respondents, and by reason of the confusion thereby created it was impossible for the appellants to distinguish which sheep were the subject of the said mortgage to their said testator, or what were the proceeds of the said sheep respectively and of the said leasehold premises; and that such confusion had been brought about by the respondents' own acts, and the appellants were entitled to have the whole quantity of sheep treated as security for their said claim, and to be paid the full amount of money so due to them as aforesaid, or as far as the proceeds of the said sheep and leasehold premises would extend. The bill then prayed that an account might be taken of what was due to the appellants in virtue of the indenture of mortgage of the 1st of December, 1853, and that the

respondents Power, Rutherford & Co. might be ordered to pay what might be found due, together with the costs of suit, out of the moneys which had arisen from the sale of the said sheep and leasehold premises, if the same had been sold; but if the said sheep and leasehold premises had not been sold, then that the same might be sold, under the directions of the Court, and that the moneys arising from such sale might be applied towards paying the appellants what might be found due to them.

The respondent Burke was not required to answer the bill.

The respondents Power and Davenport put in their joint and several answers to the bill, whereby they admitted the above-recited statements in the bill. They denied that the indenture of the 8th of April, 1862, gave any interest or claim to Webster, or his executors and assigns, other than he was entitled to under the indenture of the 1st of December, 1853, and alleged that Burke had, previously to the date of the indenture of the 8th of April, 1862, purchased and brought on the station 7,530 sheep, and not 6,410, as mentioned in the bill, and had afterwards purchased and brought upon the station additional sheep to the number of 3,605, which they submitted were not to be deemed comprised, nor were in fact comprised, in the security of the appellants, or, at all events, not so comprised in priority of the security held by the respondents. They admitted having taken possession of sheep depasturing on the Mount Shadwell Station to the number of 12,000, and that a portion of such sheep, or their issue, were comprised in the mortgage to Webster by Burke in the year 1853, but submitted that if any sheep were in fact sold by them, which were the property of the appellants, as such mortgagees as in the bill alleged, the proper remedy of the appellants was at law; that the appellants had been guilty of delay and laches in the prosecution of their rights as such mortgagees against the respondent Burke; that the appellants were bound by proper evidence to identify the sheep which they claimed, as such mortgagees, with the sheep sold by them; and that any difficulty which might have arisen as to the identification of such

sheep had been caused by the delay and negligence of the appellants; and they submitted that the appellants ought to be left to the prosecution of their legal rights, if any.

The case came on for hearing on the 21st of October, 1864, before Mr. Justice Molesworth, when evidence both oral and documentary was produced, and various witnesses examined on both sides.

It was further proved, that subsequent to the mortgage to the respondents Messrs. Power and Davenport, the respondent Burke had obtained a lease of part of the station from a former owner of it, and had deposited the then lease with Messrs. Power and Davenport by way of further security; and that Messrs. Power and Davenport had sold the lease together with the sheep.

Mr. Justice Molesworth, in giving judgment, said—"The plaintiffs by their bill prayed to have their debt ascertained and paid by the defendants Power and Davenport out of the produce of all the sheep and leasehold sold, or if the sheep had not been sold, then to have them sold, and the proceeds similarly applied. The sheep which were in existence and comprised in the mortgage, 1857, were probably all dead before September, 1863; but it has not been disputed in argument that the plaintiffs' lien continued against so many of the sheep taken in September, 1863, as were the issue or progeny of those mortgaged in 1857. The plaintiffs, however, insist that Burke tortiously intermixed the sheep comprised in the mortgage to Webster, with those otherwise brought upon the Mount Shadwell Station, and that the defendants Power and Davenport should be held responsible for Burke's acts, and a legal principle should be applied to the case, namely, that a person mixing his own goods with those of another, so that the parts become mixed and undistinguishable, thereby loses his property in the entire mixture. But it does not appear to me that Burke on this subject should be considered the agent of his second mortgagees rather than of his first; Webster, in taking his mortgage, introduces no stipulation as to distinguishing the mortgaged sheep by brands or otherwise from those afterwards introduced, and he

and the plaintiffs seem never to have taken any trouble on the subject. The defendants Power and Davenport's firm had apparently no direct connexion with the branding, but took a mortgage of all branded 'B' prior to it. I do not think there is any such difference in their comparative neglect on the subject of distinguishing that a difference should be made unfavourable to the defendants as to the mixture which Burke had made before September, 1863; besides, this doctrine of loss of property by intermixture savours of forfeiture, which Courts of equity rather relieve against than assist — see *Colburn v. Simms* (1). Up to the possession taken in September, 1863, I do not think that the Court should have any leaning as between the plaintiffs and the defendants Power and Davenport, but endeavour to ascertain their proportional interests in the sheep then taken by the latter, according to the proportion borne by the number of the sheep comprised in Webster's mortgage, to the number of those brought on otherwise, unless evidence was offered of some distinction in the quality of the different classes, which would render the adjustment by mere numerical proportion incorrect. From the taking possession in September, 1863, to the sale, I think the defendants Power and Davenport stand in a more culpable position. Having full notice of the claim of the plaintiffs, they do not inform them of the change of possession or the treatment of the sheep, and afterwards sold the sheep in one lot with a leasehold interest, so as to confound the numbers and price of different classes of sheep and the land. But their liability to the plaintiffs, I think, was complete upon the seizure, and the intermixture had occurred before. As to their subsequent conduct, they should be dealt with according to a principle of evidence, that they who cause obscurity should have doubts disposed of unfavourably to them. It has been argued for those defendants that the plaintiffs' remedy should be at law; but I think that Burke, as mortgagor, in possession of the sheep, was a trustee for Webster, his mortgagee, and that the defendants, taking a second mortgage knowingly,

(1) 2 Hare, 534.

and entering into possession, were similarly trustees, so as to give an equitable jurisdiction. Besides, the ascertainment of the plaintiffs' demand is a matter of account, and the determining the proportion of the sheep subject to the two mortgages, is a matter of account more conveniently adjusted in the Master's office than before a jury."

By an Order of the Supreme Court made in the cause, it was ordered that it be referred to the Master in Equity, to take an account of the sums remaining due to the appellants by the respondent Burke on the sum mentioned in the memorandum of agreement, bearing date the 21st of September, 1857; for principal and interest, and it was declared that the appellants had a lien for the same upon the sheep, of which the respondents Power and Davenport, or their firm, took possession in September, 1863, to the extent of the value of so many of the said sheep as should be deemed probably the issue or increase of those depasturing on the Mount Shadwell Station, on the 1st of December, 1853; and the Court further ordered, that it be referred to the Master, to inquire and report the number and the value of the sheep which should be so deemed, with liberty to the Master to report specially on the matters standing referred to him; and the Court reserved the consideration of all further directions and costs, until the Master should have made his report.

The appellants appealed to the full Court upon the following grounds, contained in a notice of motion dated the 1st of March, 1865: "First, that the appellants were entitled to a decree for the full amount of the principal and interest claimed by their bill; secondly, that the respondents had notice of the rights of the appellants, and took their mortgage securities subject to such rights; thirdly, that the sheep, the subject of the respondents' second mortgage, were substituted for the sheep which the respondents had sold, and which they took subject to the appellants' prior rights; fourthly, that such substituted sheep were liable to the appellants' mortgage debt; fifthly, that the respondents, by taking possession in September, 1863, and by their subsequent sale created a confusion of the property, and as

they could not then determine which sheep belonged exclusively to them or which did not, the appellants were entitled to be paid in full, their principal, interest and costs, out of the moneys produced by the said sale; sixthly, that as the appellants sold the sheep and also the leasehold property together for a lump sum, they were unable to distinguish how much was paid for the sheep and how much was paid for the land, and therefore the appellants were entitled to be paid in full out of the proceeds of such sale; seventhly, that the learned Judge was wrong in saying that the appellants relied upon the confusion created by the respondent Burke, branding the new sheep the same as the old, as the appellants did not make or allege any such case; and, eighthly, that the learned Judge was wrong in deciding that the appellants were only entitled to such sheep as were the issue of those mortgaged in 1857, as the appellants were entitled to hold all the sheep taken by the respondents, subject to the mortgage of the appellants' testator, and subsequently substituted for such as were sold as being subject to their said testator's security."

The appeal came on for hearing on the 1st of May, 1865, before the full Court, consisting of the Chief Justice and two of the puisne Judges; and by an order or decree made by the Supreme Court, dated the 18th of May, 1865, it was ordered that the decree or order of Mr. Justice Molesworth be affirmed.

From this decree the present appeal was brought.

Mr. Druce and Mr. Edmund Moore, for the appellants.—The appellants were entitled to a decree for payment of the full amount of principal and interest claimed by the bill. The respondents Power and Davenport, as representing the firm of "Power, Rutherford & Co.," had full notice of the rights of the appellants' testator, and took the securities subject to the prior rights of Webster. The sheep, the subject of the respondents Power and Davenport's second mortgage, were substituted for the sheep which they had sold, and which they took, subject to the appellants' testator's prior debt. Such substituted sheep were liable to the appellants' mortgage debt.

The respondents Power and Davenport, by taking possession, in September, 1863, and by their subsequent sale, created such a confusion of the property that they cannot now determine which sheep belonged to them, or which did not. The *onus probandi* lies upon them to identify the sheep so sold from the sheep and their issue which were mortgaged to Webster by Burke. The appellants are entitled to be paid in full their principal, interest and costs, out of the moneys produced by the said sale. As the respondents Power and Davenport sold the sheep and also the leasehold property together, for a lump sum, they are unable to distinguish how much was paid for the sheep and how much was paid for the land; and therefore the appellants are entitled to be paid in full out of the proceeds of the sale both of the sheep and also of the leasehold interest. The appellants were entitled to hold all the sheep taken by the respondents Power and Davenport, subject to the mortgage to the appellants' testator, and subsequently substituted for such as were sold, as being subject to the said testator's security. The respondents Power, Rutherford & Co. were bound to account to the appellants for the proceeds of sale of the sheep comprised in the appellants' security. Besides, the appellants have a personal equity to have the sheep purchased substituted for the sheep sold by Burke which had been mortgaged to the appellants' testator, of all which the respondents had full notice.

They referred to *Ward v. Byrne* (2), *Lupton v. White* (3), *Pennell v. Deffell* (4), *Holroyd v. Marshall* (5); *Kent's Com.* edit. 1860, vol. 2, p. 68; *Black. Com.* Stephen's edit. vol. 2, p. 22; *Levin on Trusts*, edit. 1864, p. 244.

Sir R. Palmer and Mr. Everitt, for the respondents.—The securities of the appellants did not include or extend to any sheep other than those upon the Mount Shadwell Station at the date of such securities, and the issue and progeny of such sheep, and did not include any of the

after-purchased flocks of sheep of the mortgagor. All such after-purchased sheep were included in or subject to the mortgage securities of the respondents. The confusion of the sheep respectively included in the mortgage securities of the appellants and respondents complained of in this suit, was not occasioned by the acts or defaults of the respondents, but by the acts and defaults of the mortgagor. The appellants, by their own laches and neglect, enabled and permitted the mortgagor to create the confusion complained of. No fiduciary relation subsisted between the respondents and the appellants, entitling the appellants to the relief as prayed by the bill. The appellants by their bill in effect seek to establish a forfeiture of the clear rights of the respondents, and to secure the appellants the benefit of the respondents' securities upon the after-purchased flocks of sheep which were never subject to the securities of the appellants. Under the circumstances, the onus of proof is on the appellants to establish their legal rights to the sheep claimed by them by sufficient evidence identifying the sheep, or establishing at least the numbers of the sheep subject to and included in the assignment by way of mortgage, under which the appellants claim. The decree appealed against has given and decreed to the appellants all and more than all the relief to which they would have been equitably entitled in this suit, even if the confusion complained of had been created by the acts of the respondents. As to any claim to the produce of the sale of the lease the appellants are precluded from raising any such question before your Lordships, no such claim having been raised by their bill. The same observation applies to any personal equity in the appellants to have the sheep purchased substituted for the sheep originally mortgaged to the appellants' testator.

They referred to *Hicks v. Hastings* (6), *Glarks v. Yonge* (7), *Colewill v. Reeves* (8) and *The Odin* (9).

Mr. Drury, in reply:—

(2) 2 Bult. 328.

(3) 15 Vex. 432.

(4) 4 De Gez. M. & G. 372.

(5) 10 H. L. Cas. 191.

(6) 3 K. & J. 701.

(7) 6 Brev. 538.

(8) 2 Camp. 575.

(9) C. Rob. 248.

SIR W. ERLE delivered the judgment of their Lordships.—This is an appeal from a decree of a single Judge of the Supreme Court of the colony of Victoria, which was confirmed on appeal by the full Court.

The first question which suggests itself to their Lordships' consideration is, What was included in the plaintiffs' original mortgage? It was admitted at the bar that the answer to be given to the question whether the mortgage included any sheep brought upon the run which were not the issue of those that were on the run at the date of the mortgage, if considered with reference to the mere words of that instrument, must depend upon the construction which their Lordships put upon the word "increase." Their Lordships, looking at the deed, and seeing that "increase" is always spoken of as the increase, not of a flock, but as the increase of those sheep which were originally the subject of the mortgage, are clearly of opinion that it must be taken to mean the natural increase, or the offspring of those original sheep.

The second question is, whether that mortgage has created any lien or interest in the plaintiffs upon the leasehold property which was part of the subjects that were ultimately sold by the respondents; and their Lordships are unable to find in that deed anything which can fairly be said to have that effect. There is undoubtedly a covenant in the deed which contemplates a possible lease, but the lease spoken of is clearly a lease which, under certain regulations then issued for this colony, it was supposed might be granted by the Government in substitution for the licence under which the run had previously been held. There is nothing in those words which can be taken to give the plaintiffs an equity to a lien attaching upon a lease derived by some other title, as this particular lease seems to have been. And if it were otherwise, there would be very considerable difficulty in administering that equity upon a bill framed as this is, because it clearly appears on the evidence,—in fact, it was admitted at the bar,—that when that particular lease was obtained the appellants' testator immediately proceeded to give the respondents an equitable mortgage by deposit of it. If, therefore, it was the intention of the appellants to question that transaction, and

to assert in themselves a prior incumbrance upon that lease, it was their duty to state such a case, to raise it by the bill and to put it properly in issue. But the bill is wholly silent upon that point.

The third point to be considered is, whether, independently of the words of the original mortgage, this Court, sitting as a Court of equity, has any grounds upon which to hold that the sheep which were "substituted," according to the term used in the deed, for those which were sold in 1862, are subject to the appellants' mortgage. Their Lordships are clearly of opinion, and they entirely agree that, emphatically, in a case which involves an imputation of personal fraud, in any case in which it is sought to raise a personal equity upon certain facts against the defendant, it is the duty of the pleader who prepares the bill to state those facts, to shew his equity, and to put the point fairly in issue. It does not appear to their Lordships that any such case as was made at the bar to-day has been properly raised by the bill before them.

That seems also to have been the view taken in the court below; in fact, upon these proceedings, it would appear that in the first court,—the Court of First Instance,—the case was not raised at all. It seems to have been raised by the grounds of the appeal, and is dealt with by the Judges of the superior Court.

The result, therefore, of these findings is to reduce the appellant's claim to a lien on the issue or increase of the sheep originally included in his security, and the proceeds realized by the sale of them. Of course, we assume that all the original sheep have died long ago.

To this extent his right is affirmed by the decree which is impeached by the appeal; and the only question that remains is, whether it was the duty of the Court to give an immediate decree for the sum claimed against the respondents, presuming, by reason of the confusion or otherwise, that the proceeds of all the sheep that were sold were subject to the plaintiffs' lien, or whether it was proper to direct an inquiry in order to ascertain what part of such proceeds was so subject.

With reference to this question of confusion, their Lordships think, upon the

evidence, that it has not been established against the respondents that they are responsible for any confusion which existed, or which had taken place before they took possession of the run and the flocks. And, upon the evidence, it also seems probable that whatever confusion has been occasioned by the intermixture of the flocks had then taken place.

If any difficulty has arisen as to ascertaining the rights of the parties under the inquiry directed, by reason of the sale of all the sheep to other purchasers without any attempt on the part of the respondents to discriminate between them, or by any other act or omission for which they are responsible, the question, what presumptions ought to be drawn against the respondents in consequence of the difficulty so caused by them, is one which, as it appears to their Lordships, will properly arise upon further directions, and after the Master has made his report. It possibly will arise before the Master in making the inquiry directed, if he shall think it his duty to draw any such presumptions. In that case his conclusions will be, of course, subject to appeal before the Court when the case comes before it upon further directions. But it seems to their Lordships to be altogether premature to assume that the Master will not be able to come to a conclusion upon the matter referred to him by means of direct evidence.

With respect to what has been said as to the introduction of the word "probable" into the decree, it does not appear to their Lordships that that affords any ground for varying the decree. In fact, if the word introduces any fresh element into the inquiry, it is an element which seems to be rather in favour of the appellants than in favour of the respondents.

Upon the whole, their Lordships feel that it will be their duty humbly to recommend Her Majesty to affirm the decree of the Court below, and to dismiss this appeal, with costs.

Attorneys—Hancock, Sharp & Hales, agents for S. Stephens, Melbourne, Australia, for appellants; W. S. Paine, agent for Vaughan, Moule & Seddon, Melbourne, Australia, for respondents.

1868. { NOGENDER CHUNDER GHOSE
Feb. 24. { AND ANOTHER, appellants,
MAHOMED ENSUFF AND
OTHERS, respondents.*

*Indian Appeal—Bengal—Practice—
Time to appeal—Limitation.*

The petitioners, being the respondents in a suit in the High Court of Bengal against whom a divisional Bench pronounced judgment, applied for a review of such judgment, which was admitted for argument, but dismissed on the hearing. The petitioners applied for leave to appeal to Her Majesty in Council; but the High Court refused the application, on the ground that the time had expired within which such appeal could be granted. It appeared that the practice in respect of the time from which the limitation as to appeals ran had been changed pending the proceedings on review.

Under these circumstances, their Lordships granted special leave to appeal.

This was a petition praying for special leave to appeal from a judgment of the High Court at Fort William, Bengal.

The petition stated, that on the 3rd of May, 1861, the petitioners commenced a suit in the Zillah Court of Chittagong, against Mahomed Ensuff and others, as defendants, to establish their rights as Zemindars of a Zemindary, called Turreff Tej Sing, in the said Zillah, to certain lands contiguous. That a plea of limitation was put in by the defendants, in bar of the suit, and a decree made thereon in favour of the defendants, which decree was appealed from by the petitioners to the High Court at Fort William, in Bengal, and was reversed, and an order made remanding the case to the Zillah Court for re-trial on the merits. That the said suit was re-tried, and on the 24th of April, 1865, a decree was made in favour of the petitioners. That the defendants, being dissatisfied with the decree, appealed from the same to the High Court. That the hearing of such appeal took place before a divisional Bench

* Present Sir W. Erle, Sir J. Colvile, Sir E. V. Williams, the Judge of the Admiralty Court (Sir B. Phillimore), and Sir Lawrence Peel.

of the High Court on the 1st of December, 1865, when a judgment was pronounced reversing the last decree of the Zillah Court, and dismissing the petitioners' suit. That the petitioners, in the month of February, 1866, and within ninety days filed a petition in the High Court, praying for a review of the judgment and decree of that Court, instead of filing a petition in the said Court for leave to appeal to Her Majesty in Council against the said judgment. That the petitioners were advised that, according to the prevailing practice of the Courts, they would have six months to file such a petition, from the date on which the order on the petition of review might be pronounced. That this practice was established by a decision of the High Court, and was recorded on the 8th of July, 1864. That the petition came on for hearing before a single Judge of the High Court on the 17th of May, 1866, who, by his order of that date, gave notice to the respondents that the case would be re-argued. That, according to such notice, a regular hearing of the appeal on review came on before two of the puisne Judges of the High Court, on the 1st of April, 1867, when a judgment was delivered affirming the former judgment of the High Court. That the petitioners directed a petition to be filed in the said High Court to Her Majesty in Council. That the petitioners were then for the first time informed that the practice as to the time of filing petitions for such leave had been altered by the High Court, by an Order of the 11th of September, 1866, passed while the said proceedings in review were pending. That the petitioners caused a petition to be presented to the High Court, stating these facts and the change of practice, and praying for leave to appeal to Her Majesty in Council. That the petition came on for hearing before the Hon. Mr. Justice Jackson, who, on the 29th of June, 1867, made the following order: "I am unable to grant this application. The petitioner must apply to the Privy Council."

Mr. Leith, for the petitioners.—Special leave to appeal against the decree of the High Court ought to be granted. The time intervening was occupied by the proceedings on the review. The petitioners would have obtained leave to appeal from the

High Court, as a matter of course, if the established practice had continued. The decision changing the practice was not passed until after the expiration of the six months from the date of the decree. This question has been twice before the Courts in Bengal: first, in the case of *Nezeer Ali Khan v. Rajah Ojoodharam Khan* (1), when the High Court held, that an order of the High Court refusing an application for a review is a final order, from which an appeal lies; and, again, in *The Maharajah of Burdwan* (2), it was held that if an application for a review be admitted, the decision upon the rehearing, whatever may be the result, is the final decree, from the date of which an appeal lies.

SIR J. COLVILLE.—Their Lordships have considered all the circumstances of this case as presented on behalf of the petitioners, and they are of opinion that special leave to appeal from both decrees of the High Court of Bengal ought to be granted.

Attorneys—Wilson, Bristows & Carpmal, agents for Archibald Rogers, Calcutta, for petitioners.

1867. }
Dec. 5. } *In re M'DOUGALL'S PATENT.**

Letters Patent—Extension of Term of—Meritorious Invention—Adequate Remuneration—Practice.

The Judicial Committee will not recommend an extension of the term of letters patent, unless it is proved to the satisfaction of their Lordships that the original invention is of considerable merit, that it is of public utility, and that there has been inadequate remuneration.

The Judicial Committee will not, upon an application to prolong the term of letters patent, adjudicate upon the validity of a

(1) Weekly Rep. (Calcutta), vol. i. p. 14 (Miscellaneous Appeals).

(2) The Revenue, Civil and Commercial Reporter (Calcutta), vol. ii. p. 260.

* Present, Sir W. Erle, Sir J. W. Colville, Sir E. V. Williams and Sir R. T. Kindersley.

patent ; but they will not recommend an extension of the term unless it appears from the specification that the invention was of great merit and public utility, and that no great detriment will arise to the public by reason of an extension of the monopoly.

This was a petition praying for the extension of the term of letters patent granted to Robert Angus Smith, of Manchester, in the county of Lancaster, and Alexander M'Dougall, of the same place, manufacturing chemist.

The petition stated that the petitioner previously to the grant of the letters patent, and after considerable application and cost, invented, in conjunction with the said Robert Angus Smith, certain "improvements in treating, deodorizing and disinfecting sewage and other offensive matter, which said improvements were also applicable to deodorizing and disinfecting in general." That letters patent, dated the 20th of January, 1854, were granted to the petitioner and the said Robert Angus Smith, in respect of the said invention, for the term of fourteen years. That the petitioner had since the date of the said letters patent expended large sums of money, and had devoted much time in perfecting the said invention and bringing the same into public use.

That the said Robert Angus Smith not being desirous of incurring any expenditure, or of devoting any more time to the said invention, it was agreed between the petitioner and the said Robert Angus Smith that the petitioner should alone be responsible for all the outlay connected with the said invention and letters patent, and should be entitled to all the proceeds to be derived therefrom. That by an indenture made between the said Robert Angus Smith of the one part, and the petitioner of the other part, all the estate and interest of the said Robert Angus Smith in the said invention and letters patent, and for any renewed or extended term to be thereafter granted in respect of the said invention, was assigned to and became absolutely vested in the petitioner.

That the petitioner commenced a series of experiments with a view to the removal of offensive smells from sewage and other offensive matter, and for the separation and preservation of such parts of them as were

useful as manure. Starting with the fact that the gaseous emanations from fæcal and other organic matter are sulphuretted hydrogen and phosphoretted hydrogen, either free or in combination with ammonia, and that the fertilizing elements to be preserved are phosphoric acid and ammonia, after much time and labour had been given, the petitioner came to the conclusion that the conditions of the case would be met by means of a compound which should contain two acids, viz., "sulphurous acid" and "carbolic acid," and two bases, i. e., magnesia and lime : these four forming together two salts, sulphite of magnesia and carbolate of lime. In cases where the manure or other matter was in a very advanced state of decomposition, and contained a larger per-centage of ammonia, the petitioner found it would be useful to add a soluble phosphate, so that sufficient phosphoric acid might be present to form the triple compounds ; in short, the petitioner found that all the conditions of the case were fulfilled by using sulphurous acid to remove offensive smells, carbolic acid to prevent putrefaction, a little lime to neutralize and dry the carbolic acid, and magnesia to combine with and preserve the phosphoric acid and ammonia, and, in special cases, a soluble phosphate to prevent the loss of any of the ammonia. This combination produced a fine white dry powder, exceedingly simple to use, and adapted both for use in large operations with sewage, or in stables and cattle sheds ; and also so safe and pleasant that it may be used for domestic purposes in sick rooms, nurseries, and offices.

The petition then stated that the petitioner designed and erected at considerable outlay apparatus for the manufacture of his invention on a commercial scale, and brought it under the notice of the public as "M'Dougall's Disinfecting Powder." The petitioner's efforts to create a sale for the disinfectants were for some time unproductive.

The petition then stated that the petitioner had not been repaid for the time and money spent in the introduction of an invention which was acknowledged to be most important and of great utility, and that if the value of his own time be taken into account, that the petitioner had made no profit at all, but that if the patent be prolonged he would be rewarded from the

profits of the business which there could be no doubt would be carried on.

The petition concluded with a prayer for a prolongation of the term of his said letters patent.

Mr. Grove and *Mr. Lawson* appeared for the petitioner.

Mr. Hannen, for the Crown.

Sir W. ERLE delivered the judgment of their Lordships.—This is an application to the Judicial Committee under its statutable jurisdiction for the extension of the term of the letters patent. It is clear that no extension ought to be granted unless their Lordships are satisfied that the invention for which the original letters patent were granted is of considerable merit, that it is of public utility, and that there has been inadequate remuneration.

It is not the duty of the Judicial Committee, upon such an application, to adjudicate upon the validity or invalidity of the patent itself, but they must, in order to determine whether the necessary conditions have been fulfilled, ascertain the meaning of the specification.

Their Lordships have no intention to construe the specification in this case in such a manner as would be necessary in the case of hostile litigation. They have considered the description of the invention as contained in the petition presented in support of the application, and they are of opinion that the specification does not contain the definition of an invention such as has been described by the petition. They have also heard the evidence of the petitioner, and they are of opinion that the specification does not contain an invention such as has been described by the petitioner himself in his evidence in support of his own petition. Whatever may be the invention for which the original letters patent were granted to the petitioner and Dr. Angus Smith, we have considered it both with reference to the evidence on behalf of the petitioner, and also with reference to the description in the specification itself, and we are of opinion that the restriction by letters patent from general use of the combination of such articles referred to, namely, sulphurous acid, or carbolic acid, in the mode described, would be a great

public detriment, and we do not discover in the invention such merit and utility as will induce us to recommend an extension of the monopoly. Such an extension would deprive the public of the use of an antidote applicable to a species of plague. Therefore, this being entirely a matter for the discretion of their Lordships, we are not inclined to recommend Her Majesty that any extension of this patent should be granted. The whole matter is one entirely for the discretion of their Lordships, and inasmuch as we see no great merit or utility in the invention for which the original letters patent were granted, and that great injury may arise to the public by any extension of the monopoly, their Lordships must refuse to recommend to Her Majesty to grant an extension of the term for which the letters patent were granted.

Application refused.

Attorneys—*Mr. J. H. Johnson*, for the petitioner;
Solicitor for the Treasury, for the Crown.

1868. { *KO KHINE AND OTHERS, appellants,*
Feb. 6. { *RICHARD SHADDEN respondent.**

Indian Appeal—Practice—Suit involving Less than Appealable Value—Other Suits pending.

On a petition praying for special leave to appeal from a judgment of the High Court of Bengal, in a suit involving less than the appealable value, it appeared that important questions of law would arise on the hearing; that other suits were directed by the High Court to abide the event of the appeal; and that the aggregate suits involved a greater amount than the appealable value. Their Lordships granted special leave to appeal.

The petition stated, that in or about the month of September, 1865, the petitioners commenced an action in the Court of the Recorder of Moulmein (being regular suit No. 153. of 1865 of that Court),

* Present, Lord Westbury, Sir J. W. Colville, Sir R. T. Kindersley, and Sir L. Peel.

against the respondent Richard Shadden. The petitioner's statement in that action was as follows: "Suit for fifty-two logs of teak timber in specie, being a portion of 609 bog logs hereinafter mentioned. Suit valued at 3,380 rupees." That besides the said action so brought by the petitioners, eleven other actions were immediately afterwards, or about the same time, brought in the same Court in respect of different portions of the said 609 logs by various other plaintiffs against the same defendants, and that all these actions involved the same issue, namely, whether the defendants had or had not legal right to the said 609 logs. These actions were numbered in the said Court as regular suits, 1865, Nos. 161 to 166, 170 to 176 inclusive. That the acting Judge of the said Court ordered that the evidence to be taken in suit No. 153, *Ko Khine v. Shadden* (being the said action brought by the present petitioners), should be evidence in the several other actions. That issues were prepared and ordered in the said action, No. 153, and at the instance of the petitioners it was ordered by the said Judge that the issues in the said several actions should be the same as the issues in the suit No. 153, being the action at the instance of the petitioners. That on the 18th day of May, 1866, and on various subsequent days, the said action No. 153 came on for trial, and evidence was adduced on the part of the petitioners and of the respondent Richard Shadden respectively; and on the 24th of August, 1866, the Court pronounced judgment in favour of the petitioners, and it was decreed that the petitioners "do recover from the respondent in specie, fifty-two logs of teak timber, marked as claimed in the plaint, together with the costs of suit." It was further adjudged as follows: "This decree will govern also suits Nos. 161 to 166 and 170 to 176 inclusive." That the Court made a note or addendum to the said judgment, more fully explaining the grounds upon which the said judgment was based.

The petitioner then alleged that, besides the said action at the instance of the petitioners, and the eleven other actions before mentioned, twelve other actions had subsequently been commenced in the said

Court, against the said respondent, in respect of other portions of the said 609 logs of timber before mentioned, the main questions in issue in each of such twelve actions being identical with the questions in issue in the said suit No. 153, at the instance of the petitioners, and in the said eleven other actions.

That the said judgment of the 24th of August, 1866, was appealed from by the respondent, to the High Court of Judicature at Fort William, in Bengal, and judgment was pronounced by the said High Court of Judicature on such appeal. By this judgment the High Court reversed the judgment of the Court below, and ordered that a decree be given for the respondent with all costs of the proceedings. This judgment of the High Court, so pronounced, was declared by the Court to relate only to the suit No. 153, being the suit at the instance of the petitioners. That of the eleven other actions which were originally decided by the said action, No. 153, at the instance of the petitioners, by the judgment of the Recorder of Moulmein, of the 24th of August, 1866, seven only involved an amount sufficiently large to entitle the parties to appeal to the High Court of Judicature at Fort William, and accordingly these seven judgments were so appealed from, and on the 29th of March, 1867, the High Court pronounced the following judgment:

"We cannot accede to this prayer. It is quite clear on reference to the proceedings in the Recorder's Court that the plaintiffs deliberately elected to be bound by the decision of the Court in the first case, by which it is declared to be agreed between the parties that the evidence to be given in the one case should be evidence in all the cases. And the Court below, at the plaintiffs' express request, proceeded to adjudicate upon all the cases simultaneously. It is not contended that the evidence in the other cases, if they had been separately tried, would have been of a different kind or better than the evidence adduced in No. 153, and we cannot shut our eyes to the certainty that if we sent these cases back to be retried, after our judgment in the appeal in No. 153, we should be simply affording the plaintiffs an oppor-

tunity of making a new case, framed to meet the exigencies of our decision. But in fact it is extremely doubtful whether, in accordance with the Code of Civil Procedure, ss. 351-2, we should be competent to remand these cases, if even we thought justice required us to do so. We might, indeed, permit the reception of additional evidence; but assuredly the facts of the case would afford no justification of our doing so, and we are bound by a recent decision of the Judicial Committee, in the case of *Sraman Chunder Dey v. Gopaul Chunder Chuckerbutty* (1), to abstain from admitting further evidence on appeal, without any substantial cause for so doing, to be recorded in the proceedings. We have, therefore, no choice but to reverse the several decrees of the Court below, and we reverse them accordingly, with all costs of these proceedings."

The petition then stated that afterwards and within six months from the said 22nd of March, 1866, being the day of the date of the judgment first before mentioned of the High Court of Judicature at Fort William, the petitioners presented to the said High Court a petition praying for leave to appeal to Her Majesty in Council on the following among other grounds, viz., that although the said action No. 153, at the instance of the petitioners, was valued at only 3,380 rupees (and according to the practice of the Court could not be appealed from without special leave), yet the right of the said (the respondent) Richard Shadden to the whole 609 logs of timber before mentioned was involved in it, and the seven actions hereinbefore mentioned were made to follow the result of the said action No. 153. at the instance of the petitioners. Upon consideration of this petition for leave to appeal, the High Court of Judicature at Fort William rejected the petition and refused such leave.

Mr. J. S. Will, for the petitioners.—The right of the respondent to the whole of the timber is indirectly involved in the appeal. There are eleven other suits which were expressly directed by the Recorder at Moulmein to be governed by the decision

in suit No. 153. Although no one suit involves the appealable value of 10,000 rupees, yet the aggregate matters petitioned to be appealed from involve a value of 34,990 rupees. The amount at issue is therefore within the spirit of the act, No. 21, 1863, ss. 3, 27. Besides, the petitioners are advised that important questions of law are involved in this appeal, and that the same questions of law will arise and must be decided in all the suits, which by the decision of the High Court of the 22nd of March, 1867, are made to follow the result of this.—He referred to *Baboo Gopal Lall Thakoor v. Teluk Chunder Rai* (2).

LORD WESTBURY.—Under the circumstances alleged in this petition, their Lordships will grant the petitioners special leave to appeal.

Attorney—*Mr. W. Robertson*, for petitioners.

1868. }
Feb. 6. } **THE QUEEN v. MICHAEL MURPHY.***

New South Wales—Appeal—Felony—Venire de Novo—Special Leave.

On a petition by the Attorney General of New South Wales for special leave to appeal from an order of the Supreme Court of that colony, it appeared that the respondent was charged, on a criminal information by the Attorney General of the colony, with murder; that he pleaded not guilty, and was tried and found guilty by the jury. The Supreme Court afterwards, on an application by the respondent, made an order that a venire de novo should issue, on the ground that the jury were allowed access to certain newspapers pending their verdict. Their Lordships granted special leave to appeal.

This was a petition, by the Attorney General of the colony of New South Wales,

(2) 7 Moo. Ind. Ap. Cas. 548.

* Present, Lord Westbury, Sir J. W. Colville and Sir R. T. Kindersley.

(1) 11 Moo. Ind. App. Ca. 28.

praying for special leave to appeal from an order of the Supreme Court of that colony.

The petition stated that, on the 12th of August, 1867, an information was filed by the petitioner, as Attorney General, in the Supreme Court of New South Wales, at the sittings of the said Court holden at Darlinghurst, in the said colony, as a Court of oyer and terminer and gaol delivery, charging one Michael Murphy with having, on the 22nd of November, 1865, at South Creek, killed and murdered one Samuel Hassen. That to this information the said Michael Murphy pleaded not guilty, and issue was joined thereon. That the said Michael Murphy was, on the 19th, 20th, 21st and 22nd of August, 1867, tried upon the issue so joined upon the said information before Mr. Justice Cheeke, one of the Judges of the said Court, and a jury of twelve persons duly empannelled and sworn as by law required. That, on the said 21st of August, 1867, evidence for the Crown and for the prisoner having been taken, and the counsel for the Crown and for the prisoner respectively having addressed the jury, the jury were charged by the said Judge, and retired from the court to the jury-room to consider their verdict; and having been duly kept, without at any time separating, for the space of twenty-seven hours and upwards, on the 22nd of August, 1867, they returned into the said court, and stated in open court to the said Judge, by their foreman, that they had not agreed upon their verdict and were not likely to agree thereon, whereupon the said Judge discharged the said jury from giving a verdict and remanded the prisoner to his former custody. That at the sittings of the said Court at Darlinghurst, as a Court of oyer and terminer and gaol delivery, on the 10th of September, 1867, the issue upon the said information came on again to be tried before Mr. Justice Faucett, another of the Judges of the said Court, and a jury of twelve persons duly empannelled and sworn as by law required, and that the said Michael Murphy was tried on the 10th, and the 11th, 12th, 13th and 14th of the said month of September, when the jury returned a verdict of guilty upon the issue so joined upon the said information, and the Court sentenced the prisoner to death. That, on the 19th of the said month

of September, the Supreme Court of the said colony, sitting *in banco*, upon the application of the said Michael Murphy, granted a rule calling upon the petitioner, as such Attorney General, to shew cause why a *venire de novo* should not issue out of the said Court for the trial of the said Michael Murphy for the said offence charged in the said information, upon the ground that, after the jury had been empannelled to try the said issue on the 10th of September, and before they had delivered their verdict, as before mentioned, they were allowed the free use of the newspapers of the day, which contained reports of the said trial so far as it had gone, and in one of which newspapers the heading given was "The South Creek Murder Case." And on the 24th of September last past, the said Court, sitting as aforesaid, made the said rule absolute, and ordered that an entry be made on the Record of Conviction herein, that, after the jury had been empannelled to try the case, and before they had delivered their verdict, the aforesaid jurors were improperly allowed the free use of the newspapers of the day, which contained reports of the said trial so far as it had gone; and in one of the newspapers the heading given was "The South Creek Murder Case." That the said Court then further ordered that a *venire facias de novo* should issue out of the said Court for the trial of the said Michael Murphy upon the said charge.

The petition then stated that the petitioner was precluded by the practice of the Supreme Court from obtaining the leave of such Court to appeal to Her Majesty in Council.

Sir R. Palmer and Mr. Hannen, for the petitioner.—The judgment of the Supreme Court was erroneous. The ordering by the said Court of a writ of *venire facias de novo* in the circumstances above stated is, in effect, the granting of a new trial. The said Court had no power to grant a new trial. The matters complained of, and by reason of which the writ of *venire de novo* was ordered to issue, did not amount to a mistrial so as to give the Court jurisdiction in any way to set aside the verdict of the jury, or to vacate, quash or avoid the judgment thereon. Besides, the said Court had no power to order the issue of a *venire de novo*

in any case of felony where the verdict has been given by a jury duly empannelled. But even if the Court had power to order the issue of a *venire de novo* in any case of felony where the verdict has been given by a jury duly empannelled, the matters relied upon in the present case were not such as to warrant the exercise of such power. Questions of the highest importance to the proper administration of the criminal law in the colony are involved in the appeal, and will arise on the hearing. They referred to *The Queen v. Bertrand* (1).

LORD WESTBURY.—Their Lordships will grant the petitioner leave to appeal from the order of the Supreme Court upon the same terms as those imposed in *The Queen v. Bertrand* (1).

Attorneys—Oliverson, Peachey, Denby & Peachey, agents for John Williams, Sydney, New South Wales, for petitioner.

1868. }
Feb. 24. } *In re M'INNIS'S PATENT.**

Letters Patent—Extension of Term—Judicial Committee, Discretion of.

On a petition praying for an extension of the term of letters patent for an invention, defined by the specification as "Metallic Soap," to be applied as a coating to ships' bottoms, it appeared that the subject-matter of the invention was composed of well-known articles in common use. Their Lordships refused to recommend any extension on the grounds: first, that the subject-matter of the invention was not sufficiently defined by the term "metallic soap"; secondly, that the invention consisted of a combination of substances in common use.

This was a petition praying for a prolongation of the term of letters patent granted to John M'Innes, of Liverpool, in the county of Lancaster, oil-merchant.

(1) 36 Law J. Rep. (n.s.) P.C. 51.
Present, Sir W. Erle, Sir J. W. Colville, Sir E. V. Williams and the Judge of the Admiralty Court (Sir R. Phillimore).

The petition stated that the petitioner, John M'Innes, obtained the grant of letters patent under the Great Seal of the United Kingdom, on the 21st of June, 1854, for the invention of "an improved composition for coating the bottoms of iron ships to prevent their fouling, and other useful purposes." That the invention consisted in the application and use of a new kind of composition as an economical and efficient coating for the bottoms of ships. That this coating prevents them from becoming foul from the deposit and accumulation of sea-weeds, shells, and other vegetable and animal matters, and also gives a very great increase of speed to the ship, owing to the peculiar character of the surface of the composition being of a smooth, slippery nature, so as to present a surface to the water analogous to that of the body of a fish. That prior to the invention of the petitioner, it had been a common practice to coat the bottoms of ships with sheathing made of very expensive metals and alloys. That the expense attending this system of coating was very great, and in addition to the objection on the score of expense, it was found that for the coating of iron vessels, the use of sheathing made of copper or its alloys is very objectionable, owing to the chemical and galvanic action that takes place between copper and its alloys and iron when the metals are exposed to the action of sea-water. That the petitioner discovered that he could use a composition consisting of soap combined with certain mineral substances which act as poisons on sea-weeds, shell-fish, and other vegetable or animal deposits. That the composition had been found after long trial to be an economical and efficient coating for the bottoms of ships, and had supplied the desideratum which was every year becoming more requisite, especially for iron ships. That it had further enabled ships to which it had been applied to obtain a large increase of speed as it gives the bottom of the vessel a smooth slippery surface, peculiarly adapted to facilitate a rapid passage through water. That the petitioner incurred great expense in making trials of various compositions before he completed his discovery, and after he had obtained letters patent for his invention, he devoted a considerable por-

tion of his time to bringing it into public use. That owners were unwilling to allow their ships to go to sea coated with a composition that had not stood the test of long and continued trial. That the petitioner, in the first instance, obtained the leave of the owners of several vessels to apply his composition, at his own expense, to a part only of such vessels. When the trials were found successful, he obtained leave, still at his own expense, to apply his new composition to other vessels intended for longer voyages, especially for vessels engaged in the East India trade. That the petitioner had always been ready to permit the use of his invention by persons desirous of using it; but, owing to its peculiar nature, and the necessity of making long and continued trial of it and the reluctance of shipowners to let their vessels be experimented upon at a risk, there was only a limited demand for its use during the first years of the term of the patent; and, notwithstanding the endeavours of the petitioner to bring it into public use, he had received no adequate remuneration for his invention.

The petition then prayed that the term for which the said letters patent had been granted might be extended.

Mr. Grove and Mr. Aston in support of the petition.—They distinguished the case from *M'Dougal's case* (1), and referred to *Hills v. the London Gas Light Company* (2), *Oxley v. Holden* (3), *In re Perkins's Patent* (4) and *In re Poole's Patent* (5).

Mr. Archibald, for the Crown.

SIR W. ERLE delivered the judgment of their Lordships.—Their Lordships are not prepared to recommend Her Majesty to accede to the prayer of this petition, that an extension of the term of the letters patent should be granted to the petitioner. It appears from the specification that the patent was granted to secure a monopoly of a combination of well-known substances

in common use, articles of general commerce. Their Lordships entertain some doubt whether such a combination is the subject of a patent; and, although this tribunal does not try the validity of patents, yet, if it appears that the validity is doubtful, their Lordships will, in the exercise of the discretion vested in this Committee, decline to recommend any extension of the term of letters patent. Extensions of patents have been recommended by this Committee where there has been great merit on the part of the inventor, and where there has been inadequate remuneration, and where no detriment to the public interest could arise from such extensions. Their Lordships think this invention both useful and important, but, having regard to the accounts which are in evidence, they see that there has been some remuneration to the patentee, and they are by no means satisfied that that remuneration is not sufficient. The alleged loss by experiments has not been proved to their Lordships' satisfaction in any degree. There has been for some time considerable profit, and the sum total of that profit for the last three years, as appears from the accounts, amounts to the sum of 2,835*l.* 16*s.* 11*d.* Their Lordships also, taking into consideration, with reference to the public interest, that the individual substance for the application of which the patent is sought to be prolonged is not specifically defined, every kind of metallic soap being within the limits of the specification, are of opinion that many questions affecting the patent might be raised, if any metallic soap was used by the public in ignorance, the specification being so wide. For these reasons, their Lordships are of opinion that they ought not to recommend Her Majesty to grant an extension of the term of these letters patent.

Application refused.

Attorneys—Torr, Janeway & Tagart, agents for W. H. Anthony, Liverpool, for the petitioner; Solicitors for the Treasury, for the Crown.

(1) *Vide supra*.

(2) 5 Hurl. & N. 312.

(3) 8 Com. B. Rep. N.S. 666.

(4) 2 Webst. Pat. Cas. 16.

(5) 36 Law J. Rep. (N.S.) P.C. 76.

1868. }
 July 2. } *In re* AUGUSTUS STEWART.*

Bengal—High Court—Practice—Attorney, Conduct of.

The appellant, an attorney on the roll of the High Court of Bengal, prepared a conveyance on behalf of his brother, containing a false recital as to consideration, knowing the same to be false, and attested the execution of the deed with such false recital, and signed his name as a witness to the receipt of the consideration money, knowing that no consideration had passed or was intended to pass. The deed was duly registered. The High Court ordered the appellant to be struck off the roll. Their Lordships were of opinion that the appellant was properly called upon to explain the circumstances under which the deed was executed; but that, as there was no evidence that the appellant was guilty of any fraudulent or dishonest intention, and as no dishonest use was attempted to be made of the deed, and as no person had been injured thereby, the circumstances were not sufficient to warrant the order of the High Court.

This was an appeal against an order made by the High Court of Judicature, at Fort William, Bengal, in its original jurisdiction, dated the 6th of May, 1867, whereby it was ordered that the appellant should be struck off the roll of attorneys and proctors of that court.

The order was made by a majority of what is called a Division Court, consisting of the Chief Justice Sir Barnes Peacock, Mr. Justice Norman and Mr. Justice Phear. The circumstances under which the order was made were as follows: There were three brothers in India named Augustus Stewart, William Molloy Stewart, and James Augustus Stewart. The first of these was the appellant, and his brother, William Molloy Stewart, having purchased for him a share in the business of an attorney named Charles William Hatch, in Calcutta, the appellant became, in July, 1862, a partner with the said Mr. Hatch as an attorney. William Molloy Stewart was an indigo-planter, and in 1861 he established

in Tirhoot a new indigo-factory, called the "Begum Serai" Factory, of which he was the sole owner. James Augustus Stewart had, in 1860, become an attorney of Her Majesty's Supreme Court in Calcutta, and was employed in the office of Messrs. Molloy & Dallas, attorneys there; but, in March, 1862, he, at his brother William's request, went to "Begum Serai," with the view of assisting him. In October, 1862, Mr. Francis Barrow, of the firm of Barrow & Son, attorneys, in Calcutta, requested James Augustus Stewart to join him as a partner. Upon William Molloy Stewart's hearing of this, he requested his brother, instead of accepting Mr. Barrow's offer, to remain as his manager, and offered him a four-anna (which is a quarter) share in his indigo concern, which quarter share he valued at 32,000 rupees. At that time the property was wholly unincumbered, save an equitable mortgage to an indigo broker's firm called Thomas & Co., for the outlay only of the factory. The season's accounts were made up to the 20th of February, 1863, at which time the crop of the season was sold, and resulted in a balance in favour of William Molloy Stewart of R. 24,544 6 2, and he gave instructions to his brother Augustus, the appellant, to prepare a conveyance to his brother James, in accordance with the arrangement entered into in October.

The appellant was aware of this arrangement, but he was instructed by his brother William Molloy Stewart to state as the consideration passing from James to him the sum of 32,000 rupees, instead of stating the real circumstances under which the factory was conveyed. The reason that the said William Molloy Stewart gave was, that as the factory was a new one he was desirous, in parting with a portion of the factory, to put a money value on it, and he valued the whole of the factory at 128,000 rupees. The appellant prepared a deed of conveyance from the said William Molloy Stewart to the said James Augustus Stewart, dated the 16th of February, 1863, in which no mention was made of the arrangement under which William conveyed a quarter of his factory to James; but it was drawn up and executed as if James had bought and paid for the said share by a payment of 32,000 rupees, and, as is usual in deeds of sale, a

* Present Sir W. Erle, Sir J. W. Colville, Sir E. V. Williams, Lord Justice Wood and Lord Justice Selwyn.

receipt clause for the money was indorsed and signed by William Molloy Stewart. The deed was engrossed on a stamp of the value of 200 rupees, and the execution of the deed and signature to the receipt clause were attested by the appellant and two other witnesses, and the deed was duly registered on execution.

No concealment was made of the fact of the conveyance, and William Molloy Stewart having borrowed a sum of 14,000 rupees from Charles William Hatch, arrangements were made for giving that gentleman a security for that sum, and also for the sum of 6,000 rupees which William Molloy Stewart owed Mr. Hatch for the purchase-money of the appellant's share in Mr. Hatch's business, a mortgage over the factory. The mortgage was originally prepared so as to comprise the whole factory, and a draft was prepared making the two brothers William Molloy and James join as mortgagors; but, it being represented to Mr. Hatch that William's three-fourths of the factory was a sufficient security, and he knowing that the debt was one owing by William alone, he took the mortgage as one of William Molloy Stewart's three-fourths only. The fact of James Augustus Stewart being an owner of one-fourth of the factory was well known throughout the district where the factory was situated. In May, 1863, William Molloy Stewart left the factory in the management of his brother James, and went to another factory, sixty miles off, where he was engaged as manager. He remained there until October, when he bought a half-share in a factory called Jeet-warpoore.

On the 18th of April, 1867, the appellant was served with a rule calling on him to shew cause why he should not be struck off the roll of attorneys, or be otherwise punished according to law, for his misbehaviour in inserting in a deed referred to in the rule a false recital as to consideration, knowing the same to be false, and in attesting the execution of the said deed with such false recital, and also in signing his name as a witness to the receipt of consideration-money therein mentioned, knowing that no consideration had passed or was intended to pass.

The appellant appeared to shew cause, and the rule came on for argument before

the Chief Justice Sir Barnes Peacock, Mr. Justice Norman and Mr. Justice Phear; and the appellant filed affidavits.

The counsel appearing for the Advocate General left the case in the hands of the Court.

Mr. Justice Norman was of opinion that the rule should be discharged; but the Chief Justice and Mr. Justice Phear being of opinion that it should be made absolute, it was made absolute.

The appellant applied for leave to appeal to the full Court, but was refused, the Court being of opinion that the appeal lay to Her Majesty in her Privy Council.

The appellant, on the 6th of May, 1867, presented a petition praying for leave to appeal to Her Majesty in her Privy Council, which petition was granted.

In giving judgment upon the rule, their Lordships delivered the following reasons for making the rule absolute.

Mr. Justice Phear stated as follows: "I am of opinion that it is in the proper discretion of this Court, whose duty it is to see that its officers are, on the one hand, well protected in every reasonable exercise of their duty, whether they make a mistake in the exercise of that duty or not, and to take care, on the other, that the character of its officers shall be above suspicion; that it is only a proper exercise of the discretion of this Court when a taint of fraud and misconduct so deeply tinctured as, to my mind, is that which proceeds from the acts of which Mr. Augustus Stewart has admitted himself guilty rest upon an officer, to say that it then becomes incumbent upon that officer to shew, not merely that it is not certain after all that the act was not an innocent one rather than a fraud, but that he is bound to go further, and to shew convincingly that he was in fact acting innocently in the matter, and with no fraudulent motive or motives of misconduct. Our powers, under the letters patent of this court, are very considerably different from those which vest in the Judges of the superior Courts of England; and I think that if we see reasonable cause (even although such a case may not, according to the reports of cases in England, have seemed as yet to have been judicially recognized by the superior Courts of Westminster a

cause of punishment) to remove or to suspend from practice an attorney of this court, we are bound to do so."

The Chief Justice, after stating his reasons for believing that the deed was a fraudulent deed, proceeded thus: "Assuming then that the conveyance of a factory was not a sale, or intended to operate as a *bona fide* transfer, and that the false recital was inserted for a dishonest purpose, is it possible to believe that Mr. Augustus Stewart was so innocent as to believe that it was an honest transaction? According to his own shewing, he knew that the statements relating to the consideration and the receipt at the foot of the deed were false, and he admits that it was arranged between him and the insolvent that it should be prepared in that way, and that either he or the insolvent suggested the consideration. The only explanation he gives is, that it was done to put a value on the factory. If he believed that the transfer was in consideration of Mr. James Stewart's continuing to act as manager, it was his duty as a solicitor preparing the deed to take care that it should contain a covenant by Mr. James Stewart to continue to act as manager, so that Mr. William Molloy Stewart might have some security for the consideration in respect of which he was to transfer the four-anna share to his brother. I do not believe that Mr. Augustus Stewart acted honestly or innocently in inserting in the deed the false statements which are contained in it, and in attesting the execution of the deed, when he knew that the statements were false, together with the false receipt for the 32,000 rupees. Mr. Augustus Stewart is an attorney of this court, and I cannot believe that any gentleman who has acted in that capacity for any time, or has even served his articles in this country, could fail to be aware of the numerous Benamsee transactions and fraudulent deeds which are resorted to in this country for the purpose of fraud. He ought to have suspected, and must have suspected, that the false statements to be contained in the deed and receipt were not intended for an honest purpose, even if they were not prepared in pursuance of his own advice. It is one of the crying evils against which we have to contend in the administration of justice in this country, that devices of all

kinds are resorted to for the purpose of protecting men's property from their creditors. A suitor may prove his debt without difficulty and obtain a decree for that debt, but it very frequently happens that as soon as he obtains a decree and seeks to execute it his difficulties commence. No man can have had much experience in the administration of justice in this country, whether in Calcutta or in the courts in the Mofussil (and more particularly so in the Mofussil) without being fully aware of the fact, and of the difficulties which are put in the way of honest suitors, and of the litigation which is constantly rendered necessary by means of false claims, which are set up and supported by deeds and other documents, containing false statements and recitals. Mr. Augustus Stewart must have known that he was not acting honestly in attesting a deed with the knowledge that it contained falsehoods, such as those which were deliberately written in the deed in question, and in preparing and attesting a receipt for a large sum of money of which he knew that not a single farthing had been paid or was ever intended to be paid. The legislature has endeavoured to put a stop to devices of this nature, and has enacted, by section 423. of the Indian Penal Code, that whoever dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. It is, in my opinion, the bounden duty of this Court to co-operate, as far as it can, with the legislature in endeavouring to put a stop to practices of this nature, and when they find one of their own officers, an attorney of the court, lending himself to the preparation of such a deed as this, and not merely preparing it but giving it the weight of his name as an attesting witness to the execution of it, to visit such officer with the severest penalty.

Mr. Justice Norman, in giving his opinion on the facts of the case, said:

"Now, in this case it is indisputably proved, that Mr. Augustus Stewart has been guilty of a very great and serious irregularity and impropriety which, whatever view we take of the motives which actuated him, would, in my opinion, justify the Court in visiting Mr. Stewart with severe penalties. But, when the question is whether he shall be struck off the roll, it is clear to my mind that there is a distinction which should never be forgotten or overlooked. The clearest distinction exists between cases where an attorney misconducts himself for fraudulent purposes, and those where such misconduct or irregularity, however grave, is not committed with the intent of defrauding his client or injuring others. In the present case, the question we have to determine in deciding whether Mr. Stewart's name shall be removed from the roll is, whether Mr. Stewart did combine or conspire with his brothers, or either of them, for the purpose of enabling Mr. William Molloy Stewart to defraud his creditors. That, I apprehend, is the real point that we have to consider, and it is the real question on which I must satisfy my mind before I concur in saying that Mr. Stewart's name shall be removed from the roll. I entirely agree in the soundness of the proposition of law stated in the case cited from *Neville & Manning's Reports*. In exercising our summary jurisdiction over attorneys and other officers of the court I wholly disclaim acting on mere suspicion, however strong. I should require positive proof that the crime or offence had been committed before I would say that an attorney's name should be removed from the roll. I should require the fraud or the crime to be distinctly proved against him as if he stood upon his trial at the bar of a criminal court for the offence."

And in another part of his judgment his Lordship observed: "Thus everything was done in an open and straightforward manner. I do not see why in a conveyance from one brother to another, in consideration of the latter managing the factory for the other, a false recital should have been inserted that the consideration was a money consideration. It seems to me that the deed, on the face of it, would have been just as binding and safe if the true consideration had been inserted. If the facts be as I have supposed,

the consideration could not have been misstated for the purpose of defrauding the creditors of Mr. William Molloy Stewart. . . . I think that the false statement of the consideration was, in fact, not made with the intent to injure or defraud any one; and I say, with still more confidence, that, on the evidence before us, in my opinion, no such intent has been proved. I would, therefore, say that the name of Mr. Augustus Stewart ought not to be removed from the roll."

Sir R. Palmer and Mr. Bell, for the appellant.—The letters patent under which the High Court of Judicature at Fort William is constituted no doubt give power to the Court to remove, on reasonable cause, attorneys-at-law admitted to and enrolled in the said court, yet such gift does not confer on that Court greater power than belongs to the Judges of Her Majesty's superior Courts in England. There was no affidavit that any person believed that the appellant had, and there was no evidence whatsoever that he had the intention of doing, or being privy to, any fraudulent act whatever, or that any person was, or could be, damaged by the act of the appellant. The evidence was clear and uncontradicted as to the circumstances under which the appellant drew and attested the deed in question, and, if such evidence is believed, there was no intention on the part of the appellant of committing a fraudulent or improper act, and there was no evidence of any kind opposed to such evidence. In coming to a determination, the majority of the Court, wholly disregarding the sworn testimony adduced before them, had acted on presumptions for which there was not a proper foundation. They referred to *Ex parte Bayley* (1) and *Ex parte King* (2).

No counsel appeared on behalf of the Judges of the High Court.

LORD JUSTICE WOOD delivered the judgment of their Lordships.—The appellant in this case seeks to reverse an Order of the High Court of Judicature in Bengal, made on the 6th of May, 1867, whereby a rule nisi of the 18th of April, 1867, calling upon

(1) 9 B. & C. 691.

(2) 3 Nev. & M. 716.

the appellant to shew cause why his name should not be struck off the roll of attorneys and proctors of the Court, was made absolute; and it was ordered that his name should be struck off accordingly. The charge alleged against him by the rule *nisi*, was that of misbehaviour in inserting in a deed a false recital as to the consideration, knowing the same to be false, and in attesting the execution of the deed with such false recital, and also in signing his name as a witness to the receipt of the consideration-money therein mentioned, knowing that no consideration had passed, or was intended to pass. The deed in question is dated the 16th of February, 1863, and purports to be an absolute conveyance by William Molloy Stewart to James Augustus Stewart, of a four-anna or quarter share in an indigo-factory, called Begum Serai, the property of William Molloy Stewart, in consideration of 32,000 rupees. A receipt for that sum is indorsed on the deed, and signed by William Molloy Stewart, and the stamp affixed and the covenants for title and further assurance are the same as would be found if the transaction had been that which the deed represents. Its execution and the receipt of the money are both attested by the appellant. It is admitted by the appellant that the real transaction was of a different character, and the circumstances of the case are stated by him, and by the parties to the deed, to have been as follows: The parties to the deed and the appellant are brothers. William Molloy Stewart was the owner of the factory, and is alleged to have been in good credit at the time of the transaction. His brother, the appellant, was an attorney in partnership with Mr. Hatch; a share in that partnership had been purchased for him by his elder brother, William Molloy Stewart. James had for some time assisted William in managing the factory; he had, in 1860, been admitted an attorney, and, about the time of the deed being executed, had been offered a partnership in the firm of Messrs. Barrow & Son, attorneys at Calcutta. William was desirous of still retaining his brother's services, and induced him to give up the offer of Messrs. Barrow & Son, by proposing to make over to him one-quarter of the Begum Serai Factory. The assent of James to William's proposal formed the

real consideration for the assignment made to him on the 16th of February; no money consideration whatever was paid by James. Mr. Barrow, by his evidence, confirms the statement of this offer of partnership having been made by him to James in July, 1862, and of James declining it on the ground of "favourable arrangements having been made with his brother." It does not appear that at the date of the deed there was any charge on the factory, beyond a deposit of title-deeds with Messrs. Thomas & Co., the agents to the factory, for the current outlay, and a balance was in fact then due to the factory on this account. The deed was registered immediately upon its execution; and within a day or two afterwards William borrowed of Mr. Hatch the further sum of 14,000 rupees, of which 6,000 rupees seem to have formed the consideration for the appellant's share in the partnership, bought for him by William, and a mortgage was executed, the draft of which is produced, by which William mortgaged his twelve-anna, or three-quarter shares only in the factory. The deed of conveyance of the 16th of February did not take any notice of the equitable mortgage to Thomas & Co.; the mortgage to Hatch recites its existence. After these transactions, William purchased another considerable factory, and took shares in an indigo company, whither he went to reside; but James continued to superintend the Begum Serai Factory. It is not shewn that William was embarrassed till after the failure of the Agra Bank in June, 1866. Thomas & Son also failed about that time; and towards the end of the same year William presented his petition in the Insolvent Debtors Court. James in the mean time had continued to manage the factory, and to draw a salary of 300 rupees a month; but he drew no sum as profits, nor was any division of profits made till after the insolvency of William, when James consigned his one-quarter share of produce to separate agents. On the 25th of March, 1867, the official assignee under the insolvency of William summoned the appellant, and James and Mr. Hatch, to be examined before the Insolvent Court as to the insolvent's estate; and on the 13th of April, 1867, they and the insolvent were examined before Mr. Justice Phear, and specially interrogated as to the above transaction.

On the 18th of April, 1867, the appellant was served with the rule *nisi* of the High Court upon which the order now appealed from is based, which was obtained on the motion of the Advocate-General. The rule purported to be drawn up upon reading the affidavit of Mr. Davis, Chief Clerk of the Insolvent Debtors Court, and two exhibits, marked A and B, and the examination of William Molloy Stewart, Mr. Hatch and the appellant, and the deed of conveyance of the 16th of January, 1863. Mr. Davis's affidavit merely verified the proceedings before the Insolvent Debtors Court and the exhibits A. and B. A. appears to have been the deed of conveyance; B. the mortgage to Mr. Hatch. On this rule having been served, the appellant appeared and filed affidavits in opposition to making the rule absolute. The affidavits were: 1st, An affidavit by Mr. M'Leod, an owner of factories in the Tirhoot district, which deposed to his having known for some years past that James was the owner of a quarter share in the factory, and to his having always believed that it had been given to him by his brother William. 2nd, An affidavit of Mr. Barrow verifying his offer of a share in his business to James Stewart, who had assigned as a reason for declining it, that he had an offer of a favourable arrangement with his brother. 3rd, 4th and 5th, Affidavits of the three brothers. Certain accounts of Thomas & Sons were produced shewing a balance of 24,544 rupees 6 annas 2 pie, due to the factory in February, 1863, over and above a sum exceeding 2,000 rupees paid to William M. Stewart's credit at his bankers. An exhibit B. was also produced, being the draft of the mortgage to Hatch, originally prepared as a mortgage by the two brothers, William and James, of the whole factory, and afterwards altered to a mortgage of the twelve-anna, or three-quarter share of William only. The appellant states in his affidavit that the form in which the deed was drawn was suggested by William Molloy Stewart, who alleged as his sole motive for desiring it to be drawn as a sale for a money consideration, his wish to put a value on the factory, the same being then a new one. The appellant states that he was not aware of any other object; that he believed, and believes, it to be

a fair estimate; that his brother William was not indebted beyond 20,000 rupees, and had, at the date of the deed, property of a value far above the amount of his debts, as to which he states some particulars. He states the immediate registering of the deed—the mortgage to Hatch—and says that, in preparing and attesting the execution of the deed, and attesting the indorsed receipt, he had no fraudulent or dishonest intention of any kind whatever, and that nothing, either directly or indirectly, passed between him and his brother William to lead him to suppose that William contemplated, and he does not believe that he contemplated, any fraud directly or indirectly. James, in his affidavit, says that he was not aware of the form of the deed till after its execution. In his examination before the Insolvent Court he had said he wrote a letter about it, and that he thought it would have been better if the consideration had appeared: that letter cannot be found. In his affidavit he denies all intention of fraud, and says he is *bona fide* owner of the property. William also, in his affidavit, denies all fraud, and makes a statement as to his estate which, if true, would shew him, at the date of the deed, to have possessed considerable property, and both agree in stating the real consideration to have been the consent of James to give up the offer of Mr. Barrow, and to attend to the management of the factory. No evidence whatever was given impugning the statements contained in these affidavits. No evidence has been given of any person having been defrauded by any of the brothers, nor of any improper use of the deed having been attempted. Nor does the assignee in insolvency make any complaint, or impugn the actual ownership of the property, to the extent of one-quarter, by James. The deed was registered. M'Leod speaks of the notoriety of the claim, at least, of ownership, by James; and Hatch took a mortgage of three-fourths on the footing of James being the owner of the other one-fourth within a day or two of the execution of the deed of conveyance.

Under these circumstances, the Chief Justice and Mr. Justice Phear have thought that the appellants ought to be struck off the list of attorneys and proctors of this Court. The Chief Justice, among the reasons

which he assigned for this conclusion, states, "that the insertion of the recital and statement admitted to be false, and known by all parties to be false, and which might be used for the purpose of misleading others, was a very grave offence on the part of the attorney. The offence is greatly aggravated if it is proved that the recital was inserted dishonestly, or in order that it might be used for a fraudulent or dishonest purpose if necessity should ever arise." And at a later part of his reasons the Chief Justice says, "I do not believe that Mr. Augustus Stewart acted honestly or innocently in inserting in the deed the false statements which are contained in it, and in attesting the execution of the deed, when he knew the statements were false, together with the false receipt for the 32,000 rupees." The Chief Justice cites also section 428. of the Indian Penal Code, which punishes with fine or imprisonment, or both, any one "who dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or charge property, and which contains any false statements relating to the consideration for such transfer or charge, or relating to the person for whose use it is really intended to operate."

Mr. Justice Phear, in his reasons, states "that the intentional statement of a falsehood in a solemn deed, taken by itself without explanation, must be considered as a badge of fraud;" adding "that it is, of course, possible to conceive cases in which the act should be unconnected with any fraudulent intention, but that if the person who has made such a statement relies on its having been done innocently, it is for him to prove it: that it betokens fraud until the contrary is shewn." And in a later passage he says, "that it is incumbent upon the officer of the court who has done such acts as the appellant admits he has done, to shew not merely that it is not certain after all that the act was not an innocent one rather than a fraud, but that he is bound to go further, and shew convincingly that he was in fact acting innocently in the matter, and with no fraudulent motive or motives of misconduct." The learned Judge concludes by observing "that the powers of the High Court could, if they thought it reasonable

(even though such a cause might not, according to the reports of cases in England, have seemed as yet to have been judicially recognized by the superior Courts of Westminster as a cause of punishment), remove or suspend from practice an attorney of the court."

Mr. Justice Norman concurred with the other learned Judges in thinking "that the appellant had been guilty of a very great and serious irregularity and impropriety, which, whatever view were taken of the motives which actuated him, would justify the Court in visiting him with severe penalties." He conceived, however, that on a question of striking an attorney off the roll, "the clearest distinction exists between cases where an attorney misconducts himself for fraudulent purposes, and those where such misconduct or irregularity, however grave, is not committed with the intent of defrauding his client or injuring others." He further says, "I should require the fraud or the crime to be as distinctly proved against him as if he stood upon his trial at the bar of a criminal court for the offence." He finally came to the conclusion that the false statement was, in fact, not made with intent to injure or defraud any one, and with still more confidence, that on the evidence no such intent had been proved; and he accordingly suggested suspension as an adequate punishment.

Their Lordships feel bound, on the consideration of the whole evidence before them, to come to the conclusion that the order complained of ought to be discharged. They are of opinion that the preparation of the deed of conveyance containing an untrue statement of the transaction, and the attesting of the deed, and of a receipt for consideration-money which was never paid, would be circumstances of great, perhaps overpowering, weight as evidence of guilty connivance against a solicitor cognizant of the actual facts in the event of such a deed upon or soon after its execution being used as an instrument of fraud. They are further of opinion that any solicitor may very properly be called upon by the Court before whom such a deed shall have been produced, to explain the circumstances attending its preparation and execution. But if this explanation be given, if it be supported by evidence, if no counter-evidence be offered,

if no fraudulent use of the instrument complained of has ever been made or attempted, and no person has complained of any injury, directly or indirectly caused by it,—we think that, however objectionable the practice may be of permitting, for any reason whatever, a deliberate mis-statement of facts upon the face of a deed, yet such practice unfortunately by no means unfrequent, cannot be considered sufficient in itself to warrant the striking of the practitioner off the rolls. Even assuming the correctness of the view taken by Mr. Justice Phear of the solicitor's duty, namely, that of shewing convincingly the absence of fraudulent motive, yet, when a fraudulent motive has not been alleged by any complainant, such a rule can scarcely be applied if the explanation offered be not simply incredible. Deeds are constantly prepared which on the face of them deal with the parties as interested who are in effect only trustees for others; and the knowledge of such a practice probably influenced the framers of the code in preparing the enactment referred to by the Chief Justice, for they confine its penal provisions to "fraudulent and dishonest" participation in such an instrument. It appears to their Lordships, on the evidence in the present case, that James was intended to become and did become the *bona fide* owner of the quarter share. Mr. Barrow confirms the statement as to the circumstances under which he became such owner. Publicity as to the ownership was immediately given; there was no reason for representing him to be such owner with a view to protect William against his creditors. The deed was acted upon at the time of the mortgage to Hatch as if William had parted with a one-quarter share. James was, as is stated by M'Leod, in possession, not only as manager, but as the recognized owner of a share, and no one up to the present hour disputes the validity of that ownership. It does not seem, therefore, that any suspicion in such a state of circumstances can arise to displace the reality of the transfer made. The reasons assigned for the false statements, though unsatisfactory had any fraud whatever followed upon the transaction, are not inconsistent with the possibility of honest motives. Though James gave a consideration for his share in the shape of services

only, yet if the share were really worth 32,000 rupees (and no evidence to the contrary was offered), it exceeded probably the value of his services, and his brother might be desirous to mark the fact of his bounty. Besides this, the condition requiring James to offer his share to his brother before parting with it to a stranger, would afford some ground for stating an estimated value. It is said that the deed contained no covenant by James to continue his management, but if the property were, as it seems to have been, flourishing, such a circumstance alone would afford an adequate motive for his continuing as owner, and the condition as to offering the share to his brother would prevent an immediate sale. The absence of any mention of the deposit with Thomas & Son to secure the floating debt due to them as agents on the purchase deed, as contrasted with the mention of it in the mortgage, is consistent with honesty. It was necessary to inform the mortgagee of all charges, but it was not necessary to inform the person purchasing the business of that which was really a security usual in the ordinary course of business. The fact that James received no profits whilst he had a monthly salary as manager seems to their Lordships to throw no doubt on the transaction. Their Lordships are not aware of such special authority as appears to be referred to by Mr. Justice Phear, as would authorize the striking of the appellant off the roll of the High Court, where such a step would not be sanctioned by the practice of the Courts in England. They desire expressly to state that they do not, in recommending to Her Majesty the discharge of this order, in any way sanction the propriety of deeds being prepared which on the face of them are inconsistent with fact, and wish simply to express the opinion that, upon the evidence, the irregularity was wholly unconnected with any intention to defraud, and does not therefore justify the penalty inflicted.

Judgment for the appellant.

Attorneys—Clarke, Son & Rawlins, for appellant.

1868. } HOWARD GILL, *appellant*;
July 1. } ANDREW BARRON AND AN-
OTHER, *respondents*.*

Bankrupt Law—Adjudication in Barbadoes—Subsequent Adjudication and Discharge in England, Effect of.

The appellant, a trader in Barbadoes, having quitted the colony in debt, and been adjudicated a bankrupt in his absence, came to England and contracted debts in England, and was adjudicated a bankrupt under the Bankruptcy Laws of England, and obtained his discharge. The appellant having returned to Barbadoes, proceedings were instituted by his creditors under the former bankruptcy in the colony, and the appellant was sentenced to a term of imprisonment:—Held, that, although an adjudication and discharge in bankruptcy in England under the imperial statute has the effect of barring any debt which a bankrupt may have contracted in any part of the world, yet that the discharge under the imperial statute would not deprive the Court of the colony of its jurisdiction to inquire into offences committed against the Insolvent Law of the colony, the insolvent being again within its jurisdiction, and such Court having once acquired jurisdiction in the matter.

This was an appeal from a judgment of the Chief Justice of the Court of Common Pleas, in the island of Barbadoes, sitting in Insolvency.

The appellant, until the month of July, 1856, and for many years, carried on business in the city of Bridge Town, in the island of Barbadoes, as a merchant, buying and shipping produce, making advances to planters, drawing bills on merchants in England, and receiving goods from England and elsewhere on consignment, for sales and returns. He was also the agent for seven large estates in the island.

In the month of July, 1856, the appellant quitted Barbadoes, and in the following month of August he arrived in England. At that time he was indebted to the extent of 50,000*l*.

* Present, The Master of the Rolls (Lord Romilly), Sir J. W. Colville, Sir E. V. Williams, and the Lord Chief Baron (Sir F. Kelly).

NEW SERIES, 37.—PRIV. COUN.

On the 29th of April, 1857, the appellant was declared an insolvent trader at Barbadoes, within the act of the island, No. 234, and a prosecution of insolvency was directed against him.

The real and personal estate and effects of the appellant vested in the official assignee at Barbadoes, duly appointed for the benefit of the creditors of the appellant, to be held and disposed of for the purpose and according to the act in force in the said island relating to insolvency.

At the date of this adjudication the appellant was absent from the island; but he left a duly constituted attorney to represent him, to whom the official assignee applied for information, and in answer to such application the attorney stated that he was totally unacquainted with the appellant's affairs, that the appellant had left no books or papers with him, and that he did not know the extent of the appellant's assets. The official assignee having obtained from the attorney the keys of the appellant's desks at his counting-house, opened the desks, and found them filled with papers in a state of great confusion. The official assignee, in order to obtain information as to the appellant's affairs, summoned and examined several witnesses, and ascertained that the appellant had been carrying on an extensive business in the island, drawing bills of exchange on one merchant in Liverpool alone in the course of eight months from the 27th of December, 1853, to the 26th of August, 1854, for no less a sum than 37,857*l*. The official assignee further ascertained that the appellant had kept no regular books.

Mr. Outtram, one of the trustees of the will of the Rev. J. Braithwaite, the father of the appellant's wife, on his examination deposed that, from information received by the appellant by the mail on the 6th of May, 1857, he had caused an entry to be made in the books of the Rev. J. Braithwaite's estates of two execution debts (one for \$2,000, and the other for 8,000*l*. sterling) as due from the appellant's estate to the trustees of the appellant's marriage settlement.

On the 30th of November, 1837, the official assignee made his first report, and reported with respect to the execution debt of 8,000*l*. sterling, that the Rev. C. C. Gil

the trustee of the appellant's marriage settlement, since deceased, declared that he was not aware of the existence of such execution debt in his favour, and that he had never had any accounting with the Rev. J. Braithwaite; and the official assignee further stated his belief that the appellant "no doubt being well aware that he was in insolvent circumstances at the time, and had been so since the year 1847, wished, by making over this 8,000*l.*, and also certain property known as Hastings House and land to the trustees, to put them out of the reach of his creditors, and to ensure a future provision for his family." He added, "As far as I can learn, his liabilities at the present moment are 40,000*l.* From the absence of all books, I cannot tell when the various debts were incurred, but the probability is, that they are most of them previous to 1853, when he got his father-in-law to settle the amount due to him upon his daughter, and that in reality he paid off no debts, but was shifting them from the shoulders of one party to the other."

On the 3rd of May, 1858, the official assignee made his second report, and stated, "Numerous claims and proofs have been filed since my last report, which, with those already reported, make the liabilities to date to amount to 48,897*l.* 10*s.*; among these are two debts said to be owing to the estate of the Rev. J. Braithwaite, deceased. One is put in by the executor and executrix, including transactions prior to his death; the other by the trustees under his will, comprising debts and credits since his death." The official assignee further stated that the accountant who posted Braithwaite's books, had, upon examination, admitted "that no entry of any lien against the estates was made until May, 1857, when he made it by Mr. Outtram's request, from memoranda put out by the appellant."

On the 28th of November, 1859, the official assignee made his third report, and stated "That the accounts proved by the executors and trustees of the Rev. J. Braithwaite for the respective sums of \$11,491.5 and \$1,179.50 have been withdrawn, the parties acknowledging them to be incorrect." "Great difficulty having been experienced in dealing with the judgment debt of 8,000*l.*, which had been confessed by the Rev. J. Braithwaite to Mr. Gill's trustee

under his marriage settlement," the matter was referred to the arbitration of the Attorney and Solicitor General, who, by their decision, brought "the estate of the Rev. J. Braithwaite in debt for the sum of \$25,202.25, instead of Rev. C. C. Gill being in debt \$12,671."

On the 9th of September, 1859, the official assignee filed a bill in Chancery against the Rev. C. C. Gill, the trustee of the appellant's marriage settlement, to set aside the conveyance of "Hastings House and land," and by the decree in the said suit, dated the 30th of March, 1860, it was declared that the conveyance for the place called Hastings House, with the land thereto belonging, was fraudulent and void against the creditors of the appellant, and should be cancelled. And a decree was made that a conveyance of the estate should be executed to the official assignee for the benefit of the appellant's creditors.

Previously to the said declaration of insolvency in Barbadoes, viz., in December, 1856, the appellant, then being in London, called upon the respondents, and stated that there were several bills of exchange, which had been drawn upon him, which he was unable to meet, but that he expected remittances from Barbadoes, which had not arrived. The appellant at the same time asked the respondents to take up the bills, and promised to pay them the money at a certain day within one month, on the 5th of January, 1857. The respondents thereupon took up two of the said bills, and gave in cash 325*l.* for them, and they gave their acceptances to the appellant at thirty days sufficient to cover the remaining bills. The bills were not met by the appellant at maturity.

On the 3rd of December, 1858, the respondents took in their proof under the said insolvency in Barbadoes, in respect of the moneys so advanced by them as aforesaid, amounting to 1,015*l.* 16*s.* 8*d.*, exclusive of damages.

On the 2nd of April, 1857, the appellant was arrested for a debt due by him in England, and committed to the Queen's Prison.

On the 16th of August, 1862, a certificate of the third class, under the Bankrupt Law Consolidation Act, 1849, was granted to the appellant.

On the 2nd of January, 1865, the appellant being then at Barbadoes, application was made to the Chief Justice for a final examination of the appellant, under the insolvency in Barbadoes. The respondents gave notice that it was their intention to oppose his final discharge, and filed nine allegations, of which the fifth was subsequently withdrawn.

On the 31st of January, 1865, the appellant appeared and objected to the jurisdiction of the Court, submitting that the certificate of discharge under the imperial statute in England ousted the jurisdiction; but the Chief Justice ruled the contrary, and proceeded with the examination of the appellant and other witnesses; and on the 7th of February, 1865, gave judgment, and found the following allegations of the respondents proved: 2. That the insolvent's books were not kept in a clear and correct manner, so as to enable his creditors to obtain a complete knowledge of the state of his affairs, although his debts exceeded 500*l*. 3. That a full and proper balance-sheet and schedule had not been lodged by the insolvent in the office of the official assignee. 4. That the insolvent contracted the debt of the respondents without having any reasonable or probable expectation at the time when he contracted it of paying the same. 6. That the insolvent fraudulently and with intent to diminish the sum to be divided among his creditors, purchased and paid for a place called Hastings House, the conveyance of which he caused to be drawn in the name of the Rev. C. C. Gill, the surviving trustee under the settlement executed previously to his marriage with his wife. 7. That the insolvent fraudulently and with intent to diminish the sum to be divided among his creditors caused the Rev. J. Braithwaite on the 9th of September, 1853, to confess judgment to the said Rev. C. C. Gill as such trustee in the sum of 8,000*l*. sterling, with interest upon the trusts of the said settlement, the said sum of 8,000*l*. being due from Braithwaite to the insolvent. 8. That the insolvent contracted a debt with the estate of the Rev. J. Braithwaite, under whose will he was a trustee, fraudulently and by means of a breach of trust.

The Chief Justice, in concluding his judgment, observed: "I wish I could see one redeeming feature in any one of the trans-

actions brought to light, but taking them altogether, I should be wanting in my duty, however painful, if I hesitated to say that the insolvent had brought himself within more than one of the penal clauses of the act, and that it is my duty to sentence him to such a measure of its penalties as I think his conduct deserves. It has been stated that the insolvent has already suffered about six months' imprisonment for debt in England; I will give him the benefit of that period of incarceration, and instead of two years, I direct him to be imprisoned in the common gaol for eighteen months."

From this judgment and sentence the present appeal was brought.

Mr. Mellish and Mr. Lord, for the appellant.—The fiat of insolvency of the 29th of April, 1857, and the Orders of the 2nd of January and the 8th of February, 1865, were erroneous, and ought to be set aside. The certificate of conformity granted under an act of the Imperial Legislature, protects the person of the appellant from proceedings under the penal clauses of the act of the island, in respect of debts which accrued previous to the date of the adjudication in England: such debts were provable under the English bankruptcy. The respondents having obtained judgment in England upon the bills before the proceedings in Bankruptcy in this country, and having elected not to prove the judgment debt under those proceedings, and having interfered in the proceedings in England by opposing the discharge of the appellant from custody, and by proving their other judgment debt, and otherwise, ought not to have been permitted to oppose the final discharge of the appellant under the proceedings in Barbadoes. The appellant was liable to be proceeded against, and for anything that appears may have been proceeded against in the Court of Bankruptcy in London, for the same offences for which he has been sentenced to imprisonment by the Court in Barbadoes. The appellant ought not to have been so sentenced by such Court, seeing that the only opposing creditors in Barbadoes were the respondents, who also were parties to the proceedings in England. The allegations held by the Court in Barbadoes to have been proved against the appellant

were not proved by the evidence adduced in support of them. Assuming all the allegations to have been proved, the order of the Court of Bankruptcy in Barbadoes inflicts a punishment upon the appellant which, having regard to the circumstances of the case, is unduly severe and disproportioned to the offence. They referred to *Ex parte Cridland* (1), *Geddes v. Mowatt* (2), *Gowland v. Warren* (3), *Horn v. Ion* (4), *Gibson v. Patrick* (5) and *Pulling v. Tucker* (6).

Mr. Forsyth and *Mr. Pontifex*, for the respondents, were not heard.

SIR J. W. COLVILLE delivered the judgment of their Lordships.—Their Lordships do not think it necessary to trouble the respondents' counsel in this case. It appears that the appellant has been convicted before the Court of Insolvent Debtors, or rather the Court of Common Pleas, possessing jurisdiction as an insolvent debtors' Court, in the island of Barbadoes upon what, for the purposes of this case, we may refer to as four distinct charges of fraud or misconduct within the act of parliament passed in respect of insolvent debtors in the island, and has been sentenced to eighteen months' imprisonment. Against this judgment he now appeals to Her Majesty in Council, and the question is, whether either on the technical grounds of law—for they are purely technical—which have been urged in his favour, and urged with considerable ability, by the learned counsel who has appeared before us, or upon the substantial merits of the case, he is entitled to maintain this appeal. It appears that the case, which is of a somewhat extraordinary character, is as follows: The appellant, being a trader and having been engaged in extensive mercantile transactions in this island as long back as the year 1857, quitted Barbadoes, after having disposed of his property in a way hereafter to be referred to, leaving his books and his accounts in a state of the greatest confusion, and also leaving a number of debts unpaid, and con-

sequently a great number of unsatisfied creditors. He appears to have proceeded to England, and there certain proceedings took place to which hereafter reference will be made. The appellant having quitted the island, his creditors proceeded to take steps under what may be called the Insolvent Debtors Act in force there, and on the 29th of April, 1857, upon what is called a petition in insolvency, he was adjudicated an insolvent, and was placed within the jurisdiction of the Court in Barbadoes. Every effort was made to realize the property. Proceedings took place from time to time, as well as the Insolvent Court and its officers were able to resort to proceedings, in order to inquire into the state of his affairs and to realize his effects. Something resulted from this, for it seems that some dividend has been declared, but he was found to be, substantially speaking, without books of account. It was impossible from the books that were found to ascertain the true state of his affairs, and nothing could be learnt concerning them but from a number of scraps of paper and memoranda and accounts of a very uncertain and irregular character, which were found in his house or in his office. The result was, that, though something was realized, nothing satisfactory could be done under these proceedings in insolvency. In the mean time, it seems he had come to England as early as the year 1856, and that in the year 1857, having contracted a debt, he was sued and taken in execution and thrown into prison. He remained in prison for about six months. During that imprisonment, and in order to obtain his liberation, he seems to have resorted, and with success, to some course of proceeding under the bankruptcy laws of this country. Their Lordships have no very distinct evidence, except from his own statement, as to what the real nature and real merits of the proceeding in question were; but certainly he himself admits that the adjudication proceeded upon a fictitious debt, alleged to have existed between himself and a person of the name of Parker. It does appear, however, that a person bearing another name, claiming a debt of 53*l.*, was the petitioning creditor, and the result at last was, that he obtained his discharge on the 28th of October in the same year, 1857; and some five years afterwards, under circumstances

(1) 3 Ves. & B. 94.

(2) 1 Glyn & J. 414.

(3) 1 Campb. 363.

(4) 11 B. & Ad. 78.

(5) 34 Law J. Rep. (N.S.) Bankr. 31.

(6) 4 B. & H. 382.

which are not fully before us, he succeeded in obtaining a certificate, which no doubt discharged him from his debts. Afterwards, having returned to Barbadoes, and being found in that island, his creditors very naturally resorted to such proceedings as they were enabled to resort to according to the law of insolvent debtors in that colony; and in January, 1865, a motion was made to restore his name to the list of insolvents, and a day was then fixed for his final examination. The notice was given to himself, and the creditors proceeded to make the charge which has led to this conviction, and to the sentence against which he now appeals. The whole matter came on to be heard, and was heard during several days. Witnesses were examined, and he himself was examined, at considerable length, as well as witnesses on his behalf, and the whole matter of these various charges appears to have been fully, and their Lordships are of opinion fairly and according to law, investigated and considered by the Court in Barbadoes. He was found guilty, and conviction was pronounced on four of those charges to which we are now about to advert, and he was sentenced accordingly to eighteen months' imprisonment on account of the frauds and misconduct of which he was thus found guilty. The sentence would have been the most severe that the law allows,—that is to say, two years' imprisonment,—but as he had suffered an imprisonment of six months in England, the Court was pleased to reduce the term to eighteen months, and accordingly to eighteen months' imprisonment in the gaol at Barbadoes the appellant has been sentenced. He now appeals against that judgment and sentence, and substantially it is upon two grounds. It was, indeed, rather suggested than seriously argued, that from the beginning the Court of Barbadoes had no jurisdiction, though certainly the petition of insolvency appears to be rather informal in its terms and in its character; but upon that petition, which does substantially, though not formally or very explicitly, disclose enough to give the Court jurisdiction, the Court pronounced an order or decree of insolvency, and from that time to this their jurisdiction and the decree itself have never been questioned, and this appeal is not, in terms at least, directed against that decree. Their Lordships there-

fore pass by that part of the case altogether. But then it is contended that the proceedings in bankruptcy in this country, under an act of the imperial legislature, the adjudication in bankruptcy, and finally the certificate granted by the Commissioner in Bankruptcy in the year 1862, have the effect, not only of discharging the insolvent from the debts which he had contracted in Barbadoes,—indeed any debts to which he might be liable contracted in any part of the world,—but of superseding the authority of the Court in Barbadoes altogether, and depriving them of the jurisdiction which they had acquired under the adjudication in insolvency in 1857, and of disabling them to proceed further in that matter, and therefore, of course, to hear the complaint and pronounce the judgment and sentence against which this appeal has been brought. Now, it is quite true that an adjudication in bankruptcy followed by a certificate of discharge in this country under the bankrupt laws passed by the imperial legislature, has the effect of barring any debt which the bankrupt may have contracted in any part of the world, and it would have the effect of putting an end to any claims in the island of Barbadoes or elsewhere, to which the appellant might have been liable at the date of adjudication. There is, indeed, much to throw a deep shade of suspicion over these proceedings, but there they are, recorded according to the law in this country; there is the adjudication and there is the certificate. The adjudication has never been superseded or annulled; the certificate remains in full force, and their Lordships do not, whatever may be their opinion of the circumstances under which the adjudication was originally obtained, feel themselves at liberty to treat the proceeding as otherwise than valid and of full force, as far as it can have any legal effect upon the debts or proceedings in Barbadoes.

But then the question arises, whether the effect of these proceedings in bankruptcy in this country can supersede the authority of the Court in Barbadoes, and deprive that Court of jurisdiction to inquire afterwards into frauds and offences committed against the law of insolvent debtors in that island, when the insolvent has returned and placed himself again within its jurisdiction; and their Lordships are

opinion that the proceedings in bankruptcy in this country have no such effect. The Court of Common Pleas, possessing jurisdiction in the matter of insolvent debtors in the island of Barbadoes, having acquired jurisdiction over the whole matter in the year 1857, by the decree then pronounced, their jurisdiction continues, and continues unimpaired to this day and in all time to come. It is quite true that the debts may be barred, so that the Court could not proceed to enforce the payment of those debts directly or indirectly as against the debtor or in any other way; but although the debts may be irrecoverable, the jurisdiction of the Court to inquire into offences committed or alleged to have been committed against the law of insolvent debtors in that country still continues. It is under that jurisdiction, and in a proceeding perfectly regular in all its forms and all its stages, that the insolvent, the now appellant, has been called before the Court, and these four charges have been preferred against him, upon which four charges he has been convicted and subjected to the sentence in question.

All that now remains for their Lordships to consider is, whether the Court has done wrong, and therefore whether this appeal ought to be allowed upon the merits of the case in respect to these four charges or any of them?

The first of those charges is, that the insolvent had contracted a debt with the now respondent without having any reasonable or probable expectation at the time when it was contracted of being able to pay it. Now, the learned counsel for the appellant has admitted, and he could not do otherwise, that in fact the charge is substantiated and true, and he only contends that the debt itself being extinguished by the proceedings in bankruptcy in this country, the criminal charge can no longer be sustained. Their Lordships are of opinion that that is not so, but that, the offence having been committed, it was only by an accident that upon this and the other charges he had not been arraigned and prosecuted to conviction in the island. It was owing to his having departed from the island, and thus wilfully and fraudulently evaded the process of the law, that he was not prosecuted for these offences at a much earlier period; but, as has been already

observed, the jurisdiction of the Court still continuing, although the debt is cancelled, he still remains liable to the criminal charge, and upon that charge it is admitted that he has been properly convicted.

Passing over the fifth charge, which has been withdrawn, their Lordships now come to the sixth, which is in substance that, having purchased with his own money a house or property called Hastings House, instead of having the conveyance made to himself, which would have placed it within the reach of his creditors under this very proceeding by virtue of the Insolvent Debtors Act, he caused it to be conveyed to the trustees of his marriage settlement, in effect for the benefit of some members of his family. Without going into what afterwards took place as to the sale, and other machinery with which the transaction became involved, it is perfectly clear that this was in itself a fraud within the express words of the Insolvent Debtors Act in Barbadoes, and that therefore he was properly convicted. He seeks to excuse himself in his examination by alleging that he was indebted to the trustees, and that he had had 900*l.* of their money. If that were so, that would not justify him, unless he had openly and regularly, in satisfaction of that debt, and not by way of fraudulent preference, expressly in consideration of that debt, conveyed the property in question to his trustees. Then he says he purchased it very cheap, but it appears to have been worth considerably more than the 900*l.* which he alleges he owed to the trustees. Its value is said to have been 3,000*l.*, and this property he withdraws and abstracts from his creditors, and conveys to these trustees, and then runs away from the island, leaving his creditors without the means of obtaining satisfaction of their debts. This charge is therefore established.

The seventh charge presents a very simple and clear case of fraud in relation to Hastings House, and comes within the express words of the Insolvent Debtors Act of this island. It appears that he prevailed upon the Rev. Mr. Braithwaite, a connexion of his own, to suffer a judgment for a debt due or alleged to be due by Braithwaite to himself, not in his own name,—which, of course, in the event of these proceedings having taken place, would have given to

his creditors the full benefit of that judgment, and put the 8,000*l.* in their hands to be divided among the creditors,—but he causes the judgment to be suffered in the name and for the benefit of the trustees under his marriage settlement, and for the benefit of his own family. He himself scarcely denies the fact. He seeks to say there were some transactions under which this might be justified; but, in truth, it is a very confused story which he tells, and the plain English of the whole appears to be this, that there being a debt due,—for one cannot suppose that any gentleman in his senses would have suffered a judgment to be entered up against him for this large sum of 8,000*l.* unless he really owed the money in some way or other,—this debt, represented by this judgment, is thus transferred into the hands of the trustees under the marriage settlement, the judgment being suffered to them and in their names, the trustee himself who gave evidence in the case, knowing nothing about the transaction until he is informed that he has become possessed of this security for 8,000*l.*, on behalf of the family of the insolvent. It is clear also that this charge is completely established.

Then, as to the eighth charge, that he contracted a debt to the estate of the same gentleman, the Rev. John Braithwaite, deceased, under whose will he was a trustee, fraudulently and by means of a breach of trust,—that charge again, upon his own shewing, is substantiated. It appears that after the death of Mr. Braithwaite, the insolvent and another person then in the island of Barbadoes were co-trustees, and the trustee in the island remitted to the appellant, who was then in England, the sum of 500*l.*, in order to pay a debt claimed by the government on account of revenue, in respect of the estate of the deceased Mr. Braithwaite. He received the 500*l.*; he does not deny that. He goes on to say, "It may have been to pay this debt; it certainly was for the estate of Mr. Braithwaite, and I applied it to my own use." He pretends to justify that by saying he considered he was at liberty to do so, because he had lived with Mr. Braithwaite, or Mr. Braithwaite had lived with him. It is perfectly manifest that this sum of 500*l.* was remitted to him to be applied in discharge of a debt due to the Crown

by the estate of Mr. Braithwaite, and that instead of doing his duty like an honest man and paying that debt, and so freeing the estate from the claim, he applied it to his own use.

All four of these charges, therefore, being completely substantiated, and there being no answer and no excuse that we can find in any part of these proceedings,—even upon the statement of the appellant himself,—it only remains for their Lordships humbly to advise Her Majesty to affirm the sentence of the Court of Common Pleas of Barbadoes, and to dismiss this appeal, with costs.

Attorneys—Lawrance, Plews & Boyer, for appellant; Charles Champion, for respondents.

1868. { THOMAS JAMES WALLACE, appellant,
July 3. { JOHN M'SWEENEY, respondent.*

Practice—Embarrassing Pleas—Nova Scotia—Foreclosure Suit—Irregularity.

The respondent commenced a foreclosure suit in the Supreme Court of Halifax, Nova Scotia. The appellant pleaded several insufficient and embarrassing pleas. The respondent applied to the Court to set aside the pleas as false and frivolous and the Court made an order to set aside the pleas, and by the same order decreed a foreclosure and a sale of the mortgage. Their Lordships reversed the decree of the Supreme Court, and remitted the cause back to the Supreme Court, without prejudice to the respondent, to call upon the appellant to reform or amend his pleas; or, failing to do so, that the pleas be set aside.

This was an appeal from a judgment of the Supreme Court of Halifax, Nova Scotia, confirming an order made by one of the Judges of the said Court, whereby certain pleas were set aside, and the foreclosure of the equity of redemption and a sale of certain mortgaged premises were ordered.

* Present, the Master of the Rolls (Lord Romilly), Sir J. W. Colvile, Sir E. V. Williams, and the Lord Chief Baron (Sir F. Kelly).

The facts material to the appeal were as follows : On the 2nd of January, 1861, James Dunphy, of Halifax, Nova Scotia, but then residing in the city of Kilkenny, Ireland, who held the office of dean in the Roman Catholic Church at Halifax, and is hereinafter sometimes called Dean Dunphy, made his will, and thereby appointed Patrick Dunphy, Thomas J. Wallace the appellant, and John M'Sweeney the respondent, executors and trustees of his said will. After directing payment of debts and funeral expenses, the testator bequeathed to the said Patrick Dunphy and the appellant the sum of 3,800*l.*, to be disposed of by them in accordance with a private letter of instructions directed by the testator to the said Patrick Dunphy and the appellant, the said bequest being a private trust to Patrick Dunphy and the appellant, and in no way to be questioned by any Court. The testator further bequeathed the residue of his estate and effects to his said executors, in trust to pay yearly the sum of 100*l.* to the support of a Roman Catholic school in the city of St. John, New Brunswick, and the yearly sum of 100*l.* to the support of a Roman Catholic school in the town of Halifax, Nova Scotia; and the testator further directed his said executors to collect the amounts due to him on certain mortgages in the city of St. John, New Brunswick, and apply the proceeds thereof to the payment of his legacies; and if the same were insufficient, then to raise the deficiency by sale of a portion of certain securities of the corporation of St. John aforesaid, held by testator, the remainder of said securities to remain in the same investment as long as was deemed expedient. No other legacies were given by the said will, and the said will gave no gift of residue except in trust as aforesaid. The said James Dunphy died without having revoked or altered the said will.

After the death of the said James Dunphy, and previously to May, 1864, the respondent and the said Patrick Dunphy commenced a suit on the equity side of the Supreme Court, Nova Scotia, against the appellant, with regard to the execution of the trusts of the said will and other matters relating thereto. In May, 1864, a written agreement was entered into between the respondent and the said Patrick Dunphy, of the one part, and the appellant of the other

part, for a compromise of the said suit; and, after reciting differences between the said executors touching the management of the estate, the control of the funds and the construction of the will of the said James Dunphy, and that, for settling the differences, the appellant had agreed to relinquish the office of trustee and executor under the will, and to release to the respondent and the said Patrick Dunphy all his, the appellant's, rights to any portion of the said estate, and to pay over to them the sum of 16,000 dollars in full of the money of the estate remaining in his hands, subject to certain deductions; and reciting that the respondent and said Patrick Dunphy had agreed to indemnify the appellant from any liability under the said will, and all claims of the next-of kin of the testator or any other person claiming under the will; it witnessed that the respondent and the said Patrick Dunphy, in consideration of the sum of 16,000 dollars, subject to deductions as aforesaid, in hand well and truly paid by the appellant, the receipt whereof was thereby acknowledged, covenanted to discontinue the said suit and indemnify the appellant as aforesaid, and released the appellant from all claims in respect of the said estate, and the appellant thereby relinquished the office of executor and trustee, and released the respondent and said Patrick Dunphy from all claims under the said will. By an indenture bearing date the 25th of May, 1864, the appellant and his wife mortgaged certain premises situate in Halifax, Nova Scotia, to the said Patrick Dunphy to secure the payment of the sum of 9,000 dollars to be paid to the said Patrick Dunphy by the said appellant. By an indenture bearing date the 20th of March, 1865, the executors of the said Patrick Dunphy, then deceased, assigned the said mortgage to the respondent.

On the 28th of December, 1865, the respondent commenced a suit against the appellant in the Supreme Court of the province of Nova Scotia, by a writ of summons, claiming a sum of 9,000 dollars, with an arrear of interest thereon, to be due from the appellant to the respondent for principal and interest due on the said indenture of mortgage; and, in default of payment of the said principal money and interest, the respondent prayed that the equity of redemption of the appellant in the said premises comprised in the

said mortgage might be foreclosed, and that a sale of the said premises might be made, and that out of the proceeds of such sale the amount due on the said mortgage, with interest and costs, might be paid to the respondent.

The appellant, having appeared by attorney in the said suit, pleaded the following pleas: First, that the indenture of mortgage was not his deed. Secondly, that the said indenture of mortgage was executed voluntarily without consideration, as the plaintiff well knew before he took an assignment thereof. Thirdly, that the plaintiff gave no consideration for the said assignment. Fourthly, that when the mortgage was executed, it was agreed by the mortgagee, as part of the consideration thereof, and as a condition precedent to the payment of the said 9,000 dollars, to obtain for the defendant releases from the next-of-kin of the said James Dunphy, the testator, and to indemnify the defendant before the said 9,000 dollars secured by the mortgage could be demanded; that no such releases had been procured or tendered; and that the plaintiff was cognizant of the agreement and condition precedent at the time the same were made and at the time of the assignment to him of the said mortgage; and that the releases and indemnification had never been given. Fifthly, that the plaintiff and the defendant and Patrick Dunphy, deceased, were executors of Dean Dunphy's will; that the defendant had obtained probate of the will in Ireland, and had thereunder received moneys of the estate; that disputes had arisen between the said Patrick Dunphy, the plaintiff, the defendant, and some of the next-of-kin of the testator, touching the said moneys; that the defendant had proposed to withdraw from the management of the estate, and to pay over to the said Patrick Dunphy and the plaintiff for the said estate, the sum of 16,000 dollars, upon condition that the said Patrick Dunphy and the plaintiff would indemnify the defendant against the consequences of so withdrawing; and that the next-of-kin should release the defendant from all further liability; that the said Patrick Dunphy and plaintiff agreed to these conditions, and that the defendant, in part performance of the said agreement, executed the said mortgage upon the express condition that the said indemnity, releases

and discharge should be given before the money secured by the mortgage should be called in; that these conditions had never been fulfilled; that defendant was willing to pay the amount secured by the mortgage upon these conditions being fulfilled; that the plaintiff took the assignment of the mortgage with knowledge of the premises, yet that he was seeking to foreclose the mortgage and call in the money in violation of the said agreement, and to leave the defendant without indemnity against the claims of the next-of-kin, and with not sufficient funds to meet them. Sixthly, that the appellant is, since the death of the said Patrick Dunphy, deceased, the only surviving trustee under the will of the said testator for the sum of 3,800*l.*, and that he the appellant was willing and agreed to leave the management of the said estate and appropriation of the funds thereof to the said Patrick Dunphy during the term of his the said Patrick Dunphy's life, and in pursuance of the said agreement executed the said mortgage to the said Patrick Dunphy, the money thereby secured being part of the said trust money which came to the appellant's hands as trustee with the said Patrick Dunphy, deceased; that the said Patrick Dunphy departed this life without having fulfilled the trusts of the said will, and the appellant, as the only surviving trustee, was entitled to resume and did resume the said trusts, and is entitled to hold the moneys secured by the said mortgage deed for the purposes of the said trust; that the plaintiff, at the time of the said assignment, and at the commencement of this suit, well knew the above premises, and that the said indenture of mortgage ought to have been released and discharged, and the property therein mentioned reconveyed to the appellant. Seventhly, that the making of the said mortgage was an improper disposition of the funds of the said estate, and the said mortgage was illegal and void. Eighthly, that the money secured by the mortgage belonged to the estate of the said Dean Dunphy, deceased, and that the plaintiff should have instituted the suit as one of the executors of the said estate, and not in his own name, without declaring the trusts for which he was bound to hold the said mortgage. Ninthly, that, upon the death of

Patrick Dunphy, the defendant was entitled to and did resume the executorship and trusteeship, under the will of Dean Dunphy, and that the money secured by the mortgage formed part of the estate, and that the purpose for which the mortgage was given had not been carried out, as the plaintiff knew at the time of the assignment, and that money secured by the mortgage ought to be treated as money of the estate, to be applied under the will by the plaintiff and defendant conjointly as co-executors. Tenthly, that the unpaid balance of the money secured by the mortgage on the death of the said Patrick Dunphy reverted to the defendant alone as sole surviving trustee, for the sum of 3,800*l.*, he having no other funds of the estate wherewith to satisfy that trust. Eleventhly, that the defendant was one of the executors of Dean Dunphy, deceased, and the only one to whom probate was granted in the country of the testator's domicile at his death; that the money secured by the mortgage was parcel of the estate of the testator, received by defendant under the said probate; that the defendant is called upon to pay money for legacy and succession duty equal to the sum secured by the mortgage; that this was one of the demands against which the defendant was entitled to be indemnified, as aforesaid, and against which he had not been indemnified, and that he had a right to retain the money secured by the mortgage to meet and indemnify himself against the said claim. Twelfthly, that the money secured by the mortgage belonged to the estate of Dean Dunphy, deceased, received by the defendant as executor, under probate granted to him alone in Ireland; that the defendant had never renounced such probate. That the defendant had been willing that the estate should be managed by Patrick Dunphy and the plaintiff, and for this purpose he executed the mortgage upon the condition that Patrick Dunphy and the plaintiff should indemnify him against all claims in respect of the said estate, and that Patrick Dunphy died without having indemnified the defendant and without settling the estate. That the defendant, being unwilling that the estate should be settled by plaintiff alone, resumed the management and settlement thereof as executor and trustee as aforesaid, as he had a right to do. That the

premises were known to the plaintiff when he took the assignment of the mortgage, and that the same, by reason of the premises, ought to be given up and cancelled. Thirteenthly, that the alleged indenture of mortgage was given as and for an escrow until an event occurred which had not yet happened. Fourteenthly, that the plaintiff had possessed himself of a large sum of money belonging to the said estate for which he, the respondent, had never accounted, and the appellant having no confidence in the respondent in consequence of his not having accounted as aforesaid, is unwilling to hand over the funds of the said estate secured by the said mortgage to the respondent alone, as, in case of misapplication of the said funds, the appellant would remain liable for the said moneys so misapplied as aforesaid.

On the 27th of February, 1866, the respondent's attorney made an affidavit that the appellant's pleas were false, frivolous and vexatious. The appellant made an affidavit that his pleas were not false or vexatious, but were true and correct, and set forth in detail the facts intended to be proved in support of the said pleas. On the 13th of March, 1866, Mr. Justice Wilkins made the following order, which was the subject of the present appeal: "On argument of the order *nisi* to set aside the pleas herein, I do order that the said order *nisi* be made absolute with costs; and I do further order that all the estate, right, title and equity of redemption of the said defendant in the premises described in the mortgage herein, be for ever barred and foreclosed, and that the said mortgaged premises be sold by the sheriff of the county of Halifax after thirty days' previous notice in the *Royal Gazette* newspaper, and twenty days' notice by handbills in the county of Halifax; and I do further order that the said sheriff do execute and deliver the necessary deed or deeds to the purchaser or purchasers, and that he retain the proceeds to abide the further order of the Court or a Judge therein." The appellant appealed to the Supreme Court against this order. On the 2nd of August, 1866, the Supreme Court confirmed the order.

On the 3rd of August, 1866, the appellant applied to the Supreme Court for leave to appeal from the said order to Her

Majesty in Privy Council, which application was allowed.

Sir Roundell Palmer and Mr. Watkin Williams, for the appellant. — The pleas pleaded disclosed a good defence to the respondent's suit. If the pleas did not disclose a good defence to the suit they ought to have been demurred to; they could not be set aside on motion. The pleas, though supported by the oath of the appellant himself, were set aside upon the oath only of the respondent's attorney that he believed them to be false, frivolous and vexatious, without any affidavit of the respondent himself. Besides, the appellant was entitled to have the truth or falsehood of his pleas tried by a jury. The Supreme Court had no jurisdiction to set aside the pleas. It was not competent for the Court to decree an immediate foreclosure of the mortgage without any account taken of the amount due for principal or interest, and without any opportunity to the appellant to redeem. The orders appealed against are contrary to right and justice, and are contrary to the principles of practice which ought to be acted on by the Supreme Court sitting as a Court of equity.

Mr. Druce and Mr. Cohen, for the respondent. — The agreement of May, 1864, clearly shews that the mortgage was not intended to be subject to any of the conditions set up by the pleas. The terms must be binding on all parties unless set aside, but no proceedings have been instituted to set aside the agreement. The appellant is estopped, by reason of his having paid 1,000 dollars and by his having frequently promised to pay the residue of the mortgage money, from alleging the defences set up in his pleas. The question whether the pleas should be set aside, is a question not to be decided by any fixed rule, but is one with reference to which any Court is at liberty to exercise its discretion. The decision of the Court should not be reversed unless it appears, beyond a doubt, that the Court came to a wrong decision or that injustice would be done by such decision. The pleas were either bad or untrue, therefore no practical injustice was done to the appellant by setting them aside. There is no reason why the decision of the Court should be reversed. The judgment of the

Supreme Court directs the proceeds of the sale to be paid to the Accountant-General, who will see that all just demands are discharged; and the Court will take care that the appellant is protected from the risks which are alleged in his pleas as the grounds for resisting the respondent's claim. In the exercise of its discretion the Court was at liberty to take into account all the circumstances of the case.

The LORD CHIEF BARON (Sir F. KELLY) delivered the judgment of their Lordships. — In this case their Lordships are not called upon to pronounce any opinion upon the real merits of the cause. It appears that the appellant and the respondent and another gentleman, now deceased, were co-executors and trustees of a clergyman of the name of Dunphy, and various sums of money, part of the estate, having been collected, a portion of which was in the hands of the present appellant, some dissatisfaction arose on the part of his co-executors. This led to a suit which was instituted, and in which no doubt the present appellant would have been held liable for the various sums of money that he had received on account of the estate, and would have been called upon to account for those moneys, and to pay them into court, in order that the estate might be duly administered. But it seems before that suit was finally determined, the parties came together, the three executors, and they entered into an agreement, the substance of which is in effect this, that the now appellant was, so far as he lawfully could, to cease to be an executor and trustee; that he was to pay over, not the whole moneys which he had received, but, by way of compromise, the sum of 16,000 dollars or thereabouts to his two co-executors, and that they were to undertake to indemnify him. In fact, by the agreement itself (had it been executed by all the parties), they would have covenanted to indemnify him against all claims, either by the next-of-kin or other parties beneficially interested, or creditors, or all other persons in any way connected with this estate. The agreement was duly executed by the appellant, but he appears not to have paid over the sum of 16,000 dollars as contemplated by the agreement; but, either at the same time or within a day or

two afterwards—certainly in the course of the same month of May—he appears to have executed and delivered the mortgage now in question. Unfortunately, this agreement does not appear to have been executed by the two other parties, the co-executors. They therefore received the mortgage. They had the agreement of the now appellant, with his personal security and the instrument under seal itself, for the performance of his part of the contract ; while he, on the other hand, had no security from them except the mere fact that the other two parties had taken the benefit of this agreement and had received not the money, but a mortgage to secure the payment of the money contracted for on the part of the now appellant.

Such being the state of things, the respondent, who had become sole assignee of this mortgage by a subsequent conveyance, brings this action for a foreclosure of the mortgage ; and it appears that under the rules by which the proceedings of the Court in Nova Scotia are regulated, though a suit for a foreclosure, it is in the form of an action at law, and that consequently the plaintiff puts in his declaration, called a writ of summons, to which the defendant, the now appellant, is in due time called upon to plead. It seems that he failed to appear within the number of days required by the rules of the Court, and there was a judgment by default against him. That judgment was set aside, and he was subsequently let in to plead. In due time he pleads several pleas, which are before us in this record ; and undoubtedly we feel bound to observe, in relation to these pleas, that they are inconsistent ; multifarious and highly embarrassing, and we cannot doubt that if an application had been made to the Court under the 62nd and 63rd sections of the clause relating to pleadings in the laws of Nova Scotia, the Court would have ordered these pleas to be set aside, unless the defendant, the now respondent, should have amended them so as to present his defence in a proper and intelligible form. But instead of that, it appears that the respondent was advised to apply to the Court to set aside these pleas as false and frivolous, and the Court made an order that they should be set aside as false and frivolous, and either by the same order or

by some order or decree immediately afterwards, decreed a foreclosure and the sale of the mortgaged premises.

Now, the question is, whether this proceeding on the part of the Court is to be sustained. Their Lordships feel bound to abstain from offering any opinion whatever upon the merits of this case. Their Lordships do not say what may be, or what ought to be, the ultimate decision of the Supreme Court, but they think that this rule ought to be set aside, and the judgment of the Court reversed, and the cause remitted to the Court, without prejudice to the right of the plaintiff—that is, of the now respondent—if he shall be so advised, to call upon the defendant, the now appellant, by rule, to reform and amend his pleas, or, failing to do so, that the pleas should be set aside. It is with liberty to him so to apply, and without prejudice to his right to do so, that their Lordships will advise Her Majesty to reverse this decree ; to remit the matter back to the Court below for it to proceed in due course of law ; and with regard to the costs, their Lordships direct that the appellant shall have the costs of this appeal, but that all other costs will be in the discretion or subject to the adjudication according to law of the Court below.

Attorneys—Hill, Son & Heald, for appellant ;
Dawes & Sons, for respondent.

1868. { ROBERT MARSDEN FITZGERALD,
June 16. { executor of ROBERT FITZGERALD, deceased, appellant ; CHARLOTTE FITZGERALD, respondent.*

New South Wales — Covenant to pay Annuity to Separate Use of Feme Sole—Effect of Subsequent Marriage of Parties.

The appellant's testator covenanted with the respondent, a feme sole, to pay her, so long as she lived and complied with certain conditions, an annuity to her separate use, free from the control of any husband. The ap-

* Present, The Master of the Rolls (Lord Romilly), the Lord Chief Baron (Sir F. Kelly), Sir J. W. Colville, Sir E. V. Williams and Sir Lawrence Peel.

pellant's testator subsequently married the respondent:—Held, in an action by the respondent to recover arrears of the annuity accrued since the testator's death, that the covenant, though suspended during the coverture, was not extinguished by the marriage of the parties.

This was an appeal from a judgment of the Supreme Court of New South Wales, delivered the 12th of January, 1867, in a civil suit or action brought in that Court by the respondent against the appellant.

On the 4th of May, 1866, the respondent commenced an action, against the appellant, as executor of one Robert Fitzgerald, to recover certain alleged arrears of an annuity,

The declaration alleged, that by a deed executed in the lifetime of the said Robert Fitzgerald, deceased, by and between the said Robert Fitzgerald, deceased, and the plaintiff, and dated the 18th day of May, in the year of our Lord, 1864, it was covenanted and agreed that the said Robert Fitzgerald would, yearly and every year during the natural life of the respondent, pay and apply an annuity or yearly sum of 100*l.*, by two half-yearly payments, in advance, on the 1st day of July and the 1st day of January in every year, the first payment of 50*l.* to be made on the 1st day of July then next ensuing, being the sum in advance for the half-year thence following, into the proper hands of the said plaintiff, whether covert or sole, from time to time, after each of the said half-yearly payments should become due, in advance, as aforesaid, but not otherwise, for her sole and separate use and benefit and disposition during her life, independent of any future husband, and so that she might not, whether covert or sole, at any time or times whatsoever, make any assignment or disposition by way of anticipation of the said annuity of 100*l.*, or any part thereof, to the intent that the same might not be subject or liable to the debts of any future husband of the said plaintiff, but always remain for her sole and separate use and independent maintenance and support. And it was thereby declared, that the receipt and receipts of the said plaintiff alone for the said annuity, or any part thereof, to be paid in the manner aforesaid, should, notwithstanding her coverture

(if married), be a sufficient release and discharge for the same, or so much thereof as in such receipt or receipts should be expressed to be received: Provided always, that if the said plaintiff should go to reside out of the city of Sydney aforesaid, without the consent in writing of the said Robert Fitzgerald during his life first had and obtained, or should marry with any person without the like consent first obtained, or should openly or covertly cohabit with any man or men, then and immediately upon the happening of either of the said events (compliance with such conditions forms the essence of the contract by the said deed entered into), the said deed and every clause, matter and thing therein contained should absolutely cease and be void, and the said annuity should thenceforth cease, determine and become extinct; and the said plaintiff, in consideration of the said covenant thereinbefore contained, by the said Robert Fitzgerald, did thereby, for herself, her executors and administrators, covenant, promise and declare, to and with the said Robert Fitzgerald, his executors and administrators, that she would from time to time thenceforth reside and continue in the said city of Sydney, and would not quit the same without the consent in writing of the said Robert Fitzgerald first obtained. And further, that before contracting any marriage with any persons she would obtain the like consent. The declaration averred, that although the respondent had done all things, and all things had happened to entitle the plaintiff to receive the said annuity, and although certain arrears of the said annuity accrued due since the death of the said Robert Fitzgerald, yet the defendant had not paid the same.

To this declaration the appellant pleaded, that after the execution of the said deed the said Robert Fitzgerald, deceased, married the respondent.

To this plea the respondent demurred, the ground of demurrer being that the right of the respondent to sue on the covenant of the said Robert Fitzgerald, deceased, contained in the said deed, was suspended only during coverture, and therefore that the plea was no bar to an action for arrears of the annuity which had accrued since the death of the said Robert Fitzgerald.

The demurrer came on for argument before the Supreme Court on the 5th of December, 1866, when the Court gave judgment for the respondent.

The appellant petitioned the Supreme Court for leave to appeal, which was granted.

The Chief Justice (Sir A. Stephen), assigned as reasons for his judgment as follows:

"The action is brought against an executor on a covenant entered into by the testator with the plaintiff, then a single woman, whereby the covenantor undertook that, so long as she lived and conformed to certain conditions, not now in question, the plaintiff should receive from him a specified annuity payable half-yearly, but it was not to be anticipated by her, and was to be for her personal use, free from the control of any husband. The plaintiff having afterwards married the covenantor and survived him, now sues his executor for such portions only of the annuity as have accrued since her husband's death.

"The fact of that intermarriage is relied on by the plea as an answer to the action. But it was contended, for the plaintiff, that the marriage only affected those portions of the annuity which accrued during the coverture, and we were of that opinion; for the testator, probably not contemplating the event of the plaintiff's survivorship, nor perhaps his intermarriage with her, distinctly covenanted that she should *every half-year during her life* receive (but not by anticipation) the *annuity* agreed upon. Any portion of it, therefore, which might accrue after his death, was not releasable by the husband; for, by the marriage, he acquired no greater right than his wife brought to him, and, as she could not anticipate future payments, neither could he.

"But, independently of this, such accruer was an event that never could by possibility happen during the coverture, and therefore the plaintiff's right to it was not extinguished. The right was not even 'suspended,' for, until her husband's death, the right to receive subsequently arising portions of the annuity never arose or could arise.

"It is possible, that if the instrument executed by the testator had been a *bond*, a distinction might be drawn in the defen-

dant's favour, on highly technical grounds; but on that point we give no opinion."

Mr. Justice Hargrave, in giving his judgment, observed—"The annuity was secured for the *separate* use and *against* anticipation. Such clauses ought to be maintained against both direct and indirect infringements, precisely as in a marriage settlement. I am unwilling to throw any doubt on the full effect of such clauses, which would be the result of not allowing this demurrer. I think the authorities of *Gage v. Acton* (1), as to the husband's not releasing property which cannot accrue to the wife during marriage, and also *Co. Lit.* 466, 10 *Rep.* 51, *Cro. Eliz.* 841, as to the wife's not losing a right of survivorship in a term, are clear authorities in support of this demurrer; and that the case of *Hore v. Becher* (2) is clearly distinguishable by the absence of the clause against anticipation from the bond in that suit."

From this judgment the present appeal was brought.

Mr. R. E. Turner (*Mr. Coleridge* with him), for the appellant.—The judgment of the Supreme Court is erroneous and ought to be reversed. The Court founded its judgment on the circumstance that the annuity was granted to the separate use of the respondent, with a restraint on alienation. The covenant to pay the annuity was not merely suspended during the coverture, but became absolutely inoperative on and extinguished by the marriage of the said Robert Fitzgerald, deceased, with the respondent. The marriage was a release in law of the covenant to pay the annuity.—He referred to *Gage v. Acton* (1), *Co. Lit.* 264 b, *Milbourn v. Ewart* (3), *Hore v. Becher* (2), *Thompson v. Butler* (4), *Ford v. Beech* (5) and *Lampel's case* (6).

Mr. Mellish and *Mr. Wills*, for the respondent, were not heard.

LORD JUSTICE WOOD delivered the judgment of their Lordships.—Their Lordships

- (1) 1 Salk. 326; s. c. 1 Ld. Raym. 522.
- (2) 12 Sim. 465.
- (3) 5 Term Rep. 381.
- (4) Moo. Rep. 522.
- (5) 11 Q.B. Rep. 852.
- (6) Rep. 522.

are of opinion that the judgment of the Court below was right, and ought therefore to be affirmed. The action was brought to recover certain arrears of an annuity granted by the appellant's testator by deed to the respondent, then an unmarried woman, but subsequently married to the appellant's testator. The arrears claimed by the respondent had accrued subsequent to the death of the testator. The marriage was pleaded in bar to the action, on the ground that such marriage put an end to the obligation during the coverture of the parties, and thereby destroyed the covenant and extinguished the liability altogether. To this plea the respondent demurred, the ground of demurrer being that the right of the respondent to sue on the covenant was suspended only during coverture, and therefore that the plea was no bar to an action for arrears of the annuity which had accrued since the death of the testator. This is not then an action on a bond with a simple defeasance, as in some of the cases cited. The instrument is not a bond, but a deed of covenant. The deed moreover provided that the annuity should be payable half-yearly, and so contains a restraint on anticipation by the covenantee, and the annuity is expressly granted to the separate use of the covenantee. The case of the respondent is at least as strong as that of the widow in *Gage v. Acton* (1), upon which the Court below relied. That

case was much controverted in *Milbourn v. Ewart* (3), and it was then contended by counsel to have proceeded on a confusion of legal and equitable principles, and even to have exceeded the relief which a Court of equity would have rendered to the obligee. Lord Kenyon, however, and the other Judges upheld the case of *Gage v. Acton* (1), and expressed themselves in the strongest terms. Mr. Justice Buller referred to a case of *Foord v. Foord* (7), where Lord Mansfield had, notwithstanding the marriage of the obligee with the obligor, held a bond to be subsisting at law after the coverture had determined. The case here is that of a covenant, and there is a fresh breach on each default. The respondent brings her action for each breach which has occurred since the death of the appellant's testator. Their Lordships are of opinion that the case of *Hore v. Becher* (2), relied upon by the learned counsel for the appellant, cannot be reconciled with the doctrine recognized in Courts of equity. Their Lordships will, therefore, humbly recommend to Her Majesty that this appeal be dismissed with costs.

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Solicitors—Messrs. Davidson, Carr & Bannister,
for appellant; Messrs. Shape, Parkers & Jackson,
for respondent.

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(7) 5 Term Rep. 386.

INDEX

TO THE REPORTS OF CASES

DECIDED BY THE

JUDICIAL COMMITTEE AND THE LORDS OF THE

PRIVY COUNCIL.

FROM MICHAELMAS TERM, 1867, TO TRINITY TERM, 1868.

APPEAL—Bengal: limitation of time to appeal: special leave—The petitioners, being the respondents in a suit in the High Court of Bengal, against whom a divisional Bench pronounced judgment, applied for a review of such judgment, which was admitted for argument, but dismissed on the hearing. The petitioners applied for leave to appeal to Her Majesty in Council; but the High Court refused the application, on the ground that the time had expired within which such appeal could be granted. It appeared that the practice in respect of the time from which the limitation as to appeals ran had been changed pending the proceedings on review. Under these circumstances, their Lordships granted special leave to appeal. *Ghose v. Ensuff*, 16

— **Bengal: appealable value: other suits pending: special leave**—On a petition praying for special leave to appeal from a judgment of the High Court of Bengal, in a suit involving less than the appealable value, it appeared that important questions of law would arise on the hearing; that other suits were directed by the High Court to abide the event of the appeal; and that the aggregate suits involved a greater amount than the appealable value. Their Lordships granted special leave to appeal. *Rhine v. Shadden*, 19

— **New South Wales: felony: venire de novo: special leave**—On a petition by the Attorney General of New South Wales for special leave to appeal from an order of the Supreme Court of that colony, it appeared that the respondent was charged, on a criminal information by the Attorney General of the colony, with murder; that he pleaded not guilty, and was tried and found guilty by the jury. The Supreme Court afterwards, on an application by the respondent, made an order that a *venire de novo* should issue, on the ground that the jury were allowed access to certain newspapers pending their verdict. Their Lordships granted special leave to appeal. *R. v. Murphy*, 21

ATTORNEY—striking off the roll: misconduct—The appellant, an attorney on the roll of the High Court of Bengal, prepared a conveyance on behalf of his brother, containing a false recital as to consideration, knowing the same to be false, and attested the execution of the deed with such false recital, and signed his name as a witness to the receipt of the consideration money, knowing that no consideration had passed or was intended to pass. The deed was duly registered. The High Court ordered the appellant to be struck off the roll. Their Lordships were of opinion that the appellant was properly called upon to explain the circumstances under which the deed was executed; but that, as there was no evidence that the appellant was guilty of any fraudulent or dishonest intention, and as no dishonest use was attempted to be made of the deed, and as no person had been injured thereby, the circumstances were not sufficient to warrant the order of the High Court. *In re Stewart*, 25

BANKRUPTCY—adjudication in Barbadoes: effect of subsequent adjudication in England—The appellant, a trader in Barbadoes, having quitted the colony in debt, and been adjudicated a bankrupt in his absence, came to England and contracted debts in England, and was adjudicated a bankrupt under the Bankruptcy Laws of England, and obtained his discharge. The appellant having returned to Barbadoes, proceedings were instituted by his creditors under the former bankruptcy in the colony, and the appellant was sentenced to a term of imprisonment.—*Held*, that, although an adjudication and discharge in bankruptcy in England under the imperial statute has the effect of barring any debt which a bankrupt may have contracted in any part of the world, yet that the discharge under the imperial statute would not deprive the Court of the colony of its jurisdiction to inquire into offences committed against the Insolvent Law of the colony, the insolvent being again within its jurisdiction, and such Court having once

acquired jurisdiction in the matter. *Gill v. Barron*, 83

COVENANT—*covenant to pay annuity to feme sole to her separate use: subsequent marriage of parties*—The appellant's testator covenanted with the respondent, a *feme sole*, to pay her so long as she lived and complied with certain conditions, an annuity to her separate use, free from the control of any husband. The testator subsequently married the respondent:—*Held*, in an action by the respondent to recover arrears of the annuity accrued since the death of the testator, that the covenant, though suspended during the coverture, was not extinguished by the marriage of the parties. *Fitzgerald v. Fitzgerald*, 44

DEVISE—*old French law: validity of proviso: "défense d'aliéner pure et simple"*—Testator devised certain lands in Lower Canada to the respondent, with a proviso that the devisee should not in any manner encumber, affect, mortgage, sell or exchange or otherwise alienate the lands until after twenty years from the death of testator. There was no substitution of the devise in the event of alienation:—*Held*, that such a proviso, being by the law of Canada a "défense d'aliéner pure et simple," amounted merely to advice by the person making the prohibition, and was not legally binding on the devisee. *Renaud v. Guillet*, 1

FORECLOSURE SUIT. See Practice.

MORTGAGE—*construction of deed mortgaging a sheep station in New South Wales, as to meaning of the words "increase of the sheep": pleading*—By an indenture of mortgage made between the respondent B. and the appellants' testator, certain flocks of sheep and certain herds branded B, then depasturing on a certain station in the colony of Victoria, "together with all and singular the issue, increase and produce of the said sheep and cattle respectively," were assigned by B. to the appellants' testator by way of mortgage. By a subsequent indenture of mortgage reciting the former indenture, B. assigned "all the issue, increase and progeny of the sheep" on the said station to the respondents P. and D, with a power of sale. Previous and subsequent to the latter indenture, B. purchased and brought upon the station large additions to the flock of sheep, and branded them with the letter B. B. also obtained a lease of the station, and deposited it with P. and D. as additional security:—*Held*, on a bill filed by the appellants, after a sale, by P. and D, both of the sheep and the lease, praying for payment of advances out of the proceeds of the sale of all the sheep and the lease, first, that by the words "increase of the sheep" in the first indenture was meant the natural increase or offspring of the original sheep mortgaged, and that such words did not include additions made to the flock by purchase; secondly, that the mortgagees under the first indenture of

mortgage were precluded from claiming the proceeds of the sale of the lease or any personal equity to have the sheep purchased substituted for the original sheep, no such claim having been raised by the original bill. *Webster v. Power*, 9

PATENT—*extension of term of letters patent*—The Judicial Committee will not recommend an extension of the term of letters patent, unless it is proved to the satisfaction of their Lordships that the original invention is of considerable merit, that it is of public utility, and that there has been inadequate remuneration. *In re M'Dougall's Patent*, 17

The Judicial Committee will not, upon an application to prolong the term of letters patent, adjudicate upon the validity of a patent; but they will not recommend an extension of the term unless it appears from the specification that the invention was of great merit and public utility, and that no great detriment will arise to the public by reason of an extension of the monopoly. *Ibid*.

—*extension of term of letters patent*—On a petition praying for an extension of the term of letters patent for an invention, defined by the specification as "metallic soap," to be applied as a coating to ships' bottoms, it appeared that the subject-matter of the invention was composed of well-known articles in common use. Their Lordships refused to recommend any extension, on the grounds, first, that the subject-matter of the invention was not sufficiently defined by the term "metallic soap"; secondly, that the invention consisted of a combination of substances in common use. *In re M'Innis's Patent*, 23

PRACTICE—*foreclosure suit: pleas: irregularity: motion to act: decree*—The respondent commenced a foreclosure suit in the Supreme Court of Halifax, Nova Scotia. The appellant pleaded several insufficient and embarrassing pleas. The respondent applied to the Court to set aside the pleas as false and frivolous; and the Court made an order to set aside the pleas, and by the same order decreed a foreclosure and a sale of the mortgage. Their Lordships reversed the decree of the Supreme Court, and remitted the cause back to the Supreme Court, without prejudice to the respondent, to call upon the appellant to reform or amend his pleas; or, failing to do so, that the pleas be set aside. *Wallace v. M'Sweeney*, 39

RECEIVER—*appointment of, pending appeal*—On a petition praying that a receiver might be appointed of certain estates pending an appeal, it appeared that a District Court decreed in favour of the petitioner, but that the High Court of Bengal reversed the decree. It also appeared that the property in question was of great extent, paying a large revenue to the Government. Their Lordships refused to appoint a receiver. *Burmon v. Thakoor*, 7

TABLE OF CASES.

Burmono v. Thakoor, 7
Fitzgerald v. Fitzgerald, 44
Ghose v. Ensuff, 16
Gill v. Barron, 33
Khine v. Shadden, 19
M'Dougall's Patent, in re, 17

M'Innis's Patent, in re, 23
Regina v. Murphy, 21
Renaud v. Guillet, 1
Stewart, in re, 25
Wallace v. M'Sweeny, 39
Webster v. Power, 9

THE PUBLIC GENERAL ACTS

OF THE UNITED KINGDOM OF

GREAT BRITAIN AND IRELAND:

ANNO REGNI

VICTORIÆ,

Britanniarum Reginæ,

TRICESIMO PRIMO.

At the Parliament begun and holden at *Westminster*, the First Day of *February*, *Anno Domini* 1866, in the Twenty-ninth Year of the Reign of our Sovereign Lady VICTORIA, by the Grace of God of the United Kingdom of *Great Britain* and *Ireland*, Queen, Defender of the Faith :
And from thence continued by several Prorogations to the Nineteenth Day of *November*, 1867 ; being the THIRD SESSION of the NINETEENTH PARLIAMENT of the United Kingdom of *Great Britain* and *Ireland*.



LONDON :

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MDCCCLXVIII.



31 VICTORIÆ, 1867.

CAP. I.

Consolidated Fund (£2,000,000).

ABSTRACT OF THE ENACTMENTS.

1. *There shall be applied for the Service of the Year ending 31st March 1868 the Sum of 2,000,000l. out of the Consolidated Fund.*
2. *Bank of England may advance 2,000,000l. on the Credit of this Act.*
3. *Interest on Advances.*

An Act to apply the Sum of Two million Pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first Day of March One thousand eight hundred and sixty-eight.

(7th December 1867.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal Subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the Supply which we have cheerfully granted to Your Majesty in this Session of Parliament, have resolved to grant unto Your Majesty the Sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. There shall and may be issued and applied, for or towards making good the Supply granted to Her Majesty for the Service of the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-eight, the Sum of Two million Pounds out of the Consolidated Fund of

the United Kingdom of Great Britain and Ireland, and the Commissioners of Her Majesty's Treasury for the Time being are hereby authorized and empowered to issue and apply the same accordingly.

2. The Governor and Company of the Bank of England may make Advances to Her Majesty, upon the Credit of the Sum granted by this Act out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, to an Amount not exceeding in the whole the Sum of Two million Pounds, and such Advances shall be made on the Application of the Commissioners of Her Majesty's Treasury, from Time to Time, in such Sums as may be required for the Public Service, and shall be placed to the Credit of the Account of Her Majesty's Exchequer at the Bank of England, and be available to satisfy the Orders for Credits granted or to be granted on the said Account, under the Provisions of the "Exchequer and Audit Departments Act, 1866," in respect of any Services voted by the Commons of the United Kingdom of Great Britain and Ireland in this present Session of Parliament.

3. The Advances made by the Bank of England from Time to Time under the Authority of

this Act shall bear Interest not exceeding the Rate of Threepence Halfpenny per Centum per Diem, and the Principal and Interest of all such Advances shall be paid out of the growing Pro-

duce of the Consolidated Fund at any Period not later than the next succeeding Quarter to that in which the said Advances shall have been made.

CAP. II.

Income Tax.

ABSTRACT OF THE ENACTMENTS.

1. *Additional Rates of Income Tax granted on Assessments made on the Amount of annual Profits.*
2. *Additional Rates of Duty to be charged on half-yearly and quarterly Assessments.*
3. *Relief to Persons whose Incomes are under 200*l.* a Year.*
4. *Provisions of former Acts to be applied to this Act.*

An Act to grant to Her Majesty additional Rates of Income Tax. (7th December 1867.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal Subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary Supplies to defray Your Majesty's Public Expenses, and making an Addition to the Public Revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several Rates and Duties herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. In addition to the Rates and Duties granted and now chargeable under the Act passed in the Thirtieth Year of Her Majesty's Reign, Chapter Twenty-three, for One Year commencing on the Sixth Day of April One thousand eight hundred and sixty-seven, for and in respect of all Property, Profits, and Gains mentioned or described as chargeable in the Act passed in the Sixteenth and Seventeenth Years of Her Majesty's Reign, Chapter Thirty-four, for granting to Her Majesty Duties on Profits arising from Property, Professions, Trades, and Offices, there shall be charged, collected, and paid, for and in respect of such Property, Profits, and Gains, either by Assessment or otherwise, the following additional Rates and Duties; that is to say, upon any

Assessment made on the annual Value or Amount of any Property, Profits, or Gains charged or chargeable under the said Act of the Thirtieth Year of Her Majesty's Reign, Chapter Twenty-three, (except Property, Profits, and Gains chargeable under Schedule (B.)) the additional Rate or Duty of One Penny for every Twenty Shillings of the annual Value or Amount of all such Property, Profits, and Gains respectively; and for and in respect of the Occupation of Lands, Tenements, Hereditaments, and Heritages chargeable under Schedule (B.), the additional Rate or Duty of One Halfpenny in England, and of Three Eighthths of a Penny in Scotland and Ireland respectively, for every Twenty Shillings of the annual Value thereof; and such additional Rates and Duties respectively shall be collected and paid with and over and above the Second Moiety of the Duties assessed or charged for the said Year.

2. Provided always, That where any Dividends, Interest, or other Profits or Gains becoming due or payable half-yearly are assessed or charged half-yearly with the Rate or Duty under the said Act of the Thirtieth Year of Her Majesty's Reign, Chapter Twenty-three, there shall be charged upon the first Assessment or Charge which shall be hereafter made on such Dividends, Interest, Profits, and Gains the additional Rate or Duty of Twopence for every Twenty Shillings of the half-yearly Amount thereof; and where any Profits or Gains becoming due or payable quarterly are assessed or charged quarterly with the Rate or Duty under the said Act, there shall be charged upon the first Two quarterly Assessments or Charges respectively which shall be

hereafter made on such last-mentioned Profits and Gains the additional Rate or Duty of Two-pence for every Twenty Shillings of the quarterly Amount of such last-mentioned Profits and Gains; and the said additional Rates and Duties charged in such half-yearly and quarterly Assessments respectively shall be collected and paid with and over and above the Rates and Duties assessed or charged therein respectively under the said Act.

3. Provided always, That every Person who shall claim and prove in the Manner prescribed by the Acts now in force relating to the Income Tax that his total annual Income from every Source, although amounting to One hundred Pounds or upwards, is less than Two hundred Pounds a Year, shall be entitled to be relieved from so much of the said additional Rates and Duties assessed upon or paid by him under this Act as an Assessment or Charge of the said Rates and Duties upon Sixty Pounds of his Income would amount unto, and such Relief

shall be given in the Manner directed by the said Acts.

4. The additional Rates and Duties by this Act granted shall be charged, raised, levied, and collected under the Regulations and Provisions of the said Act of Parliament herein-before mentioned, and of the several Acts therein referred to, and also of any Act or Acts subsequently passed explaining, amending, or continuing the said first-mentioned Act; and all Powers, Authorities, Rules, Regulations, Penalties, Clauses, Matters, and Things contained in or enacted by the said several Acts, and in force with respect to the Rates and Duties granted by the said first-mentioned Act, shall (so far as the same are or may be applicable consistently with the express Provisions of this Act) respectively be duly observed, applied, and put in execution, *mutatis mutandis*, for charging, levying, collecting, receiving, accounting for, and securing the said Rates and Duties hereby granted, and otherwise relating thereto.

CAP. III.

The Drainage and Improvement of Lands Supplemental Act (Ireland), 1867.

ABSTRACT OF THE ENACTMENTS.

1. *Confirmation of Provisional Order in Schedule.*
2. *Saving of Rights of Owners beyond the Jurisdiction of the Board established by this Act.*
3. *Short Title.*
Schedule.

An Act to confirm a Provisional Order under "The Drainage and Improvement of Lands (Ireland) Act, 1863," and the Acts amending the same.

(7th December 1867.)

WHEREAS the Commissioners of Public Works in Ireland have, in pursuance of "The Drainage and Improvement of Lands Act (Ireland), 1863," and the Acts amending the same, duly made the Provisional Order contained in the Schedule to this Act annexed, and it is by the first-mentioned Act provided that no such Order shall be of any Validity whatsoever until it should be confirmed by Parliament, and it is expedient that said Order shall be so confirmed:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assem-

bled, and by the Authority of the same, as follows:

1. The Provisional Order contained in the Schedule hereto annexed is hereby confirmed, and from and after the passing of this Act shall be deemed to be a Public General Act of Parliament, of the like Force and Effect as if the Provisions of the same had been enacted in the Body of this Act.

2. It is hereby declared, That as against any Person owning or interested in any Land or other Property situate beyond the Limits of the Jurisdiction of the Board established by the Act, nothing contained in the said Drainage and Improvement of Lands Act (Ireland), 1863, or in the said Provisional Order, or in this Act, shall be construed to render legal any Work executed or to be executed by such Board that would if said Acts had not been passed have

been illegal by reason of its injuriously affecting such Land or Property, and any Damages adjudged to be paid by the said Board to any Person as aforesaid shall be deemed to be Part of the Costs incurred by such Board in defending legal Proceedings instituted against them, and shall be defrayed in manner in which the said

Costs are authorized to be defrayed by "The Drainage and Improvement of Lands Act (Ireland), 1863."

3. This Act may be cited for all Purposes as "The Drainage and Improvement of Lands Supplemental Act (Ireland), 1867."

SCHEDULE to which this Act refers.

Drainage and Improvement of Lands Act (Ireland), 1863, 26th and 27th Vict. Cap. 88, 27th and 28th Vict. Cap. 72, 28th and 29th Vict. Cap. 52.

In the Matter of ELPHIN DRAINAGE DISTRICT, County of Roscommon.

WHEREAS certain Proprietors of and Persons interested in the Lands adjacent to the Owenure River and its Tributaries on or about the 16th Day of September 1864 presented their Petition to the Commissioners of Public Works in Ireland, under the Provisions of the Drainage and Improvement of Lands Act (Ireland), 1863, and the Acts since passed amending the same, accompanied by the proper Schedules, Maps, Plans, Sections, and Estimates, together with other Particulars and Information required by said Acts, showing, by Reference to said Maps, the Boundaries and Area of the proposed Drainage District, and stating the Exigencies rendering the Formation of such Drainage District necessary, and praying that the said Lands within the proposed District should be constituted a separate Drainage District under the Provisions of said Act:

And whereas the said Commissioners referred the same to Samuel Ushen Roberts, Esquire, Civil Engineer, an Inspector duly appointed under the said Act:

And whereas all Notices and Inquiries required by the said Act have been duly given and made, and said Inspector has duly reported to us the said Commissioners in Writing the Result of his Inquiries, and we the said Commissioners have duly considered the same, and no Objections to the Report of the said Inspector have been made to us, and all Preliminaries required by the said Act to precede the making of this Provisional Order have been performed and complied with:

And whereas the said Commissioners of Public Works in Ireland, upon Consideration of the Premises, are satisfied of the Propriety of constituting the proposed separate Drainage District, and that the Proprietors of Two Third Parts in Value of the Lands in the proposed

District are in favour thereof, and have, subsequently to the Date of the Report of the said Inspector, assented thereto in Writing:

Now, therefore, in pursuance of the Power given to us by the said Act, we, the Commissioners of Public Works in Ireland, do by this Provisional Order under our Common Seal constitute the Area in the said Petition and Report (and the Boundaries and Extent of which are set forth within Yellow Lines on certain Maps to which we have caused our Common Seal to be attached, and which Maps are deposited in the Office of Public Works in Ireland,) a separate Drainage District, by the Name of "The Elphin Drainage District," and we do declare that the Lands to be purchased for the proposed Works in such District (subject to such Alterations and Deviations therefrom as we the said Commissioners may hereafter sanction) are the Lands in that Behalf shown and set forth in the said Maps, and the Schedule thereto annexed marked with the Letter B., and also sealed with our Common Seal.

And we the said Commissioners of Public Works do by this our Order order and direct that the Time for Completion of the necessary Works in the said District shall be limited to the 1st Day of September 1870.

And we do further, by this our Provisional Order, make the following Regulations with respect to the Drainage Board:—

The Drainage Board for the said District shall consist of Eleven Members.

That the following Persons shall be the Members of the First Drainage Board; viz.—

The Right Honourable Lord Crofton of Moat Park, County of Roscommon.

John Irwin of Raheen, Esquire, County of Roscommon.

William Lloyd of Rockville, Esquire, County of Leitrim.

Henry Packenham Mahon of Strokestown House, Esquire, County of Roscommon.

Joseph A. Holmes of Roscommon, Esquire, County of Roscommon.

George Walpole of Castlenode, Esquire, County of Roscommon.

William Garnett of Roscommon, Esquire, County of Roscommon.

Christopher French of Cloonyguin, Esquire, County of Roscommon.

John Hague of Cloonahoe, Esquire, County of Roscommon.

Horatio N. Lawder of Aughamore, Esquire, County of Leitrim.

John Ross Mahon of Strokestown, Esquire, County of Roscommon.

That the First Meeting of the said Board shall be summoned by Notice under the Hands of any Two or more of the said Board, published in the Dublin Gazette and some Newspaper generally circulated in the said District at least Fourteen Days next before the Day of Meeting.

That the Qualification of any subsequent Member of the said Board shall be that he shall be the Proprietor (as defined by the said Act and the Acts referred to therein or incorporated therewith) of not less than 20 Acres of Land situate within the Area of the said District, or the Land Agent for the Time being of a Person being a Proprietor as aforesaid of not less than

100 Acres of Land situate within the Area of said District, and acting as Receiver of the Rents and Profits of such Lands.

That the Members of the First Board shall vacate their Offices on the First Thursday in September in the Year following the Date of this Provisional Order.

That the Electors for Members of the Drainage Board shall be the Persons in that Behalf mentioned in the said Act: Provided always, that no such Elector shall be entitled to vote or exercise any Privilege as such unless the Land of which he is the Proprietor, or some Portion thereof, shall be rateable on account of the Works in the District, and he shall have previously paid all Rates or Arrears of Rates which may be payable by him in respect of any Drainage Rate of the aforesaid District.

In witness whereof, we the said Commissioners of Public Works in Ireland have hereunto caused our Common Seal to be affixed, this 5th Day of August 1867.

E. HORNSBY, (L.S.)
Secretary.

Office of Public Works,
Dublin.

CAP. IV.

Sales of Reversions.

ABSTRACT OF THE ENACTMENTS.

1. *No Purchase, made bonâ fide, of Reversionary Interests to be set aside merely on the Ground of Undervalue.*
2. *Interpretation of "Purchase."*
3. *Commencement of Act.*

An Act to amend the Law relating to Sales of Reversions.

(7th December 1867.)

WHEREAS it is expedient to amend the Law, as administered in Courts of Equity, with respect to Sales of Reversions:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. No Purchase, made bonâ fide and without Fraud or unfair Dealing, of any Reversionary

Interest in Real or Personal Estate shall hereafter be opened or set aside merely on the Ground of Undervalue.

2. The Word "Purchase" in this Act shall include every Kind of Contract, Conveyance, or Assignment under or by which any beneficial Interest in any Kind of Property may be acquired.

3. This Act shall come into operation on the First Day of January One thousand eight hundred and sixty-eight, and shall not apply to any Purchase concerning which any Suit shall be then depending.

CAP. V.

The Metropolitan Streets Act Amendment Act, 1867.

ABSTRACT OF THE ENACTMENTS.

1. *Amendment of Section 6. of 30 & 31 Vict. c. 134.*
2. *Regulations as to Lamps to be subject to Approval of Secretary of State.*
3. *Short Title.*

An Act for the Amendment of "The Metropolitan Streets Act, 1867."
(7th December 1867.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. The Sixth Section of "The Metropolitan Streets Act, 1867," prohibiting the Deposit of Goods in the Streets, shall not apply to Costermongers, Street Hawkers, or itinerant Traders, so long as they carry on their Business in accordance with the Regulations from Time to Time made by the Commissioner of Police, with the

Approval of the Secretary of State; and so much of the said Sixth Section as refers to the Surface of any Space that intervenes in any Street between the Footway and the Carriageway is hereby repealed.

2. No Regulation shall be made in respect of the Carriage of Lamps by Hackney Carriages in pursuance of the Seventeenth Section of "The Metropolitan Streets Act, 1867," except with the Approval of One of Her Majesty's Principal Secretaries of State.

3. This Act may be cited for all Purposes as "The Metropolitan Streets Act Amendment Act, 1867," and shall be construed as one with the said Metropolitan Streets Act, 1867.

CAP. VI.

Totnes, &c. Writs.

ABSTRACT OF THE ENACTMENTS.

1. *Prohibition of Issue of Writs.*
2. *Prohibition of Registration of Voters.*

An Act to forbid the Issue of Writs for Members to serve in this present Parliament for the Boroughs of Totnes, Reigate, Great Yarmouth, and Lancaster.
(7th December 1867.)

WHEREAS it is expedient to forbid the Issue of Writs for Members to serve in this present Parliament for the Boroughs of Totnes, Reigate, Great Yarmouth, and Lancaster :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Com-

mons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. From and after the passing of this Act the Speaker shall not sign any Warrant for the Issue of a Writ, and no Writ shall issue, for the Election of any Member or Members to serve in Parliament for the Boroughs of Totnes, Reigate, Great Yarmouth, and Lancaster, or any of such Boroughs.

2. After the passing of this Act no Registration of Voters for Members of Parliament shall take place in any of the said Boroughs.

CAP. VII.

Habeas Corpus Suspension (Ireland) Act Continuance.

ABSTRACT OF THE ENACTMENTS.

1. *Powers, &c. of 29 & 30 Vict. c. 1. further continued.*
2. *All Prisoners under this Act to be treated as untried Prisoners.*

An Act to further continue the Act of the Twenty-ninth Year of the Reign of Her present Majesty, Chapter One, intituled "An Act to empower the Lord Lieutenant or other Chief Governor or Governors of Ireland to apprehend, and detain for a limited Time, such Persons as he or they shall suspect of conspiring against Her Majesty's Person and Government."
(28th February 1868.)

WHEREAS an Act was passed in the Session of Parliament holden in the Twenty-ninth and Thirtieth Years of the Reign of Her present Majesty, intituled "An Act to empower the Lord Lieutenant or other Chief Governor or Governors of Ireland to apprehend, and detain for a limited Time, such Persons as he or they shall suspect of conspiring against Her Majesty's Person and Government:"

And whereas by an Act passed in the last Session of Parliament, Chapter Twenty-five, intituled "An Act to further continue the Act of the Twenty-ninth Year of the Reign of Her present Majesty, Chapter One, intituled 'An Act to empower the Lord Lieutenant or other Chief Governor or Governors of Ireland to apprehend, and detain for a limited Time, such Persons as he or they shall suspect of conspiring against Her Majesty's Person and Government,'" the Powers and Provisions of the said first-recited Act were continued until the First Day of March One thousand eight hundred and sixty-eight, and it is expedient to continue the same for a further limited Period :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. The first-recited Act, and the several Powers and Provisions therein contained, shall continue in force until the Twenty-fifth Day of March One thousand eight hundred and sixty-nine, and the said Act shall be construed as if the Words "until the Twenty-fifth Day of March One thousand eight hundred and sixty-nine" were throughout the said Act substituted for the Words "until the First Day of September One thousand eight hundred and sixty-six:" Provided always, that if Parliament shall not have sat for the Despatch of Business for Twenty-one Days during the said Year One thousand eight hundred and sixty-nine previously to the said Twenty-fifth Day of March, the said Act and the several Powers and Provisions therein contained shall continue in force until Parliament shall have sat for the Despatch of Business for Twenty-one Days after the said Twenty-fifth Day of March; and the said Act shall be construed as if the Words "until Parliament shall have sat for the Despatch of Business for Twenty-one Days after the Twenty-fifth Day of March One thousand eight hundred and sixty-nine" were throughout the said Act substituted for the Words "until the First Day of September One thousand eight hundred and sixty-six."

2. All Prisoners at present in Confinement under the Warrant of the Lord Lieutenant of Ireland by virtue of the Powers of the first-recited Act, or who shall be hereafter arrested and committed to Prison in pursuance of same or of this Act, shall while in such Confinement be treated as untried Prisoners.

CAP. VIII.

The London Museum Site Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Power to sell Lands in Schedule for Purposes of London Museum.*
2. *Protection for Interests omitted by Mistake to be purchased.*
3. *Power to transfer Lands, &c. to Department of Science and Art.*
4. *Short Title.*
Schedule.

An Act to provide for the Acquisition
of a Site for a Museum in the East of
London. (28th February 1868.)

WHEREAS the Pieces of Land described in the Schedule to this Act form Part of a Charity Estate situate in the Parish of Saint Matthew, Bethnal Green, in the County of Middlesex, and known as the Poor's Lands of that Parish, and the same are eligible as a Site for the Museum proposed to be established by the Department of Science and Art in the East of London, and it is expedient that they be sold for that Purpose; but that Object cannot be effected without the Authority of Parliament:

May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. For the Purposes of the said Museum, and Purposes connected therewith, the Persons for the Time being acting as Trustees of the said Charity Estate, or a Majority of them, being not less than Three Fourths of the Number of such acting Trustees, may sell, and the Persons for the Time being acting as Trustees for the Establishment and Maintenance of the said Museum may purchase, all or any Part of the said Pieces of Land, with the Rights, Easements, and Appurtenances actually or by Reputation belonging thereto, at such Price and on such Terms as they agree on, with the Approbation of the Charity Commissioners for England and Wales.

2. On the Payment of the Purchase Money, and the Execution and Delivery to the Purchasers of an Assurance of the Lands sold, the Purchasers shall stand seised thereof, absolutely discharged (save as in such Assurance may be expressed) from all prior Trusts, Estates, and Claims therein or thereto; but the Provisions of The Lands Clauses Consolidation Act, 1845, with respect to Interests in Lands which have by Mistake been omitted to be purchased, shall apply and take effect as if the Lands had been acquired under the Provisions of that Act, or as near thereto as Circumstances admit; and those Provisions are hereby incorporated with this Act; and for the Purposes of this Act the Term "the Promoters of the Undertaking" used in those Provisions shall mean the Purchasers under this Act.

3. The Purchasers under this Act may hold the Lands purchased by them, subject and according to the Terms and Conditions on which they purchase the same, and to the Provisions of this Act, or may, on the Request of the Department of Science and Art, grant or dispose of the same to that Department, or as that Department directs, and the same when so granted or disposed of shall be held subject and according to the Terms and Conditions on which the same are purchased under this Act, and to the Provisions of this Act, and shall be used and applied accordingly, and not otherwise; and no Dwelling House shall be erected on any Part of the Land so purchased, except Apartments in connexion with the Museum itself, to be occupied by the Officers thereof.

4. This Act may be cited as The London Museum Site Act, 1868.

SCHEDULE.

Lands authorized to be purchased.

All those Two Pieces of Land situate in the Parish of Saint Matthew, Bethnal Green, in the County of Middlesex, and lying on the East Side

of the Cambridge Road there, and comprising together the Land formerly known as The Green, as the same are delineated on the Plan

drawn in the Margin of a Memorandum of Agreement dated the Twenty-second Day of November One thousand eight hundred and sixty-seven, and made or expressed to be made between William Howard, Esquire, Edward Eagles, Cordwainer, Richard Henry Ashford, Pawnbroker, Robert Brookes, Gentleman, Joseph Hamilton Cox, Gentleman, William Engleburtt, Silk Manufacturer, Nathaniel Hardingham, Gentleman, William Robert Frederick Lane, Surgeon, John Millar, Surgeon, William Mundy,

Builder, James Smart, Surgeon, and George Samuel Webb, Gentleman, Inhabitants of the Parish of Saint Matthew, Bethnal Green, of the one Part, and the Reverend Septimus Cox Holmes Hansard, Rector of the same Parish, Antonio Brady of Stratford in the County of Essex, Esquire, and John Moxon Clabon of 21, Great George Street, Westminster, Esquire, of the other Part, and are thereon coloured Green, which said Pieces of Land are now in the several Occupations of Symonds and Gardiner.

CAP. IX.

Public Departments (Extra Receipts).

ABSTRACT OF THE ENACTMENT.

1. *Certain Fees or casual Receipts to be paid over to the Exchequer to Credit of Consolidated Fund.*

An Act to regulate the Disposal of extra Receipts of Public Departments.
(30th March 1868.)

WHEREAS under the Provisions of certain Acts of Parliament, Orders in Council, or alleged ancient Usage, certain Fees or other casual Receipts have been or may be received by Persons holding Public Offices under the Crown, and are applied in aid or diminution of Charges borne upon the annual Votes of Parliament or upon the Consolidated Fund; and it is expedient that in many Cases such Fees or casual Receipts should cease to be so applied, and that the Purposes to which they are applicable should be otherwise provided for:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent

of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. Notwithstanding any Act of Parliament now in force, or Order in Council, or ancient Usage, it shall be lawful for the Commissioners of Her Majesty's Treasury to direct that any such Fees or other casual Receipts, or any Part of them, shall be paid over to Her Majesty's Exchequer, to the Credit of the Consolidated Fund, in such Manner as such Commissioners shall from Time to Time determine, instead of being applied to the Purposes aforesaid, in any Case where Provision shall have been made by Parliament or otherwise to meet the Charges to which any such Fees or casual Receipts would have been applicable if this Act had not passed.

CAP. X.

Consolidated Fund (362,398l. 19s. 9d.)

ABSTRACT OF THE ENACTMENTS.

1. *There shall be applied for the Service of the Years ending 31st March 1867 and 31st March 1868 the Sum of 362,398l. 19s. 9d. out of the Consolidated Fund.*
 2. *Bank of England may advance 362,398l. 19s. 9d. on the Credit of this Act.*
 3. *Interest on Advances.*
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An Act to apply the Sum of Three hundred and sixty-two thousand three hundred and ninety-eight Pounds Nineteen Shillings and Ninepence out of the Consolidated Fund to the Service of the Years ending the Thirty-first Day of March One thousand eight hundred and sixty-seven and the Thirty-first Day of March One thousand eight hundred and sixty-eight. (30th March 1868.)

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal Subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the Supply which we have cheerfully granted to Your Majesty in this Session of Parliament, have resolved to grant unto Your Majesty the Sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. There shall and may be issued and applied, for or towards making good the Supply granted to Her Majesty for the Service of the Years ending on the Thirty-first Day of March One thousand eight hundred and sixty-seven and the Thirty-first Day of March One thousand eight hundred and sixty-eight, the Sum of Three hundred and sixty-two thousand three hundred and ninety-eight Pounds Nineteen Shillings and Ninepence out of the Consolidated Fund of the United

Kingdom of Great Britain and Ireland, and the Commissioners of Her Majesty's Treasury for the Time being are hereby authorized and empowered to issue and apply the same accordingly.

2. The Governor and Company of the Bank of England may make Advances to Her Majesty, upon the Credit of the Sum granted by this Act out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, to an Amount not exceeding in the whole the Sum of Three hundred and sixty-two thousand three hundred and ninety-eight Pounds Nineteen Shillings and Ninepence, and such Advances shall be made on the Application of the Commissioners of Her Majesty's Treasury, from Time to Time, in such Sums as may be required for the Public Service, and shall be placed to the Credit of the Account of Her Majesty's Exchequer at the Bank of England, and be available to satisfy the Orders for Credits granted or to be granted on the said Account, under the Provisions of the "Exchequer and Audit Departments Act, 1866," in respect of any Services voted by the Commons of the United Kingdom of Great Britain and Ireland in this present Session of Parliament.

3. The Advances made by the Bank of England from Time to Time under the Authority of this Act shall bear Interest not exceeding the Rate of Threepence Halfpenny per Centum per Diem, and the Principal and Interest of all such Advances shall be paid out of the growing Produce of the Consolidated Fund at any Period not later than the next succeeding Quarter to that in which the said Advances shall have been made.

CAP. XI.

Court of Appeal, Chancery (Despatch of Business) Amendment.

ABSTRACT OF THE ENACTMENTS.

1. No Decree, &c. upon Motion to be heard before Judges sitting separately.
2. This and recited Act to be as One.

An Act to amend an Act to make further Provision for the Despatch of Business in the Court of Appeal in Chancery. (30th March 1868.)

WHEREAS it is expedient to amend an Act passed in the Thirtieth and Thirty-first Victoria, Chapter Sixty-four :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. In addition to the Proviso in the said recited Act that no Decree made on the Hearing

of a Cause or for further Consideration shall be reheard before the Judges appointed under the Act of the Fourteenth and Fifteenth Victoria, Chapter Eighty-three, when sitting separately, no Decree or Decretal Order made upon Motion shall after the passing of this Act be reheard before the said Judges when sitting separately : Provided that the Lord Chancellor shall and may while sitting alone have and exercise the like Jurisdiction, Powers, and Authorities as might have been exercised by the Lord Chancellor if this Act had not been passed.

2. This Act and the said recited Act shall be read together as One Act.

CAP. XII.

The Fairs (Ireland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Interpretation of Terms.*
3. *Power to Lord Lieutenant in Council to alter Days or Places for holding Fairs.*
4. *When Order made, Fair to be held only on the Day or at the Place named in Order.*

An Act to facilitate the Alteration of Days upon which, and of Places at which, Fairs are now held in Ireland. (30th March 1868.)

WHEREAS it is expedient to make Provision to facilitate the Alteration of the Days upon which, and of the Places at which, Fairs are now held in Ireland :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited as "The Fairs (Ireland) Act, 1868."

2. In this Act—

The Term "Lord Lieutenant" means Lord Lieutenant of Ireland and the Lords Justices or other Chief Governors or Governor of Ireland for the Time being :

The Term "Owner" means any Person or Persons, or Body of Commissioners, or Body Corporate entitled to hold any Fair, whether in respect of the Ownership of any Lands or Tene-

ments, or under any Charter, Letters Patent, or Act of Parliament, or otherwise howsoever.

3. In case it shall appear to the Lord Lieutenant in Council, upon Representation duly made to him by the Owner of any Fair in Ireland, that it would be for the Convenience and Advantage of the Public that such Fair should be held on some Day or Days other than that or those on which such Fair is used to be held, or at some other suitable Place (not more than One Half Mile distant from the Town, Village, or other Place where such Fair is used to be held,) provided for that Purpose by the said Owner, it shall be lawful for the Lord Lieutenant, by and with the Advice of Her Majesty's Privy Council in Ireland, to order that such Fair shall be held on such other Day or Days as he shall think fit, or at such other Place as aforesaid : Provided always, that Notice of such Representation, and of the Time when it shall please the Lord Lieutenant to order the same to be taken into consideration by the Privy Council, shall be published once in the *Dublin Gazette*, and in Three successive Weeks in some One and the same Newspaper of the County, County of a City, or County of a Town in which such Fair

is held, or if there be no Newspaper published therein, then in the Newspaper of some County adjoining or near thereto, before such Representation is so considered.

4. When and so soon as any such Order as aforesaid shall have been made by the Lord Lieutenant in Council, Notice of the making of the same shall be published in the *Dublin Gazette*, and in some One Newspaper of the County, County of a City, or County of a Town in which such Fair is usually held, or if there be no Newspaper published therein, then in the News-

paper of some County adjoining or near thereto; and thereupon such Fair shall only be held on the Day or Days or at the Place mentioned in such Order; and it shall be lawful for the Owner of such Fair to take all such Toll or Tolls, and to do all such Act or Acts, and to enjoy all and the same Rights, Powers, and Privileges in respect thereof, and to enforce the same by all and the like Remedies, as if the same were held on the Day or Days upon which, or at the Place at which, it was used to be held previous to the making of such Order.

CAP. XIII.

*Consolidated Fund (6,000,000*l.*)*

ABSTRACT OF THE ENACTMENTS.

1. *There shall be applied for the Service of the Year ending 31st March 1869 the Sum of 6,000,000*l.* out of the Consolidated Fund.*
2. *Bank of England may advance 6,000,000*l.* on the Credit of this Act.*
3. *Interest on Advances.*

An Act to apply the Sum of Six million Pounds out of the Consolidated Fund to the Service of the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine. (3d April 1868.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal Subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the Supply which we have cheerfully granted to Your Majesty in this Session of Parliament, have resolved to grant unto Your Majesty the Sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. There shall and may be issued and applied, for or towards making good the Supply granted to Her Majesty for the Service of the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine, the Sum of Six million Pounds out of the Consolidated Fund

of the United Kingdom of Great Britain and Ireland, and the Commissioners of Her Majesty's Treasury for the Time being are hereby authorized and empowered to issue and apply the same accordingly.

2. The Governor and Company of the Bank of England may make Advances to Her Majesty, upon the Credit of the Sum granted by this Act out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, to an Amount not exceeding in the whole the Sum of Six million Pounds, and such Advances shall be made on the Application of the Commissioners of Her Majesty's Treasury from Time to Time, in such Sums as may be required for the Public Service, and shall be placed to the Credit of the Account of Her Majesty's Exchequer at the Bank of England, and be available to satisfy the Orders for Credits granted or to be granted on the said Account, under the Provisions of the "Exchequer and Audit Departments Act, 1866," in respect of any Services voted by the Commons of the United Kingdom of Great Britain and Ireland in this present Session of Parliament.

3. The Advances made by the Bank of England, from Time to Time, under the Authority

of this Act, shall bear Interest not exceeding the Rate of Threescore Halfpenny per Centum per Diem, and the Principal and Interest of all such Advances shall be paid out of the growing

Produce of the Consolidated Fund at any Period not later than the next succeeding Quarter to that in which the said Advances shall have been made.

CAP. XIV.

Mutiny.

ABSTRACT OF THE ENACTMENTS.

Number of Men to consist of 138,691, including those employed at Depôts of Regiments serving in India, but exclusive of those actually serving in India.

1. *Articles of War made by Her Majesty to be judiciously taken notice of, and Copies printed by the Queen's Printer to be transmitted to Judges, &c.*
2. *Persons subject to this Act.*
3. *Provisions of this Act to extend to Jersey, Guernsey, &c.*
4. *Colonial and Foreign Troops in Her Majesty's Pay to be subject to Provisions of this Act.*
5. *Provision as to the Militia or Yeomanry or Volunteer Corps or Reserve Forces.*
6. *Power to constitute Courts-martial.*
7. *Place where Offenders may be tried.*
8. *Powers of General Courts-martial.*
9. *Powers of District or Garrison Courts-martial.*
10. *Powers of Regimental or Detachment Courts-martial.*
11. *Courts-martial on Line of March or in Troop Ships, &c.*
12. *Powers of Detachment General Courts-martial.*
13. *As to swearing and summoning of Witnesses. Oath to be administered to Shorthand Writer.*
14. *No Second Trial for the same Offence, but Revision may be allowed.*
15. *Crimes punishable with Death.*
16. *Judgment of Death may be commuted for Penal Servitude or other Punishments.*
17. *Embezzlement, &c. of Stores punishable by Penal Servitude, or by Fine, Imprisonment, &c.*
18. *As to Execution of Sentences of Penal Servitude in the United Kingdom.*
19. *As to Execution of Sentences of Penal Servitude in the Colonies, India, or elsewhere out of Her Majesty's Dominions.*
20. *A Sentence of Penal Servitude may be commuted for Imprisonment, &c.*
21. *Of Forfeitures, when combined with Penal Servitude.*
22. *Courts-martial may not sentence to Corporal Punishment in Time of Peace.*
23. *Power to inflict Corporal Punishment and Imprisonment.*
24. *Power to commute Corporal Punishment for Imprisonment, &c.*
25. *Power to commute a Sentence of Cashiering.*
26. *Marking Deserters, or Soldiers discharged with Ignominy.*
27. *Power of Imprisonment by different Kinds of Courts-martial.*
28. *As to Imprisonment of Offenders already under Sentence.*
29. *Regulations as to Military Prisons.*
30. *As to the Custody of Military Offenders under Sentence of Court-martial and in other Cases.*
31. *As to the Removal or Discharge of Prisoners in certain Cases.*
32. *Provision for Subsistence of Soldiers when imprisoned in Common Gaols.*
33. *Expiration of Imprisonment of Soldiers in Common Gaols.*
34. *Apprehension of Deserters in the United Kingdom. In Her Majesty's Foreign Dominions. Transfer of Deserters.*
35. *As to the temporary Custody of Deserters in Gaols.*
36. *Desertion of Recruits prior to joining their Regiments or Corps.*
37. *Fraudulent Confession of Desertion.*
38. *Furlough in case of Sickness.*
39. *No Person acquitted or convicted by the Civil Magistrate or by a Jury to be tried by a Court-martial for the same Offence.*

40. *Soldiers liable to be taken out of Her Majesty's Service only for Felony, Misdemeanor, or for Debts amounting to 30l. and upwards. Soldiers not liable to be taken out of Her Majesty's Service for Debts under 30l., or for not maintaining their Families, or for Breach of Contract.*
41. *Officers not to be Sheriffs or Mayors, &c.*
42. *Questions to be put to Recruits on enlisting.*
43. *Recruits, when deemed to be enlisted.*
44. *When Recruits to be taken before a Justice.*
45. *Dissent and Relief from Enlistment.*
46. *Enlistment for particular Branch or Arm of or for General Service. Attesting of Recruits.*
47. *Recruits, until they have been attested or received Pay, not triable by Court-martial, but in certain Cases punishable as Rogues and Vagabonds.*
48. *Attested Recruits triable in some Cases either before Two Justices or before a Court-martial.*
49. *Recruits absconding.*
50. *As to Militiamen enlisting into Regular Forces.*
51. *Punishment of Persons offending against Laws relating to Enlistment.*
52. *Enlistment and Re-enlistment, and Transfer to another Corps abroad.*
53. *Soldiers willing may be transferred to succeeding Corps.*
54. *Soldiers may be transferred from one Service to another.*
55. *Re-engagement of Soldiers for a further Term. Boon Service to be reckoned.*
56. *Enlistment of Negroes.*
57. *Apprentice enlisting to be liable to serve after the Expiration of his Apprenticeship. Claims of Masters to Apprentices.*
58. *Punishment of Apprentices enlisting.*
59. *Removal of Doubts as to Attestation of Soldiers.*
60. *Authorized Deductions only to be made from the Pay of the Army.*
61. *Suspending Operation of certain Acts herein recited.*
62. *Certain Requirements of 6 Anne, c. 14. (I.), as to billeting in Ireland not now necessary.*
63. *How and where Troops may be billeted.*
64. *Billeting the Guards in and near Westminster.*
65. *Military Officers not to act as Justices in billeting.*
66. *Allowance to Innkeepers.*
67. *Interpretation of Act. Powers and Regulations as to Billets. Exemptions from Billets.*
68. *Supply of Carriages.*
69. *Rates to be paid for Carriages, and Regulations relating thereto.*
70. *As to Supply of Carriages in Cases of Emergency, &c.*
71. *Justices empowered to reimburse Constables for Sums expended by them.*
72. *Routes in Ireland.*
73. *Tolls.*
74. *Ferries.*
75. *Marching Money on Discharge.*
76. *Ordinary Course of Criminal Justice not to be interfered with. Punishment of Officers obstructing Civil Justice.*
77. *Penalty for Disobedience by Agents.*
78. *Penalty on trafficking in Commissions.*
79. *Penalty for procuring false Musters.*
80. *Penalty on unlawful recruiting.*
81. *Penalty for inducing Soldiers to desert.*
82. *Penalty for forcible Entry in pursuit of Deserters without Warrant.*
83. *Penalties on aiding Escape or Attempt to escape of Prisoners, and on Breach of Prison Regulations. Certain Provisions of Acts for regulating Gaols to apply to Military Prisons.*
84. *Penalty on Keepers of Prisons for refusing to confine, &c. Military Offenders.*
85. *Penalty on purchasing Soldiers' Necessaries, Stores, &c.*
86. *Penalties on Civil Subjects offending against the Laws relating to Billets; on Toll Collectors demanding Toll from Officers, Soldiers, or for Carriages; and on Persons personating Soldiers, &c.*
87. *Penalties on the Military offending against the Laws relating to Billets.*
88. *Penalty on killing Game without Leave.*
89. *Form of Actions at Law.*
90. *Recovery of Penalties.*
91. *Appropriation of Penalties.*
92. *Mode of recording a Soldier's Settlement.*

93. *Licences of Canteens.*
94. *Attestation of Accounts.*
95. *Commissaries, &c. to attest their Accounts.*
96. *Administration of Oaths. Perjury.*
97. *Offences against former Mutiny Acts and Articles of War.*
98. *Officers and Soldiers to conform to 26 & 27 Vict. c. 57., &c.*
99. *Where Troops are serving beyond the Jurisdiction of the Courts of Requests, &c., Actions of Debt not exceeding 400 Rupees to be cognizable by a Military Court. Composition and Constitution of the Court prescribed. President, &c. of Court to take the following Oath. Powers of such Court defined.*
100. *Provisions relating to Courts-martial on Officers and Soldiers of Her Majesty's Indian Forces.*
101. *As to Trial of Officers and Soldiers serving in India.*
102. *Duration of this Act.*
103. *Repealing Section.*
Schedules.

An Act for punishing Mutiny and
Desertion, and for the better Pay-
ment of the Army and their Quarters.
(3d April 1868.)

WHEREAS the raising or keeping a Standing Army within the United Kingdom of Great Britain and Ireland in Time of Peace, unless it be with the Consent of Parliament, is against Law: And whereas it is adjudged necessary by Her Majesty and this present Parliament that a Body of Forces should be continued for the Safety of the United Kingdom, and the Defence of the Possessions of Her Majesty's Crown, and that the whole Number of such Forces should consist of One hundred and thirty-eight thousand six hundred and ninety-one Men, including Nine thousand eight hundred and eighty all Ranks, to be employed with the Dépôts in the United Kingdom of Great Britain and Ireland of Regiments serving in Her Majesty's Indian Possessions, but exclusive of the Numbers actually serving within Her Majesty's Indian Possessions: And whereas no Man can be forejudged of Life or Limb, or subjected in Time of Peace to any Kind of Punishment within this Realm by Martial Law, or in any other Manner than by Judgment of his Peers, and according to the known and established Laws of this Realm; yet nevertheless it being requisite, for the retaining all the before-mentioned Forces in their Duty, that an exact Discipline be observed, and that Soldiers who shall mutiny or stir up Sedition, or shall desert Her Majesty's Service, or be guilty of Crimes and Offences to the Prejudice of good Order and Military Discipline, be brought to a more exemplary and speedy Punishment than the usual Forms of the Law will allow: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. It shall be lawful for Her Majesty to make Articles of War for the better Government of Her Majesty's Army, which Articles shall be judicially taken notice of by all Judges and in all Courts whatsoever; and Copies of the same, printed by the Queen's Printer, shall, as soon as may be after the same shall have been made and established by Her Majesty, be transmitted by Her Majesty's Secretary of State for the War Department to the Judges of Her Majesty's Superior Courts at Westminster, Dublin, and Edinburgh respectively, and also to the Governors of Her Majesty's Dominions abroad: Provided that no Person within the United Kingdom of Great Britain and Ireland, or within the British Isles, shall by such Articles of War be subject to suffer any Punishment extending to Life or Limb, or to be kept in Penal Servitude, except for Crimes which are by this Act expressly made liable to such Punishments as aforesaid, or shall be subject, with reference to any Crimes made punishable by this Act, to be punished in any Manner which shall not accord with the Provisions of this Act: Provided also, that nothing in this Act contained shall in any Manner prejudice or affect any Articles of War or other Matters made, enacted, or in force, or which may hereafter be made, enacted, or in force, under the Authority of the Government of India, respecting Officers or Soldiers or Followers in Her Majesty's Indian Army, being Natives of India; and on the Trial of all Offences committed by any such Native Officer or Soldier or Follower, Reference shall be had to the Articles of War framed by the Government of India for such Native Officers, Soldiers, or Followers, and to the established Usages of the Service.

2. All the Provisions of this Act shall apply to all Persons who are or shall be commissioned or in Pay as an Officer, or who are or shall be listed or in Pay as a Non-commissioned Officer or Soldier, and to all Warrant Officers, and to all Persons employed on the Recruiting Service

receiving Pay, and all Pensioners receiving Allowances in respect of such Service, and to Persons who are or shall be hired to be employed in the Royal Artillery, Royal Engineers, and to Master Gunners, and to Conductors of Stores, and to the Corps of Royal Military Surveyors and Draftsmen, and to all Officers and Persons who are or shall be serving on the Commissariat Staff, or Soldiers in the Commissariat Staff Corps, and to Officers and Soldiers serving in the Military Store Department or in the Military Store Staff Corps, and to Persons in the War Department, who are or shall be serving with any Part of Her Majesty's Army at home or abroad, under the Command of any Commissioned Officer, and (subject to and in accordance with the Provisions of an Act passed in the Sixth and Seventh Years of the Reign of Her present Majesty, Chapter Ninety-five,) to any Out-pensioners of the Royal Hospital, Chelsea, who may be called out on Duty in aid of the Civil Power, or for Muster or Inspection, or who having volunteered their Services for that Purpose shall be kept on Duty in any Fort, Town, or Garrison, and to all Military Store Officers and other Civil Officers who are or shall be employed by or act under the Secretary of State for War at any of Her Majesty's Establishments in the Islands of Jersey, Guernsey, Alderney, Sark, and Man, and the Islands thereto belonging, or at Foreign Stations; and all the Provisions of this Act shall apply to all Persons belonging to Her Majesty's Indian Forces who are or shall be commissioned or in Pay as Officers, or who shall be listed or in Pay as Non-commissioned Officers or Soldiers, or who are or shall be serving or hired to be employed in the Artillery or any of the Trains of Artillery, or as Master Gunners or Gunners, or as Conductors of Stores, or who are or shall be serving in the Department of Engineers, or in the Corps of Sappers and Miners, or Pioneers, or as Military Surveyors or Draftsmen, or in the Ordnance or Public Works or Commissariat Departments, and to all Storekeepers and other Civil Officers employed under the Ordnance, and to all Veterinary Surgeons, Medical Storekeepers, Apothecaries, Hospital Stewards, and others serving in the Medical Department of the said Forces, and to all Licensed Suttlers, and all Followers in or of any of the said Forces; provided that nothing in this Act contained shall extend to affect any Security which has been or shall be given by any Military Store Officer, Barrack Master, or other Officer, or their Sureties, for the due Performance of their respective Offices, but that all such Securities shall be and remain in full Force and Effect.

3. This Act shall extend to the Islands of Jersey, Guernsey, Alderney, Sark, and Man, and the Islands thereto belonging, as to the Pro-

visions herein contained for enlisting of Recruits whether Minors or of full Age, and swearing and attesting such Recruits, and for mustering and paying, and as to the Provisions for the Trial and Punishment of Officers and Soldiers who shall be charged with Mutiny and Desertion, or any other of the Offences which are by this Act declared to be punishable by the Sentence of a Court-martial, and also as to the Provisions which relate to the Punishment of Persons who shall conceal Deserters, or shall knowingly buy, exchange, or otherwise receive any Arms, Medals for good Conduct or for distinguished or other Service, Clothes, Military Furniture, or Regimental Necessaries from any Soldier or Deserter, or who shall cause the Colour of any such Clothes to be changed, or who shall aid in the Escape of a Prisoner from a Military Prison, or who shall introduce forbidden Articles into such Prison, or shall carry out any such Articles, or who shall assault any Officer of such Prison, and also as to the Provisions for exempting Soldiers from being taken out of Her Majesty's Service for not supporting or for leaving chargeable to any Parish any Wife or Child or Children, or on account of any Breach of Contract to serve or work for any Employer, or on account of any Debts under Thirty Pounds in the said Islands.

4. All Officers and Soldiers of any Troops mustered and in Pay, which shall be raised and serving in any of Her Majesty's Dominions abroad, or in Places in possession of or occupied by Her Majesty's Subjects under the Command of any Officer having any Commission immediately from Her Majesty, shall be subject to the Provisions of this Act and of Her Majesty's Articles of War, in like Manner as Her Majesty's other Forces are; and if such Officers and Soldiers, having been made Prisoners, be sent into Great Britain or Ireland although not allowed to serve therein, all the Provisions of this Act in regard to billeting Soldiers shall apply to such Officers and Soldiers.

5. Nothing in this Act contained shall be construed to extend to any Militia Forces or Yeomanry or Volunteer Corps in Great Britain or Ireland, or to the Reserve Force provided for by "The Reserve Force Act, 1867," or to the Reserve Force provided for by "The Militia Reserve Act, 1867," excepting only where by any Act for regulating any of the said Forces or Corps the Provisions contained in any Act for punishing Mutiny and Desertion are or shall be specifically made applicable to such Forces or Corps.

6. For the Purpose of bringing Offenders against this Act and against the Articles of War to Justice, Her Majesty may from Time to Time, in like Manner as has been heretofore used,

grant Commissions under the Royal Sign Manual for the holding of Courts-martial within the United Kingdom of Great Britain and Ireland, and may grant Commissions or Warrants under the said Royal Sign Manual to the Chief Governor or Governors of Ireland, the Commander of the Forces, or the Person or Persons commanding in chief, or commanding for the Time being, any Body of Troops belonging to Her Majesty's Army, as well within the United Kingdom of Great Britain and Ireland and the British Isles as in any of Her Majesty's Garrisons and Dominions or elsewhere beyond Seas, for convening Courts-martial, and for authorizing any Officer under their respective Commands to convene Courts-martial, as Occasion may require, for the Trial of Offences committed by any of the Forces under the Command of any such last-mentioned Officer, whether the same shall have been committed before or after such Officer shall have taken upon him such Command: Provided that the Officer so authorized be not below the Degree of a Field Officer, except in detached Situations beyond Seas where a Field Officer is not in Command, in which Case a Captain may be authorized to convene District or Garrison Courts-martial: Every Officer so authorized to convene Courts-martial may confirm the Sentence of any Court-martial convened by him according to the Terms of his Warrant.

7. Any Person subject to this Act who shall, in any Part of Her Majesty's Dominions or elsewhere, commit any of the Offences for which he may be liable to be tried by Court-martial by virtue of this Act or of the Articles of War, may be tried and punished for the same in any Part of Her Majesty's Dominions or in any other Place whereto he may have come or where he may be after the Commission of the Offence, as if the Offence had been committed where such Trial shall take place.

8. Every General Court-martial convened within the United Kingdom or the British Isles shall consist of not less than Nine Commissioned Officers, each of whom shall have held a Commission from Her Majesty for Three Years before the Date of the Assembly of the Court. Every General Court-martial shall have Power to sentence any Officer or Soldier to suffer Death, Penal Servitude, Imprisonment, Forfeiture of Pay or Pension, or any other Punishment which shall accord with the Usage of the Service: No Sentence of Death by a Court-martial shall pass unless Two Thirds at least of the Officers present shall concur therein; no Sentence of Penal Servitude shall be for a Period of less than Five Years; and no Sentence of Imprisonment shall be for a Period longer than Two Years.

9. Every District or Garrison Court-martial convened within the United Kingdom or the British Isles shall consist of not less than Seven Commissioned Officers, and shall have the same Power as a General Court-martial to sentence any Soldier to such Punishments as shall accord with the Provisions of this Act: Provided always, that no such District or Garrison Court-martial shall have Power to try a Commissioned Officer, or to pass any Sentence of Death or Penal Servitude.

10. A Regimental or Detachment Court-martial shall consist of not less than Five Commissioned Officers, unless it is found to be impracticable to assemble that Number, in which Case Three shall be sufficient, and shall have Power to sentence any Soldier to Corporal Punishment, or to Imprisonment, and to Forfeiture of Pay, in such Manner as shall accord with the Provisions of this Act.

11. In Cases of Mutiny, and Insubordination accompanied with personal Violence, or other Offences committed on the Line of March, or on board any Transport Ship, (Convict Ship, Merchant Vessel, or Troop Ship, not in Commission, the Offender may be tried by a Regimental or Detachment Court-martial, and the Sentence may be confirmed and carried into execution on the Spot by the Officer in the immediate Command of the Troops, provided that the Sentence shall not exceed that which a Regimental Court-martial is competent to award.

12. It shall be lawful for any Officer commanding any Detachment or Portion of Troops serving in any Place beyond Seas where it may be found impracticable to assemble a General Court-martial, upon Complaint made to him of any Offence committed against the Property or Person of any Inhabitant of or resident in any Country in which such Troops are so serving by any Person serving with or belonging to Her Majesty's Armies, being under the immediate Command of any such Officer, to convene a Detachment General Court-martial, which shall consist of not less than Three Commissioned Officers, for the Purpose of trying any such Person; and every such Court-martial shall have the same Powers in regard to Sentence upon Offenders as are granted by this Act to General Courts-martial: Provided always, that no Sentence of any such Court-martial shall be executed until the General commanding the Army of which such Detachment or Portion forms Part shall have approved and confirmed the same.

13. All General and other Courts-martial shall administer an Oath to every Witness or other

Person who shall be examined before such Court in any Matter relating to any Proceeding before the same; and every Person, as well Civil as Military, who may be required to give or produce Evidence before a Court-martial, shall, in the Case of General Courts-martial, be summoned by the Judge Advocate General, or his Deputy, or the Person officiating as Judge Advocate, and in the Case of all other Courts-martial by the President of the Court; and all Persons so summoned and attending as Witnesses before any Court-martial shall, during their necessary Attendance in or on such Courts, and in going to and returning from the same, be privileged from Arrest, and shall, if unduly arrested, be discharged by the Court out of which the Writ or Process issued by which such Witness was arrested, or if such Court be not sitting, then by any Judge of the Superior Courts of Westminster or Dublin, or of the Court of Session in Scotland, or of the Courts of Law in the East or West Indies, or elsewhere, according as the Case shall require, upon its being made to appear to such Court or Judge, by any Affidavit in a summary Way, that such Witness was arrested in going to or attending upon or returning from such Court-martial; and all Witnesses so duly summoned as aforesaid who shall not attend on such Courts, or attending shall refuse to be sworn, or being sworn shall refuse to give Evidence, or not produce the Documents under their Power or Control required to be produced by them, or to answer all such Questions as the Court may legally demand of them, shall be liable to be attached in the Court of Queen's Bench in London or Dublin, or in the Court of Session or Sheriff or Stewart Courts in Scotland, or in Courts of Law in the East or West Indies, or in any of Her Majesty's Colonies, Garrisons, or Dominions in Europe or elsewhere respectively, upon Complaint made, in like Manner as if such Witness, after having been duly summoned or subpoenaed, had neglected to attend upon a Trial in any Proceeding in the Court in which such Complaint shall be made: Provided always, that nothing in this Act contained shall be construed to render an Oath necessary in any Case where by Law a solemn Affirmation may be made instead thereof: It shall be lawful for the President of any Court-martial to administer an Oath to a Shorthand Writer to take down, according to the best of his Power, the Evidence to be given before the Court.

14. No Officer or Soldier who shall be acquitted or convicted of any Offence shall be liable to be tried a Second Time by the same or any other Court-martial for the same Offence; and no Finding, Opinion, or Sentence given by any Court-martial, and signed by the President thereof, shall be revised more than once, nor

shall any additional Evidence in respect of any Charge on which the Prisoner then stands arraigned be received by the Court on any Revision.

15. If any Person subject to this Act shall at any Time during the Continuance of this Act begin, excite, cause, or join in any Mutiny or Seditious in any Forces belonging to Her Majesty's Army, or Her Majesty's Royal Marines, or shall not use his utmost Endeavours to suppress the same, or shall conspire with any other Person to cause a Mutiny, or coming to the Knowledge of any Mutiny or intended Mutiny shall not, without Delay, give Information thereof to his Commanding Officer; or shall hold Correspondence with or give Advice or Intelligence to any Rebel or Enemy of Her Majesty, either by Letters, Messages, Signs, or Tokens, in any Manner or Way whatsoever; or shall treat or enter into any Terms with such Rebel or Enemy without Her Majesty's Licence, or Licence of the General or Chief Commander; or shall misbehave himself before the Enemy; or shall shamefully abandon or deliver up any Garrison, Fortress, Post, or Guard committed to his Charge, or which he shall have been commanded to defend; or shall compel the Governor or Commanding Officer of any Garrison, Fortress, or Post to deliver up to the Enemy or to abandon the same; or shall speak Words or use any other Means to induce such Governor or Commanding Officer, or others, to misbehave before the Enemy; or shamefully to abandon or deliver up any Garrison, Fortress, Post, or Guard committed to their respective Charge, or which he or they shall be commanded to defend; or shall desert Her Majesty's Service; or shall leave his Post before being regularly relieved; or shall sleep on his Post; or shall strike or shall use or offer any Violence against his Superior Officer, being in the Execution of his Office, or shall disobey any lawful Command of his Superior Officer; or who being confined in a Military Prison shall offer any Violence against a Visitor or other his superior Military Officer, being in the Execution of his Office; all and every Person and Persons so offending in any of the Matters before mentioned, whether such Offence be committed within this Realm or in any other of Her Majesty's Dominions, or in Foreign Parts, upon Land or upon the Sea, shall suffer Death, or Penal Servitude, or such other Punishment as by a Court-martial shall be awarded: Provided always, that any Non-commissioned Officer or Soldier attested for or in Pay in any Regiment or Corps who shall, without having first obtained a regular Discharge therefrom, enlist himself in any other Regiment or Corps, may be deemed to have deserted Her Majesty's Service, and shall be liable to be punished accordingly.

16. In all Cases where the Punishment of Death shall have been awarded by a General Court-martial or Detachment General Court-martial it shall be lawful for Her Majesty, or, if in any Place out of the United Kingdom or British Isles, for the Commanding Officer having Authority to confirm the Sentence, instead of causing such Sentence to be carried into execution, to order the Offender to be kept in Penal Servitude for any Term not less than Five Years, or to suffer such Term of Imprisonment, with or without Hard Labour, and with or without Solitary Confinement, as shall seem meet to Her Majesty, or to the Officer commanding as aforesaid.

17. Any Officer or Soldier of Her Majesty's Army, or any Person employed in the War Department, or in any way concerned in the Care or Distribution of any Money, Provisions, Forage, Arms, Clothing, Ammunition, or other Stores belonging to Her Majesty's Army or for Her Majesty's Use, who shall embezzle, fraudulently misapply, wilfully damage, steal, or receive the same, knowing them to have been stolen, or shall be concerned therein or connive therat, may be tried for the same by a General Court-martial, and sentenced to be kept in Penal Servitude for any Term not less than Five Years, or to suffer such Punishment of Fine, Imprisonment, Dismissal from Her Majesty's Service, Reduction to the Ranks if a Warrant or Non-commissioned Officer, as such Court shall think fit, according to the Nature and Degree of the Offence; and every such Offender shall, in addition to any other Punishment, make good at his own Expense the Loss and Damage sustained, and in every such Case the Court is required to ascertain by Evidence the Amount of such Loss or Damage, and to declare by their Sentence that such Amount shall be made good by such Offender; and the Loss and Damage so ascertained as aforesaid shall be a Debt to Her Majesty, and may be recovered in any of Her Majesty's Courts at Westminster or in Dublin, or the Court of Exchequer in Scotland, or in any Court in Her Majesty's Colonies, or in India, where the Person sentenced by such Court-martial shall be resident, after the said Judgment shall be confirmed and made known, or the Offender, if he shall remain in the Service, may be put under Stoppages not exceeding One Half of his Pay and Allowances until the Amount so ascertained shall be recovered.

18. Whenever Her Majesty shall intend that any Sentence of Penal Servitude heretofore or hereafter passed upon any Offender by any Court-martial shall be carried into execution for the Term specified in such Sentence or for any shorter Term, or shall be graciously pleased to

commute as aforesaid to Penal Servitude any Sentence of Death passed by any such Court, the Sentence, together with Her Majesty's Pleasure thereupon, shall be notified in Writing by the Officer commanding in chief Her Majesty's Army in Great Britain and Ireland, or in the temporary Absence of such Officer by the Adjutant General, or when there shall not be any Commander-in-Chief of Her Majesty's Army in Great Britain and Ireland, then by the Secretary of State for the War Department, to any Judge of the Queen's Bench, Common Pleas, or Exchequer in England or Ireland, and thereupon such Judge shall make an Order for the Penal Servitude of such Offender in conformity with such Notification, and shall do all such other Acts consequent upon such Notification as such Judge is authorized to do by any Act in force touching the Penal Servitude of other Offenders; and it shall be lawful for any Judge of the Queen's Bench, Common Pleas, or Exchequer in Ireland to make an Order that any such Offender convicted in Ireland shall be kept in Penal Servitude in England; and such Order shall be in all respects as effectual in England as though such Offender had been convicted in England, and the Order had been made by any Judge of the Queen's Bench, Common Pleas, or Exchequer in England; and the Person in whose Custody such Offender shall at that Time be, and all other Persons whatsoever whom the said Order may concern, shall be bound to obey and shall be assistant in the Execution thereof, and shall be liable to the same Punishment for Disobedience to or for interrupting the Execution of such Order as if the Order had been made under the Authority of any such Act as aforesaid; and every Person so ordered to be kept in Penal Servitude shall be subject to every Provision made by Law and in force concerning Persons under Sentence of Penal Servitude; and from the Time when such Order of Penal Servitude shall be made every Act in force touching the Escape of Felons, or their afterwards returning or being at large without Leave, shall apply to such Offender, and to all Persons aiding and abetting, contriving or assisting in any Escape or intended Escape or returning without Leave of any such Offender; and the Judge who shall make any Order of Penal Servitude as aforesaid shall direct the Notification of Her Majesty's Pleasure, and his own Order made thereupon, to be filed and kept of Record in the Office of the Clerk of the Crown of the Court of Queen's Bench; and the said Clerk shall have a Fee of Two Shillings and Sixpence only for filing the same, and shall, on Application, deliver a Certificate in Writing (not taking more than Two Shillings and Sixpence for the same) to such Offender or to any Person applying in his or Her Majesty's Behalf, showing the Christian and Surname of such Offender, his

Offence, the Place where the Court was held before which he was convicted, and the Conditions on which the Order of Penal Servitude was made; which Certificate shall be sufficient Proof of the Conviction and Sentence of such Offender, and also of the Terms on which such Order for his Penal Servitude was made, in any Court and in any Proceeding wherein it may be necessary to inquire into the same.

19. Whenever any Sentence of Penal Servitude heretofore or hereafter passed upon any Offender by any Court-martial holden in any Part of Her Majesty's Foreign Dominions, or elsewhere beyond the Seas, is to be carried into execution for the Term specified in such Sentence or for any shorter Term, or when Sentence of Death passed by any such Court-martial has been or shall as aforesaid be commuted to Penal Servitude, the same shall be notified by the Officer commanding Her Majesty's Forces at the Presidency or Station where the Offender may come or be, or in his Absence by the Adjutant General for the Time being, if in India to the Chief Judge or any Judge of the Chief Civil Court of the Presidency or Province in which the Court-martial shall have been held, and if in any other Part of Her Majesty's Dominions to the Chief Justice or some other Judge therein, and such Judge shall make Order for the Penal Servitude or intermediate Custody of such Offender; and upon any such Order being made it shall be duly notified to the Governor of the Presidency if in India, or to the Governor of the Colony if in any of Her Majesty's Colonies, or to the Person who shall for the Time being be exercising the Office of Governor of such Presidency or Colony, who, on Receipt of such Notification, shall cause such Offender to be removed or sent to some other Colony or Place, or to undergo his Sentence within the Presidency or Colony where the Offender was so sentenced, or where he may come or be as aforesaid, in obedience to the Directions for the Removal and Treatment of Convicts which shall from Time to Time be transmitted from Her Majesty through One of Her Principal Secretaries of State to such Presidency or Colony; and such Offender shall according to such Directions undergo the Sentence of Penal Servitude which shall have been passed upon him either in the Presidency or Colony in which he has been so sentenced, or in the Colony or Place to which he has been so removed or sent, and whilst such Sentence shall remain in force shall be liable to be imprisoned, and kept to Hard Labour, and otherwise dealt with under such Sentence, in the same Manner as if he had been sentenced to be imprisoned with Hard Labour during the Term of his Penal Servitude by the Judgment of a Court of competent Jurisdiction in such Presidency or Colony, or in the Colony or Place to

which he has been so removed or sent respectively: And elsewhere out of Her Majesty's Dominions, the Officer commanding shall have Power to make an Order in Writing for the Penal Servitude or intermediate Custody of such Offender; and such Offender shall be liable by virtue of such Order to be imprisoned, and kept to Hard Labour, and otherwise dealt with under the Sentence of the Court, in the same Manner as if he had been sentenced to be imprisoned with Hard Labour during the Term of his Penal Servitude by the Judgment of a Court of competent Jurisdiction in the Place where he may be ordered to be kept in such intermediate Custody, or in the Place to which he may be removed for the Purpose of undergoing his Sentence of Penal Servitude. If any Prisoner shall be brought to any Place in the United Kingdom there to undergo any Sentence of Penal Servitude which has been passed upon him by a Court-martial held elsewhere, and the Judge's or Officer's Order herein-before prescribed for his Penal Servitude and intermediate Custody shall not be forthcoming, and the Judge Advocate General, upon Application for that Purpose, shall certify that it appears from the original Proceedings of the Court-martial whereby the Prisoner was tried that he has been duly sentenced to Penal Servitude, and that for anything that appears to the contrary thereon such Sentence is still in force against the said Prisoner for the Period to be stated in such Certificate, then it shall be lawful for One of Her Majesty's Principal Secretaries of State, upon Consideration of such Certificate, to direct, in Writing under his Hand, that the said Prisoner shall be at once removed to a Convict Prison, and be imprisoned and kept to Hard Labour according to the Sentence stated in such Certificate, and thereupon the Prisoner shall be removed to such Convict Prison, and shall be liable to be imprisoned and kept to Hard Labour, and be otherwise dealt with during the Term of his Sentence, as if he had been sentenced to a like Term of Penal Servitude by a competent Court in the United Kingdom.

20. In any Case where a Sentence of Penal Servitude shall have been awarded by a General or Detachment General Court-martial it shall be lawful for Her Majesty, or, if in any Place out of the United Kingdom or British Isles, for the Officer commanding in chief Her Majesty's Forces there serving, instead of causing such Sentence to be carried into execution, to order that the Offender be imprisoned, with or without Hard Labour, and with or without Solitary Confinement, for such Term not exceeding Two Years as shall seem meet to Her Majesty, or to the Officer commanding as aforesaid.

21. Where an Award of any Forfeiture, or of Deprivation of Pay or of Stoppages of Pay, shall

have been added to any Sentence of Penal Servitude, it shall be lawful for Her Majesty, or, if in any Place out of the United Kingdom or British Isles, for the Officer commanding in chief Her Majesty's Forces there serving, in the event of the Sentence being commuted for Imprisonment, to order such Award of Forfeiture, Deprivation of Pay, or Stoppages of Pay to be enforced, mitigated, or remitted, as may be deemed expedient.

22. No Court-martial shall, for any Offence whatever committed under this Act during the Time of Peace within the Queen's Dominions, have Power to sentence any Soldier to Corporal Punishment; provided, that any Court-martial may sentence any Soldier to Corporal Punishment while on active Service in the Field, or on board any Ship not in Commission, for Mutiny, Insubordination, Desertion, Drunkenness on Duty or on the Line of March, disgraceful Conduct, or any Breach of the Articles of War; and no Sentence of Corporal Punishment shall exceed Fifty Lashes.

23. It shall be lawful for any General, District, or Garrison Court-martial, in addition to any Sentence of Corporal Punishment, to award Imprisonment, with or without Hard Labour, and with or without Solitary Confinement, such Confinement not exceeding the Periods prescribed by the Articles of War.

24. In all Cases in which Corporal Punishment shall form the whole or Part of the Sentence awarded by any Court-martial it shall be lawful for Her Majesty, or for the General or other Officer authorized to confirm the Sentences of Courts-martial, to commute such Corporal Punishment to Imprisonment for any Period not exceeding Forty-two Days, with or without Hard Labour, and with or without Solitary Confinement, or to mitigate such Sentence, or instead of such Sentence to award Imprisonment for any Period not exceeding Twenty Days, with or without Hard Labour, and with or without Solitary Confinement and Corporal Punishment, to be inflicted in the Prison, not exceeding Twenty-five Lashes, and the Solitary Confinement herein-before mentioned shall in no Case exceed Seven Days at a Time, with Intervals of not less than Seven Days between each Period of such Confinement.

25. It shall be lawful for Her Majesty in all Cases whatsoever, instead of causing a Sentence of Cashiering to be put in execution, to order the Offender to be reprimanded, or, in addition thereto, to suffer such Loss of Army or Regimental Rank, or both, as may be deemed expedient.

26. On the first and on every subsequent Conviction for Desertion the Court-martial, in addition to any other Punishment, may order the Offender to be marked Two Inches below and One Inch in rear of the Nipple of the Left Breast with the Letter D, such Letter not to be less than an Inch long, and to be marked upon the Skin with some Ink or Gunpowder, or other Preparation, so as to be clearly seen, and not liable to be obliterated; a Court-martial may, upon sentencing any Offender to be discharged with Ignominy, also sentence him to be marked on the Right Breast with the Letters B C; and the confirming Officer may order such Sentence, both in respect of the Discharge and of the Marking, to be carried into effect.

27. A General, Garrison, or District Court-martial may sentence any Soldier to Imprisonment, with or without Hard Labour, and with or without Solitary Confinement, but such Solitary Confinement shall not exceed the Periods prescribed by the Articles of War; and any Regimental or Detachment Court-martial may sentence any Soldier to Imprisonment, with or without Hard Labour, for any Period not exceeding Forty-two Days, and with or without Solitary Confinement not exceeding the Periods prescribed by the Articles of War.

28. Whenever Sentence shall be passed by a Court-martial on an Offender already under Sentence either of Imprisonment or of Penal Servitude, the Court may award a Sentence of Imprisonment or Penal Servitude for the Offence for which he is under Trial, to commence at the Expiration of the Imprisonment or Penal Servitude to which he shall have been so previously sentenced, although the aggregate of the Terms of Imprisonment or Penal Servitude respectively may exceed the Term for which any of those Punishments could be otherwise awarded.

29. It shall be lawful for the Secretary of State for the War Department, and in India for the Governor General in Council, to set apart any Buildings now erected or which may hereafter be erected, or any Part or Parts thereof, as Military Prisons, and to declare that any Building or any Two or more Buildings shall be, and thenceforth, such Building or Buildings shall be deemed and taken to be, a Military Prison; and every Military Prison which, under the Provisions of any former Act of Parliament, has been or which shall be so as aforesaid set apart and declared, shall be deemed to be a public Prison within the Meaning of this Act; and all and every the Powers and Authorities with respect to County Gaols or Houses of Correction which now are or which may hereafter be vested in any of Her Majesty's Principal Secretaries of State

shall, with respect to all such Military Prisons, belong to and may be exercised by the Secretary of State for the War Department, and in India by the Governor General in Council; and it shall be lawful for the said Secretary of State, and in India for the Governor General in Council, from Time to Time to make, alter, and repeal Rules and Regulations for the Government and Superintendence of any such Military Prison, and of the Governor, Provost Marshal, Officers, and Servants thereof, and of the Offenders confined therein, which said Rules and Regulations so made as aforesaid shall remain and continue to be in force until the same are altered or repealed by Her Majesty's said Secretary of State for War, or in India by the Governor General in Council; and it shall be lawful for the said Secretary of State, and in India for the Governor General in Council, from Time to Time to appoint an Inspector General and Inspectors of Military Prisons, and a Governor, or Provost Marshal, and all other necessary Officers and Servants for any such Military Prison, and, as Occasion may arise, to remove the Governor or Provost Marshal, Officer or Servant of any such Military Prison; and the General or other Officer commanding any District or Station within which may be any such Military Prison, or such General or other Officer, and such other Person or Persons as the said Secretary of State, and in India the Governor General in Council, may from Time to Time appoint, shall be a Visitor or Visitors of such Prison; and the said Secretary of State, and in India the Governor General in Council, may authorize any General Officer commanding on a Foreign Station to appoint periodically Visitors to any Military Prison within his Command; and the said Secretary of State, and in India the Governor General in Council, shall transmit to the Visitor or Visitors of every Military Prison established by his Authority a Copy of the Rules and Regulations which are to be observed and enforced, and the same shall accordingly be observed and enforced, within such Prison; and every Inspector, Visitor, and Governor of any such Military Prison shall, subject to such Rules and Regulations as may from Time to Time be made by the said Secretary of State, or in India by the Governor General in Council, have and exercise in respect of such Prison, and of the Governor, Officers, and Servants thereof, and of the Prisoners confined therein, all the Powers and Authorities, as well in respect of administering Oaths as otherwise, which any Inspector, Visiting Justice, or Governor of a County Gaol or House of Correction may respectively exercise as such.

30. Every Governor, Provost Marshal, Gaoler, or Keeper of any public Prison or of any Gaol or House of Correction in any Part of Her Majesty's

Dominions shall receive into his Custody any Military Offender under Sentence of Imprisonment by a Court-martial, upon Delivery to him of an Order in Writing in that Behalf from the General commanding in chief, or the Adjutant General, or the Officer who confirmed the Proceedings of the Court, or the Officer commanding the Regiment or Corps to which the Offender belongs or is attached, which Order shall specify the Offence of which he shall have been convicted, and the Sentence of the Court, and the Period of Imprisonment which he is to undergo, and the Day and Hour of the Day on which he is to be released; and such Governor, Provost Marshal, Gaoler, or Keeper shall keep such Offender in a proper Place of Confinement, with or without Hard Labour, and with or without Solitary Confinement, according to the Sentence of the Court and during the Time specified in the said Order, or until he be discharged or delivered over to other Custody before the Expiration of that Time under an Order duly made for that Purpose; and whenever Troops are called out in aid of the Civil Power, or are stationed in Billats, or are on the Line of March, every Governor, Provost Marshal, Gaoler, or Keeper of any public Prison, Gaol, House of Correction, Look-up House, or other Place of Confinement, shall receive into his Custody any Soldier for a Period not exceeding Seven Days, upon Delivery to him of an Order in Writing on that Behalf from the Officer commanding such Troops.

31. In the Case of a Prisoner undergoing Imprisonment under the Sentence of a Court-martial in any public Prison other than the Military Prisons set apart by the Authority of this Act, or in any Gaol or House of Correction in any Part of the United Kingdom, it shall be lawful for the General commanding in chief, or the Adjutant General, or the Officer who confirmed the Proceedings of the Court, or the Officer commanding the District or Garrison in which such Prisoner may be, to give, as often as Occasion may arise, an Order in Writing directing that the Prisoner be discharged, or be delivered over to Military Custody, whether for the Purpose of being removed to some other Prison or Place in the United Kingdom, there to undergo the Remainder or any Part of his Sentence, or for the Purpose of being brought before a Court-martial either as a Witness or for Trial; and in the Case of a Prisoner undergoing Imprisonment or Penal Servitude under the Sentence of a Court-martial in any public Prison other than such Military Prison as aforesaid, or in any Gaol or House of Correction in any Part of Her Majesty's Dominions other than the United Kingdom, it shall be lawful for the General commanding in chief or the Adjutant General of Her Majesty's Forces in the Case of any such Prisoner, and for the Com-

Commander-in-Chief in India in the Case of any Prisoner so confined in any Part of Her Majesty's Indian Dominions, and for the General commanding in chief in any Presidency in India in the Case of a Prisoner so therein confined, and for the Officer commanding in chief or the Officer who confirmed the Proceedings of the Court at any Foreign Station in the Case of a Prisoner so there confined, to give as often as Occasion may arise an Order in Writing directing that the Prisoner be discharged or be delivered over to Military Custody, whether for the Purpose of being removed to some other Prison or Place in any Part of Her Majesty's Dominions, there to undergo the Remainder of any Part of his Sentence, or for the Purpose of being brought before a Court-martial either as a Witness or for Trial; and in the Case of any Prisoner who shall be removed by any such Order from any such Prison, Gaol, or House of Correction either within the United Kingdom or elsewhere to some other Prison or Place either in the United Kingdom or elsewhere, the Officer who gave such Order shall also give an Order in Writing directing the Governor, Provost Marshal, Gaoler, or Keeper of such other Prison or Place to receive such Prisoner into his Custody, and specifying the Offence of which such Prisoner shall have been convicted, and the Sentence of the Court, and the Period of Imprisonment which he is to undergo, and the Day and the Hour on which he is to be released; and such Governor, Provost Marshal, Gaoler, or Keeper shall keep such Offender in a proper Place of Confinement, with or without Hard Labour, and with or without Solitary Confinement, according to the Sentence of the Court, and during the Time specified in the said Order, or until he be duly discharged or delivered over to other Custody before the Expiration of that Time under an Order duly made for that Purpose; and in the Case of a Prisoner undergoing Imprisonment or Penal Servitude under the Sentence of a Court-martial in any Military Prison in any Part of Her Majesty's Dominions, the Secretary of State for the War Department, or any Person duly authorized by him in that Behalf, shall have the like Powers in regard to the Discharge and Delivery over of such Prisoners to Military Custody as may be lawfully exercised by any of the Military Authorities above mentioned in respect of any Prisoners undergoing Confinement as aforesaid in any public Prison other than a Military Prison, or in any Gaol or House of Correction in any Part of Her Majesty's Dominions; and such Prisoner in any of the Cases herein-before mentioned shall accordingly, on the Production of any such Order as is herein-before mentioned, be discharged or delivered over, as the Case may be: Provided always, that the Time during which any Prisoner under Sentence of Imprisonment by a

Court-martial shall be detained in such Military Custody under such Order as aforesaid shall be reckoned as Imprisonment under the Sentence for whatever Purpose such Detention shall take place; and such Prisoner may during such Time, either when on board Ship or otherwise, be subjected to such Restraint as is necessary for his Detention and Removal.

32. The Gaoler or Keeper of any public Prison, Gaol, House of Correction, Lock-up House, or other Place of Confinement in any Part of Her Majesty's Dominions shall diet and supply every Soldier imprisoned therein under the Sentence of a Court-martial or as a Deserter with Fuel and other Necessaries according to the Regulations of such Place of Confinement, and shall receive on account of every Soldier, during the Period of his Imprisonment, in Great Britain and Ireland One Shilling per Diem, and in other Parts of Her Majesty's Dominions Sixpence per Diem, which the Secretary of State for the War Department shall cause to be issued out of the Subsistence of such Soldier, upon Application in Writing signed by any Justice within whose Jurisdiction such Place of Confinement shall be locally situated, together with a Copy of the Order of Commitment, and which Sum of One Shilling or of Sixpence per Diem, as the Case may be, shall be carried to the Credit of the Fund from which the Expense of such Place of Confinement is defrayed. In India the Expenses incurred under the Provisions of this Section shall be paid in the same Manner as the other Expenses of such Prison, or as may be provided by the Laws or Regulations to be made in that Behalf.

33. Every Gaoler or Keeper of any public Prison, Gaol, House of Correction, or other Place of Confinement, to whom any Notice shall have been given, or who shall have Reason to know or believe, that any Person in his Custody for any Offence, Civil or Military, is a Soldier liable to serve Her Majesty on the Expiration of his Imprisonment, shall forthwith, or as soon as may be, give, if in Great Britain to the Secretary of State for the War Department, and if in Ireland to the General commanding Her Majesty's Forces in Ireland, or if in India to the Adjutant General of the Army, or to the nearest Military Authority with whom it may be convenient to communicate, Notice of the Day and Hour on which the Imprisonment of such Person will expire; and every such Gaoler or Keeper is hereby required to use his best Endeavours to ascertain and report in all Cases where practicable the particular Regiment or Corps, Battalion of a Regiment or Battery of Artillery, to which such Soldier belongs, and also whether he belongs to the Depot or the Head Quarters of his Regiment; and in the event of his being a Recruit who has not joined, that it

may be so stated in his Report, together with the Name of the Place where the Man enlisted. In all Cases where the Soldier in Custody is under Sentence to be discharged from the Service on the Completion of his Term of Imprisonment, and the Discharge Document is in the Hands of the Gaoler, such Gaoler shall not be required to make any Report thereof to the Secretary of State for War, or to the Military Authorities herein-before referred to.

34. Upon reasonable Suspicion that a Person is a Deserter it shall be lawful for any Constable, or if no Constable can be immediately met with, then for any Officer or Soldier in Her Majesty's Service, or other Person, to apprehend or cause to be apprehended such suspected Person, and forthwith to bring him or cause him to be brought before any Justice living in or near the Place where he was so apprehended and acting for the County or Borough wherein such Place is situate, or for the County adjoining such first-mentioned County or such Borough; and such Justice is hereby authorized and required to inquire whether such suspected Person is a Deserter, and from Time to Time to defer the said Inquiry and to remand the said suspected Person in the Manner prescribed by an Act passed in the Eleventh and Twelfth Years of the Reign of Her present Majesty, Chapter Forty-two, Section Twenty-one, and subject to every Provision therein contained; and if it shall appear to the Satisfaction of such Justice by the Testimony of One or more Witnesses, taken upon Oath, or by the Confession of such suspected Person, confirmed by some corroborative Evidence upon Oath or by the Knowledge of such Justice, that such suspected Person is a Deserter, such Justice shall forthwith cause him to be conveyed in Civil Custody to the Head Quarters or Depôt of the Regiment or Corps to which he belongs, if stationed within a convenient and easily accessible Distance from the Place of Commitment, or if not so stationed then to the nearest or most convenient public Prison (other than a Military Prison set apart under the Authority of this Act) or Police Station legally provided as a Lock-up House for temporary Confinement of Persons taken into Custody, whether such Prison or Police Station be in the County or Borough in which such suspected Person was apprehended or in which he was committed, or not; or if the Deserter has been apprehended by a Party of Soldiers of his own Regiment or Corps in charge of a Commissioned Officer, such Justice may deliver him up to such Party, unless the Officer shall deem it necessary to have the Deserter committed to Prison for safe Custody; and such Justice shall transmit an Account of the Proceedings, in the Form prescribed in the Schedule annexed to this Act, to the Secretary of State for

the War Department, specifying therein whether such Deserter was delivered to his Regiment or Corps, or to the Party of his Regiment or Corps, in order to his being taken to the Head Quarters or Depôt of his Regiment or Corps, or whether such Deserter was committed to Prison, to the end that the Person so committed may be removed by an Order from the Office of the said Secretary of State, and proceeded against according to Law; and such Justice shall also send to the said Secretary of State a Report stating the Names of the Persons by whom or by or through whose Means the Deserter was apprehended and secured; and the said Secretary of State shall transmit to such Justice an Order for the Payment to such Persons of such Sum not exceeding Forty Shillings as the said Secretary of State shall be satisfied they are entitled to according to the true Intent and Meaning of this Act; and for such Information, Commitment, and Report as aforesaid the Clerk of the said Justice shall be entitled to a Fee of Two Shillings and no more; and every Gaoler and other Person into whose Custody any Person charged with Desertion is committed shall immediately upon the Receipt of the Person so charged into his Custody pay such Fee of Two Shillings, and also upon the Production of a Receipt from the Medical Practitioner who, in the Absence of a Military Medical Officer, may have been required to examine such suspected Person, a Fee of Two Shillings and Sixpence, and shall notify the Fact to the Secretary of State for the War Department, and transmit also to the said Secretary of State a Copy of the Commitment, to the end that such Secretary of State may order Repayment of such Fees; and when any such Person shall be apprehended and committed as a Deserter in any Part of Her Majesty's Foreign Dominions the Justice shall forthwith cause him to be conveyed to some public Prison, if the Regiment or Corps to which he is suspected to belong shall not be in such Part, or, if the Regiment or Corps be in such Part, the Justice may deliver him into Custody at the nearest Military Post if within reasonable Distance, although the Regiment to which such Person is suspected to belong may not be stationed at such Military Post; and such Justice shall in every Case transmit to the General or other Officer commanding a Descriptive Return in the Form prescribed in the Schedule to this Act annexed, to the end that such Person may be removed by Order of such Officer, and proceeded against according to Law; and such Descriptive Return purporting to be duly made and subscribed in accordance with the Act shall, in the Absence of Proof to the contrary, be deemed sufficient Evidence of the Facts and Matters therein stated: Provided always, that any such Person so committed as a Deserter in any Part of Her Majesty's Dominions shall, sub-

ject to the Provisions herein-after contained, be liable to be transferred by Order of the General or other Officer commanding to serve in any Regiment or Corps or Depôt nearest to the Place where he shall have been apprehended, or to any other Regiment or Corps to which Her Majesty may deem it desirable that he should be transferred, and shall also be liable after such Transfer of Service to be tried and punished as a Deserter.

35. Every Gaoler or Keeper of any public Prison, Gaol, House of Correction, Lock-up House, or other Place of Confinement in any Part of Her Majesty's Dominions, is hereby required to receive and confine therein every Deserter who shall be delivered into his Custody by any Soldier or other Person conveying such Deserter under lawful Authority, on Production of the Warrant of the Justice of the Peace on which such Deserter shall have been taken, or some Order from the Office of the Secretary of State for the War Department, which Order shall continue in force until the Deserter shall have arrived at his Destination; and such Gaoler or Keeper shall be entitled to One Shilling for the safe Custody of the said Deserter while halted on the March, and to such Subsistence for his Maintenance as shall be directed by Her Majesty's Regulations.

36. Any Recruit for Her Majesty's Army who, having been attested or received Pay other than Enlisting Money, shall desert before joining the Regiment or Corps for which he has enlisted, shall, on being apprehended, and committed for such Desertion by any Justice of the Peace upon the Testimony of One or more Witnesses upon Oath, or upon his own Confession, forfeit his personal Bounty, and be liable to be transferred to any Regiment or Corps or Depôt nearest to the Place where he shall have been apprehended, or to any other Regiment or Corps to which Her Majesty may deem it more desirable that he should be transferred: Provided always, that such Deserters thus transferred shall not be liable to other Punishment for the Offence, or to any other Penalty except the Forfeiture of their personal Bounty.

37. Any Person who shall confess himself to be a Deserter from Her Majesty's Forces, or from the Embodied Militia, shall be liable to be taken before any Two Justices of the Peace acting for the County, District, City, Burgh, or Place where any such Person shall at any Time happen to be when he shall be brought before them, and on Proof that any such Confession as aforesaid was false shall by the said Justices be adjudged to be punished, if in England as a Rogue and Vagabond, and if elsewhere by Commitment to some Prison or House of Correction, there to be kept

to Hard Labour for any Time not exceeding Three Calendar Months; and if, when such Person shall be brought before the said Justices, it shall be proved to their Satisfaction that such Confession has been made, but Evidence of the Truth or Falseness of such Confession shall not at that Time be forthcoming, such Justices within the United Kingdom are hereby required to remand such Person in the Manner herein-before mentioned, and to transmit a Statement of the Case and Descriptive Return to the Secretary of State for the War Department, with a Request to be informed whether such Person appears to belong or to have belonged to the Regiment or Corps from which he shall have so confessed himself to have deserted; and a Letter from the War Office in reply thereto, referring to such Statement, and purporting to be signed by or on behalf of the Secretary of State for the War Department, shall be admissible in Evidence against such Person, and shall be deemed to be legal Evidence of the Facts stated therein, and on the Receipt thereof the said Justices shall forthwith proceed to adjudicate upon the Case. In India the Authority herein given to Two Justices may be exercised by One European Justice or Magistrate.

38. When there shall not be any Military Officer of Rank not inferior to Captain, or any Adjutant of Regular Militia, within convenient Distance of the Place where any Non-commissioned Officer or Soldier on Furlough shall be detained by Sickness or other Casualty rendering necessary any Extension of such Furlough, it shall be lawful for any Justice who shall be satisfied of such Necessity to grant an Extension of Furlough for a Period not exceeding One Month; and the said Justice shall by Letter immediately certify such Extension and the Cause thereof to the Commanding Officer of the Corps or Detachment to which such Non-commissioned Officer or Soldier belongs, if known, and if not then to the Agent of the Regiment or Corps, in order that the proper Sum may be remitted to such Non-commissioned Officer or Soldier, who shall not during the Period of such Extension of Furlough be liable to be treated as a Deserter: Provided always, that nothing herein contained shall be construed to exempt any Soldier from Trial and Punishment, according to the Provisions of this Act, for any false Representation made by him in that Behalf to the said Justice, or for any Breach of Discipline committed by him in applying for and obtaining the said Extension of Furlough.

39. No Person subject to this Act, having been acquitted or convicted of any Crime or Offence by the Civil Magistrate, or by the Verdict of a Jury, shall be liable to be again convicted for the

same Crime or Offence by a Court-martial, or to be punished for the same otherwise than by cashiering in the Case of a Commissioned Officer, or in the Case of a Warrant Officer by Reduction to an inferior Class or to the Rank of a Private Soldier by Order of the Commander-in-Chief, or in the Case of a Non-commissioned Officer by Reduction to the Ranks by Order of the Commander-in-Chief or of the Colonel, or in the Militia by Order of the appointed Commandant of the Regiment or Corps; and whenever any Officer or Soldier shall have been tried by any Court of ordinary Criminal Jurisdiction, the Clerk of such Court or other Officer having the Custody of the Records of such Court, or the Deputy of such Clerk, shall, if required by the Officer commanding the Regiment or Corps to which such Officer or Soldier shall belong, transmit to him a Certificate setting forth the Offence of which the Prisoner was convicted, together with the Judgment of the Court thereon if such Officer or Soldier shall have been convicted, or of the Acquittal of such Officer or Soldier, and shall be allowed for such Certificate a Fee of Three Shillings.

40. Any Person attested for Her Majesty's Army, or serving on the permanent Staff of the Disembodied Militia or Volunteers other than as a Commissioned Officer, shall be liable to be taken out of Her Majesty's Service only by Process or Execution on account of any Charge of Felony or of Misdemeanor, or of any Crime or Offence other than the Misdemeanor of absenting himself from his Service, or neglecting to fulfil his Contract, or otherwise misconducting himself respecting the same, or the Misdemeanor of refusing to comply with an Order of Justices for the Payment of Money, or on account of an original Debt proved by Affidavit of the Plaintiff or of some one on his Behalf to amount to the Value of Thirty Pounds at the least, over and above all Costs of Suit, such Affidavit to be sworn, without Payment of any Fee, before some Judge of the Court out of which Process or Execution shall issue, or before some Person authorized to take Affidavits in such Court, of which Affidavit, when duly filed in such Court, a Memorandum shall, without Fee, be endorsed upon the Back of such Process, stating the Facts sworn to, and the Day of filing such Affidavit; but no Soldier or other Person as aforesaid shall be liable by any Process whatever to appear before any Justice of the Peace or other Authority whatever, or to be taken out of Her Majesty's Service by any Writ, Summons, Warrant, Order, Judgment, Execution, or any Process whatsoever issued by or by the Authority of any Court of Law, or any Magistrate, Justice or Justices of the Peace, or any other Authority whatsoever, for any original Debt not

amounting to Thirty Pounds, or for not supporting or maintaining, or for not having supported or maintained, or for leaving or having left chargeable to any Parish, Township, or Place, or to the Common Fund of any Union, any Relation or Child which such Soldier or Person might, if not in Her Majesty's Service, be compellable by Law to relieve or maintain, or for neglecting to pay to the Mother of any Bastard Child, or to any Person who may have been appointed to have the Custody of such Child, any Sum to be paid in pursuance of an Order on that Behalf, or for the Breach of any Contract, Covenant, Agreement, or other Engagement whatever by Parol or in Writing, or for having left or deserted his Employer or Master, or his Contract, Work, or Labour, or misconducting himself respecting the same, except in the Case of an Apprentice, or of an indentured Labourer, as herein-after described; and all Summons, Warrants, Commitments, Indictments, Convictions, Judgments, and Sentences on account of any of the Matters for which it is herein declared that a Soldier or other Person as aforesaid is not liable to be taken out of Her Majesty's Service, shall be utterly illegal, and null and void, to all Intents and Purposes; and any Judge of any such Court may examine into any Complaint made by a Soldier or by his Superior Officer, and by Warrant under his Hand discharge such Soldier, without Fee, he being shown to have been arrested contrary to the Intent of this Act, and shall award reasonable Costs to such Complainant, who shall have for the Recovery thereof the like Remedy as would have been applicable to the Recovery of any Costs which might have been awarded against the Complainant in any Judgment or Execution as aforesaid, or a Writ of Habeas corpus ad subiiciendum shall be awarded or issued, and the Discharge of any such Soldier out of Custody shall be ordered thereupon; provided that any Plaintiff, upon Notice of the Cause of Action first given in Writing to any Soldier, or left at his last Quarters, may proceed in any Action or Suit to Judgment, and have Execution other than against the Body or Military Necessaries or Equipments of such Soldier; provided also, that nothing herein contained relating to the leaving or deserting a Master or Employer, or to the Breach of any Contract, Agreement, or Engagement, shall apply to Persons who shall be really and bona fide Apprentices, duly bound, under the Age of Twenty-one Years, or to indentured Labourers, as herein-after prescribed.

41. No Person who shall be commissioned and in full Pay as an Officer shall be capable of being nominated or elected to be Sheriff of any County, Borough, or other Place, or to be Mayor, Portreeve, Alderman, or to hold any Office in any

Municipal Corporation in any City, Borough, or Place in Great Britain or Ireland.

42. Every Person authorized to enlist Recruits shall first ask the Person offering to enlist whether he belongs to the Militia, and also such other Questions as the Military Authorities may direct to be put to Recruits, and shall immediately after giving him Enlisting Money serve him with a Notice in the Form set forth in the Schedule to this Act annexed.

43. Every Person who shall receive Enlisting Money in manner aforesaid, knowing it to be such, shall, subject to the Provisions herein-after contained, upon such Receipt be deemed to be enlisted as a Soldier in Her Majesty's Service, and while he shall remain with the Recruiting Party shall be entitled to be billeted.

44. Every Person so enlisted as aforesaid shall, within Ninety-six Hours (any intervening Sunday, Christmas Day, or Good Friday not included) but not sooner than Twenty-four Hours after such Enlistment, appear, together with some Person employed in the Recruiting Service, before a Justice of the Peace, not being an Officer of the Army, for the Purpose of being attested as a Soldier, or of objecting to his Enlistment.

45. When a Recruit upon appearing before a Justice for the Purposes aforesaid shall dissent from or object to his Enlistment, and shall satisfy the Justice that the same was effected in any respect irregularly, he shall forthwith discharge the Recruit absolutely, and shall report such Discharge to the Inspecting Field Officer of the District, or in the Case of a Recruit enlisted at the Head Quarters or Depot of a Regiment to the Officer commanding the same; but if the Recruit so dissenting shall not allege or shall not satisfy the Justice that the Enlistment was effected irregularly, nevertheless, upon Repayment of the Enlisting Money, and of any Sum received by him in respect of Pay, and of a further Sum of Twenty Shillings as Smart Money, he will be entitled to be discharged, and the Sum paid by such Recruit upon his Discharge shall be kept by the Justice, and, after deducting therefrom One Shilling as the Fee for reporting the Payment to the Secretary of State for the War Department and to the Inspecting Field Officer of the District, shall be paid over to any Person belonging to the Recruiting Party who may demand the same; and the Justice who shall discharge any Recruit shall in every Case give a Certificate thereof, signed with his Hand, to the Recruit, specifying the Cause thereof.

46. Any Person may be enlisted for some particular Arm or Branch of Service, and if he shall enlist for Cavalry or Infantry he shall be at liberty to declare and state the particular Regiment of Cavalry or Infantry into which he desires to enlist, and he shall be attested for the same, and be sent thereto with all convenient Speed; but if no such Statement or Declaration be made by such Person at the Time of his Attestation as aforesaid, then he shall be attested for General Service, and it shall be lawful for the Military Authorities at any Time within Twelve Months after his Attestation to attach him to such Arm or Branch of Service, or to such Regiment of Cavalry or Infantry, excluding Colonial Corps, as to them shall seem to be most fitting and convenient for Her Majesty's Service: Provided always, that after the Recruit shall have been attached to any Regiment he shall not be removed or transferred therefrom, save and except under the Provisions of the Mutiny Act for the Time being in force.

If the Recruit on appearing before a Justice shall not dissent from his Enlistment, or dissenting shall within Twenty-four Hours return and state that he is unable to pay the Sums mentioned in the last Section, he shall be attested as follows: the Justice, or some Person deputed by him, shall read to the Recruit the Questions set forth in the Form contained in the Schedule to this Act annexed, cautioning him that if he fraudulently make any false Answer thereto he shall be liable to be punished as a Rogue and a Vagabond; and the Answers of the Recruits shall be recorded opposite to the said Questions, and the Justice shall require the Recruit to make and sign the Declaration in the said Form, and shall then administer to him the Oath of Allegiance in the said Form; and when the Recruit shall have signed the said Declaration, and taken the said Oath, the Justice shall attest the same by his Signature, and shall deliver to the Recruiting Officer the Declaration so signed and attested; and the Fee for such Attestation, including the Declaration and Oath, shall be One Shilling and no more; and any Recruit shall, if he so wish, be furnished with a certified Copy of the above-mentioned Declaration by the Officer who finally approved of him for the Service.

47. No Recruit, unless he shall have been attested or shall have received Pay other than Enlisting Money, shall be liable to be tried by Court-martial; but if any Recruit previously to his being attested shall by means of any false Answer obtain Enlistment Money, or shall make any false Statement in his Declaration, or shall refuse to answer any Question duly authorized to be put to Recruits for the Purpose of filling up such Declaration, or shall refuse or neglect to go before a Justice for the Purposes aforesaid,

or having dissented from his Enlistment shall wilfully omit to return and pay such Money as aforesaid, in any of such Cases it shall be lawful for any Two Justices within the United Kingdom, or for any One Justice out of the United Kingdom, acting for the County, District, City, Burgh, or Place where any such Recruit shall at any Time happen to be, to adjudge such Recruit, when he shall be brought before them or him, if in England, to be a Rogue and Vagabond, and to sentence him to be punished accordingly, and if in Scotland or Ireland, or elsewhere in Her Majesty's Dominions, to be imprisoned with Hard Labour in any Prison or House of Correction for any Period not exceeding Three Calendar Months; and the Declaration made by the Recruit on his Attestation purporting to be made and subscribed in accordance with the Schedule to this Act annexed shall, in the Absence of Proof to the contrary, be deemed sufficient Evidence of such Recruit having represented the several Particulars as stated in such Declaration.

48. Any Recruit who shall have been attested, and who shall afterwards be discovered to have given any wilfully false Answer to any Question directed to be put to Recruits, or shall have made any wilfully false Statement in the Declaration herein-before mentioned, shall be liable, at the Discretion of the proper Military Authorities, to be proceeded against before Two Justices in the Manner herein-before mentioned, and by them sentenced accordingly, or to be tried by a District or Garrison Court-martial for the same, and punished in such Manner as such Court shall direct.

49. If any Recruit shall abscond, so that it is not possible immediately to apprehend and bring him before a Justice for Attestation, the Recruiting Party shall produce to the Justice before whom the Recruit ought regularly to have been brought for that Purpose a Certificate of the Name and Place of Residence and Description of such Recruit, and of his having absconded, and shall declare the same to be true; and the Justice to whom such Certificate shall be produced shall transmit a Duplicate thereof to the Secretary of State for the War Department, in order that the same may appear in the *Police Gazette*.

50. If any Man while belonging to a Militia Regiment shall enlist in and be attested for Her Majesty's Army, he shall be liable to be tried before a Court-martial on a Charge for Desertion; but it shall be lawful for the Secretary of State for the War Department to give such general Directions as may from Time to Time appear to him necessary for placing any Man who confesses himself to be a Militiaman under Stoppage

of One Penny a Day of his Pay for Eighteen Calendar Months, in lieu of his being tried by Court-martial, and further to give general Directions as to the Manner in which such Stoppage shall be applied, and whether, on making good the same, the Man shall be returned to his Militia Regiment or be deemed to be a Soldier in the same Manner as if he had not been a Militiaman at the Time of his Attestation: Provided that if the Regiment of Militia from which the Man has deserted be within the United Kingdom, the Secretary of State for the War Department shall not make such latter Order without the Consent of the Commanding Officer of such Regiment: Provided also, that every Soldier who while belonging to a Militia Regiment enlisted in Her Majesty's Army, whether such Enlistment took place before or after the passing of the Mutiny Act, 1860, shall reckon Service towards the Performance of his limited Engagement from the Date of his Attestation: Provided also, that any such Soldier shall not reckon Service for Pension until the Day on which his Engagement for the Militia would have expired; but if any such Soldier shall subsequently to his Enlistment have rendered long, faithful, or gallant Service, the Secretary of State for War may, upon the special Recommendation of the Commander-in-Chief, order that he may reckon Service for Pension from the Date of his Attestation. If any Non-commissioned Officer of the Volunteer Permanent Staff enlists in Her Majesty's Army he may be tried and punished as a Deserter, but if he confesses his Desertion the Secretary of State for the War Department, instead of causing him to be tried and punished as a Deserter, may cause him to be returned to his Service on the Volunteer Permanent Staff, to be there put under Stoppages from his Pay until he has repaid the Amount of any Bounty received by him and the Expenses attending his Enlistment, and also the Value of any Arms, &c. issued to him while on the Volunteer Permanent Staff, and not duly delivered up by him; or may cause him to be held to his Service in Her Majesty's Army, with a Direction, if it seems fit, that his Time of Service therein shall not be reckoned for Pension until the Time when his Engagement on the Volunteer Permanent Staff would have expired; and may further cause him to be put under Stoppages of One Penny a Day of his Pay until he has repaid the Expense attending his Engagement or Attestation on the Volunteer Permanent Staff, and also the Value of any Arms, Clothing, or Appointments issued to him while on the Volunteer Permanent Staff, and not duly delivered up by him.

51. Every Person subject to this Act who shall wilfully act contrary to any of its Provisions

any Matter relating to the enlisting or attesting of Recruits for Her Majesty's Army shall be liable to be tried for such Offence before a General, District, or Garrison Court-martial, and to be sentenced to such Punishments other than Death or Penal Servitude as such Courts may award.

52. It shall be lawful for any Justice of the Peace or Person exercising the Office of a Magistrate within any of Her Majesty's Dominions abroad, and in any Colony for any other Person duly authorized in that Behalf by the Governor or Officer administering the Government of such Colony, and in Her Majesty's Dominions in India for any Person duly authorized in that Behalf by the Governor General or Lieutenant Governor or other Officer administering the Government of any Presidency, Division, or Province, and within the Territories of any Foreign State in India for the Person performing the Duties of the Office of British Resident therein, and for any other Person duly authorized in that Behalf by the Governor General, to enlist and attest or to re-engage within the local Limits of their several Authorities any Soldiers or Persons desirous of enlisting or re-engaging in Her Majesty's Army; and it shall be lawful, notwithstanding anything contained in the Statute Twenty-third and Twenty-fourth Victoria, Chapter One hundred, for any Person so authorized in Her Majesty's Dominions in India, or within the Territories of any Foreign State in India, to enlist and attest within the local Limits of his Authority any Persons desirous of enlisting in Her Majesty's Indian Forces. Any such Magistrate or Person as aforesaid shall have the same Powers in that Behalf as are by this or any other Act of Parliament given to Justices in the United Kingdom for all such Purposes of Enlistment and Attestation; but no such Magistrate or other Person authorized to enlist and attest as above mentioned shall be a General Officer or hold any Regimental Commission; and all such Appointments, past and future, and everything done or to be done under them, shall be valid and of full Effect, notwithstanding the Expiration of this Act or of any other Act of Parliament; and any Person so attested shall be deemed to be an attested Soldier.

53. When any Corps shall be relieved or disbanded at any Station beyond the Seas it shall be lawful for any Officers thereunto authorized by the Officer commanding in Chief at such Station to receive as Transfers as many of the Soldiers belonging to the Corps leaving the Station as shall be willing and fit for Service for any Corps appointed to remain; and every Soldier so transferred is hereby deemed to be

discharged from his former Corps, and an attested Certificate of Transfer shall be delivered to the Soldier.

54. It shall be lawful for the Commander-in-Chief, or for any Officer authorized by him in that Behalf, to direct that any Soldier attested for any one Branch of the Service shall, on the Application of his Commanding Officer, and with his own Consent, be transferred to some other Branch of the Service or to some other Regiment or Corps in the same Branch of the Service, either within the United Kingdom or elsewhere; and every Soldier so transferred shall be deemed to be discharged from his former Corps, and shall have a Certificate of Transfer delivered to him; but any Soldier attested for the Infantry or Commissariat Staff Corps or Military Store Staff Corps, and at his own Request transferred to the Cavalry, Artillery, or Engineers, shall be bound to serve for the full Term of such Service as if originally enlisted therein, and any Soldier at his own Request transferred from either of such before-mentioned Services to the Infantry or Commissariat Staff Corps or Military Store Staff Corps shall be liable to serve for the Term of his original Enlistment: Provided always, that any Soldier who may have volunteered for the Corps of Armourer Sergeants, or for the Army Hospital Corps, or Military Store Staff Corps, shall be liable, by Order of the Military Authorities above mentioned, to be re-transferred to his former Corps, or to any other Corps on the Station on which he is serving at the Time, for Misconduct, Unfitness, or any other reasonable Cause: Provided also, that any Staff Clerk or other Non-commissioned Officer or Soldier on the Staff of the Army may be transferred to any Corps serving at the Station at the Time of his Removal from Staff Employ: Provided also, that upon the Conviction by Court-martial of any Soldier of the Crime of Desertion, the Officer commanding in chief Her Majesty's Forces may, and if the Court-martial has been held at a Foreign Station the Officer commanding in chief Her Majesty's Forces at such Foreign Station may, order such Soldier to serve in any Regiment or Corps.

55. Any Person who now has or may hereafter have completed at least Two Thirds of the First Term of his Enlistment may at any Time thereafter, with the Approbation of his Commanding Officer, or other competent Military Authority, be re-engaged for such a Period as shall complete a total Period of Twenty-one Years in Her Majesty's Service; and any Person who has been a Soldier, and who has received his Discharge, may also be so re-engaged upon making a Declaration, in the Form given in the Schedule annexed to this Act, before any One of

Her Majesty's Justices of the Peace in Great Britain or Ireland, or if not in Great Britain or Ireland before any Person duly appointed to enlist and attest out of Great Britain and Ireland any Soldiers or Persons desirous of enlisting or re-engaging in Her Majesty's Service: Provided always, that in reckoning Service under the original Enlistment or Re-engagement of a Soldier the Boon Service granted by the General Order of the Governor General of India, dated Twelfth of October One thousand eight hundred and fifty-nine, shall be reckoned as actual Service, and allowed towards Pension and Discharge: Provided also, that every Soldier now serving who belonged to the Garrison which defended Luoknow, or to the Garrison which defended the Alumbagh, before the Advance of any Portion of the Forces under the late Lord Clyde in One thousand eight hundred and fifty-seven, shall be allowed to reckon One Year's Service towards the Performance of his limited Engagement, and also towards Pension on Discharge: Provided also, that every Soldier who volunteered into Her Majesty's Army from any embodied Regiment of Militia between the Thirty-first of December One thousand eight hundred and fifty-five and the Twenty-first of March One thousand eight hundred and sixty-one inclusive, or from the disembodied Militia during the last Week of the training of his Regiment in the Year One thousand eight hundred and fifty-eight, and who had rendered previous to volunteering Six Months embodied or disembodied Militia Service, shall be allowed to reckon towards Good-conduct Pay and Pension, and towards the Completion of his limited Engagement of Service in Her Majesty's Army, Half the embodied Service which he had rendered in the Militia after attaining the Age of Eighteen.

56. All Negroes or Persons of Colour who, although not born in any of Her Majesty's Colonies, Territories, or Possessions, shall have voluntarily enlisted into Her Majesty's Service, shall, while serving, be deemed to be Soldiers legally enlisted into Her Majesty's Service, and be entitled to all the Privileges of natural-born Subjects; and all Negroes who have been seized and condemned as Prize under the Slave Trade Acts, and appointed to serve in Her Majesty's Army, shall be deemed to be and shall be entitled to all the Advantages of Negroes or Persons of Colour voluntarily enlisted to serve as Soldiers in any of Her Majesty's Colonial Forces.

57. Any Person duly bound as an Apprentice in Great Britain or Ireland, or as an indentured Labourer in any of Her Majesty's Colonies or Possessions abroad, who shall enlist as a Soldier in Her Majesty's Army, and shall falsely state to the Magistrate before whom he shall

be carried and attested that he is not an Apprentice or indentured Labourer as aforesaid, shall be deemed guilty of obtaining Money under false Pretences, if in England or in Ireland, or in the Colonies or Possessions aforesaid, and of Falsehood, Fraud, and wilful Imposition, if in Scotland, and shall after the Expiration of his Apprenticeship, or of his Indenture as a Labourer, whether he shall have been so convicted and punished or not, be liable to serve as a Soldier in Her Majesty's Army according to the Terms of the Enlistment, and if on the Expiration of his Apprenticeship, or of his Indenture as a Labourer, he shall not deliver himself up to some Officer authorized to receive Recruits, such Person may be taken as a Deserter from Her Majesty's Army; and no Master shall be entitled to claim an Apprentice or an indentured Labourer as aforesaid who shall enlist as a Soldier in Her Majesty's Army, or shall be serving in the embodied Militia, unless he shall, within One Calendar Month after such Apprentice or indentured Labourer shall have left his Service, go before some Justice, and take the Oath mentioned in the Schedule to this Act annexed, and shall produce the Certificate of such Justice of his having taken such Oath, which Certificate such Justice is required to give in the Form in the Schedule to this Act annexed, and unless such Apprentice shall have been bound, if in England, for the full Term of Five Years, not having been above the Age of Fourteen when so bound, and, if in Ireland or in the British Isles, for the full Term of Five Years at the least, not having been above the Age of Sixteen when so bound, and, if in Scotland, for the full Term at least of Four Years, by a regular Contract or Indenture of Apprenticeship, duly extended, signed, and tested, and binding on both Parties by the Law of Scotland, prior to the Period of Enlistment, and unless such Contract or Indenture in Scotland shall, within Three Months after the Commencement of the Apprenticeship, and before the Period of Enlistment, have been produced to a Justice of the Peace of the County in Scotland wherein the Parties reside, and there shall have been endorsed thereon by such Justice a Certificate or Declaration signed by him specifying the Date when and the Person by whom such Contract or Indenture was so produced, which Certificate or Declaration such Justice of the Peace is hereby required to endorse and sign, and unless such Apprentice shall, when claimed by such Master, be under Twenty-one Years of Age: Provided always, that any Master of an Apprentice indentured for the Sea Service, or of any indentured Labourer in Her Majesty's Colonies or Possessions abroad, shall be entitled to claim and recover him in the Form and Manner above directed, notwithstanding such Apprentice or indentured Labourer may have been bound for a less Term

then Five or Four Years as aforesaid : Provided also, that any Master who shall give up the Indentures of his Apprentice or of his Labourer as aforesaid within One Month after the enlisting of such Apprentice or indentured Labourer shall be entitled to receive to his own Use so much of the Bounty payable to such Recruit as shall not have been paid to such Recruit before Notice given of his being an Apprentice or an indentured Labourer.

58. No Apprentice or indentured Labourer claimed by his Master as aforesaid shall be taken from any Corps or Recruiting Party, except under a Warrant of a Justice residing near, and within whose Jurisdiction such Apprentice or indentured Labourer shall then happen to be, before whom he shall be carried; and such Justice shall inquire into the Matter upon Oath, which Oath he is hereby empowered to administer, and shall require the Production and Proof of the Indenture, and that Notice of the said Warrant has been given to the Commanding Officer, and a Copy thereof left with some Officer or Non-commissioned Officer of the Party, and that such Person so enlisted declared that he was no Apprentice or indentured Labourer; and such Justice, if required by such Officer or Non-commissioned Officer, shall commit the Offender to the Common Gaol of the County, Division, or Place for which such Justice is acting, and shall keep the Indenture to be produced when required, and shall bind over such Person as he may think proper to give Evidence against the Offender, who shall be tried at the next or at the Sessions immediately succeeding the next General or Quarter Sessions of such County, Division, or Place, unless the Court shall for just Cause put off the Trial; and the Production of the Indenture, with the Certificate of the Justice that the same was proved, shall be sufficient Evidence of the said Indenture; and every such Offender in Scotland may be tried by the Judge Ordinary in the County or Stewartry in such and the like Manner as any Person may be tried in Scotland for any Offence not inferring a Capital Punishment: Provided always, that any Justice not required as aforesaid to commit such Apprentice or indentured Labourer may deliver him to his Master.

59. No Person who shall, for Six Months either before or after the passing of this Act, have received Pay and been borne on the Strength and Pay List of any Regiment or Corps, or Depôt or Battalion of a Regiment or Corps (of which the last Quarterly Pay List, if produced, shall be Evidence), shall be entitled to claim his Discharge on the Ground of Error or Illegality in his Enlistment or Attestation or Re-engagement, or on any other Ground whatsoever, but, on the con-

trary, every such Person shall be deemed to have been duly enlisted, attested, or re-engaged, as the Case may be.

60. No Secretary of State for the War Department, Paymaster General of the Army, Paymaster, or any other Officer whatsoever, or any of their under Officers, shall receive any Fees or make any Deductions whatsoever out of the Pay of any Officer or Soldier in Her Majesty's Army, or from their Agents, which shall grow due from and after the Twenty-fifth Day of April One thousand eight hundred and sixty-eight, other than the usual Deductions, or such other necessary Deductions as shall from Time to Time be authorized or required by Her Majesty's Regulations or Articles of War, or by Statute Twenty-six and Twenty-seven Victoria, Chapter Sixty-five, Section Eight (Volunteer Act), or by Her Majesty's Order signified by the Secretary of State for the War Department; and every Paymaster or other Officer who having received any Officer's or Soldier's Pay shall unlawfully detain the same for the Space of One Month, or refuse to pay the same when it shall become due, according to the several Rates and agreeably to the several Regulations established by Her Majesty's Orders, shall, upon Proof thereof before a Court-martial, be discharged from his Employment, and shall forfeit One hundred Pounds, and the Informer, if a Soldier, shall, if he demand it, be discharged from any further Service.

61. And whereas by Petition of Right in the Third Year of King Charles the First it is enacted and declared, that the People of the Land are not by the Laws to be burdened with the sojourning of Soldiers against their Wills; and by a Clause in an Act of the Parliament of England, made in the Thirty-first Year of the Reign of King Charles the Second, for granting a Supply to His Majesty of Two hundred and six thousand four hundred and sixty-two Pounds Seventeen Shillings and Threepence, for paying and disbanding the Forces, it is declared and enacted that no Officer, Civil or Military, nor other Person whosoever, should thenceforth presume to place, quarter, or billet any Soldier upon any Subject or Inhabitant of this Realm, of any Degree, Quality, or Profession whatsoever, without his Consent, and that it shall be lawful for any Subject or Inhabitant to refuse to quarter any Soldier, notwithstanding any Warrant or Billeting whatsoever: And whereas by an Act passed in the Parliament of Ireland in the Sixth Year of the Reign of Queen Anne, Chapter Fourteen, Section Eight, intituled "An Act to prevent the Disorders that may happen by the marching of Soldiers, and providing Carriages for the Baggage of Soldiers on their March," it was enacted, that no Officer, Soldier, or Trooper

in the Army, nor the Servant of any Officer, nor any Attendant on the Train of Artillery, nor any Yeoman of the Guard or Battle-axes, nor any Officer commanding the said Yeomen, nor any Servant of any such Officer, should at any Time thereafter have, receive, or be allowed any Quarters in any Part of Ireland, save only during such Time or Times as he or they should be on their March as in the same Act is before mentioned, or during such Time as he or they should be and remain in some Seaport Town or other Place in the Neighbourhood of a Seaport Town in order to be transported, or during such Time as there should be any Commotion in any Part of Ireland, by reason of which Emergency the Army, or any considerable Part thereof, should be commanded to march from one Part of Ireland to another: But forasmuch as there is and may be Occasion for the marching and quartering of Regiments, Corps, Troops, and Companies in several Parts of the United Kingdom of Great Britain and Ireland, the said several Provisions of the said recited Acts shall be suspended and cease to be of any Force or Effect during the Continuance of this Act.

62. And whereas by the Eleventh Section of the said Act of the Sixth Year of the Reign of Queen Anne, Chapter Fourteen, it is provided and enacted, that no Civil Magistrate or Constable should be obliged to find Quarters for or give Billets to more or other Soldiers than those only whose true Christian and Surnames should be delivered to him in Writing under the Hand of the Officer desiring Quarters or Billets for such Soldiers at the Time such Quarters or Billets should be desired, and that all such Names should be written together and delivered in One Piece of Paper, signed as aforesaid, and that the Christian and Surnames of every Soldier to be quartered or billeted, together with the Name of the Person on whom he or they should be billeted or quartered, should be given in Writing by the Constable or Civil Officer billeting or quartering such Soldier, and be contained in the Billet given by such Civil Officer: And whereas it has been found inconvenient and difficult to comply with all the Requirements of the said Enactment: It shall not be necessary, so long as this Act shall continue in force, for any Officer, upon the Occasion of his requiring Quarters or Billets for any Soldiers in Ireland, to deliver to the Constable or other Person whose Duty it shall be to find or give the same any List of the Names of the Soldiers to be so quartered or billeted; and it shall not be necessary for the Constable or other such Person as aforesaid to set forth in any Billet the Name of any Soldier to be billeted or quartered, but only the Number of the Soldiers, or the Number of the Soldiers and Horses respectively, as the Case

may require, to be billeted or quartered on the Person named in the Billet, and to whom the same shall be addressed.

63. It shall be lawful for all Constables of Parishes and Places, and other Persons specified in this Act, in Great Britain and Ireland, and they are hereby required, to billet the Officers and Soldiers in Her Majesty's Service, and Out-pensioners when assembled as a local Force by competent Authority, and Persons receiving Pay in Her Majesty's Army, and the Horses belonging to Her Majesty's Cavalry, and also all Staff and Field Officers Horses, and all Bât and Baggage Horses belonging to any of Her Majesty's other Forces, when on actual Service, not exceeding for each Officer the Number for which Forage is or shall be allowed by Her Majesty's Regulations, in Victualling Houses and other Houses specified in this Act (taking care in Ireland not to billet less than Two Men in One House, except only in case of billeting Cavalry as specially provided); and they shall be received by the Occupiers of the Houses in which they are so billeted, and be furnished by such Victuallers with proper Accommodation in such Houses, or if any Victualler shall not have sufficient Accommodation in the House upon which a Soldier is billeted, then in some good and sufficient Quarters to be provided by such Victualler in the immediate Neighbourhood, and in Great Britain shall also be furnished with Diet and Small Beer, and in Great Britain and Ireland with Stables, Oats, Hay, and Straw for such Horses as aforesaid, paying and allowing for the same the several Rates herein-after provided; and at no Time when Troops are on a March shall any of them, whether Infantry or Cavalry, be billeted above One Mile from the Place mentioned in the Route, Care being always taken that Billets be made out for the less distant Houses, in which suitable Accommodation can be found, before making out Billets for the more distant; and in all Places where Cavalry shall be billeted in pursuance of this Act, each Man and his Horse shall be billeted in One and the same House, except in case of Necessity; and, except in case of Necessity, One Man at least shall be billeted where there shall be One or Two Horses, and Two Men at least where there shall be Four Horses, and so in proportion for a greater Number; and in no Case shall a Man and his Horse be billeted at a greater Distance from each other than One hundred Yards; and the Constables are hereby required to billet all Soldiers and their Horses on their March, in the Manner required by this Act, upon the Occupiers of all Houses within One Mile of the Place mentioned in the Route, and whether they be in the same or in a different County, in like Manner in every respect as if such Houses were all locally situate within

such Place; provided that nothing herein contained shall be construed to extend to authorize any Constable to billet Soldiers out of the County to which such Constable belongs when the Constable of the adjoining County shall be present and shall undertake to billet the due Proportion of Men in such adjoining County; and no more Billets shall at any Time be ordered than there are effective Soldiers and Horses present to be billeted; all which Billets, when made out by such Constables, shall be delivered into the Hands of the Commanding Officer present; and if any Person shall find himself aggrieved by having an undue Proportion of Soldiers billeted in his House, and shall prefer his Complaint, if against a Constable or other Person not being a Justice, to One or more Justices, and if against a Justice then to Two or more Justices within whose Jurisdiction such Soldiers are billeted, such Justices respectively shall have Power to order such of the Soldiers to be removed, and to be billeted upon other Persons, as they shall see Cause; and when any of Her Majesty's Cavalry or any Horses as aforesaid shall be billeted upon the Occupiers of Houses in which Officers or Soldiers may be quartered by virtue of this Act who shall have no Stables, then and in such Case, upon the written Requisition of the Commanding Officer of the Regiment, Corps, Troop, or Detachment, the Constable is hereby required to billet the Men and their Horses, or Horses only, upon some other Person or Persons who have Stables, and who are by this Act liable to have Officers and Soldiers billeted upon them; and upon Complaint being made by the Person or Persons to whose House or Stables the said Men or Horses shall have been so removed to Two or more Justices within whose Jurisdiction such Men or Horses shall be so billeted, it shall be lawful for such Justices to order a proper Allowance to be paid by the Person relieved to the Persons receiving such Men and Horses, or to be applied in furnishing the requisite Accommodation; and Commanding Officers may exchange any Man or Horse billeted in any Place with another Man or Horse billeted in the same Place for the Benefit of the Service, provided the Number of Men and Horses do not exceed the Number at that Time billeted on such Houses respectively; and the Constables are hereby required to billet such Men and Horses so exchanged accordingly; and it shall be lawful for any Justice, at the Request of any Officer or Non-commissioned Officer commanding any Soldiers requiring Billets, to extend any Routes or to enlarge the Districts within which Billets shall be required, in such Manner as shall appear to be most convenient to the Troops; provided that to prevent or punish all Abuses in billeting Soldiers, it shall be lawful for any Justice within

his Jurisdiction, by Warrant or Order under his Hand, to require any Constable to give him an Account in Writing of the Number of Officers and Soldiers who shall be quartered by such Constables, together with the Names of the Persons upon whom such Officers and Soldiers are billeted, stating the Street or Place where such Persons dwell, and the Sign, if any, belonging to the Houses: Provided always, that no Officer shall be compelled or compellable to pay anything for his Lodging where he shall be duly billeted.

64. The Officers and Soldiers of Her Majesty's Foot Guards shall be billeted within the City and Liberties of Westminster and Places adjacent, lying in the County of Middlesex (except the City of London) and in the County of Surrey, and in the Borough of Southwark, in the same Manner and under the same Regulations as in other Parts of England, in all Cases for which particular Provision is not made by this Act; and the High Constables shall, on Receipt of the Order for billeting Soldiers, deliver Precepts to the several Constables within their respective Divisions, in pursuance of which the said Constables shall billet such Officers and Soldiers equally and proportionably on the Houses subjected thereto by this Act; and the said Constables shall, at every General Sessions of the Peace to be holden for the said City and Liberties, Counties and Borough respectively, make and deliver to the Justices then in open Session assembled, upon Oath, which Oath the said Justices are hereby required to administer, Lists, signed by them respectively, of the Houses subject by this Act to receive Officers and Soldiers, together with the Names and Rank of all Officers and Soldiers billeted on each respectively, which Lists shall remain with the respective Clerks of the Peace for the Inspection of all Persons without Fee or Reward; and such Clerk shall forthwith from Time to Time deliver to any Persons who shall require the same true Copies of any such Lists upon being paid Twopenny per Sheet for the same, each Sheet to contain at the least One hundred and fifty Words.

65. No Justice having or executing any Military Office or Commission in any Part of the United Kingdom shall, directly or indirectly, be concerned in the billeting or appointing Quarters for any Soldier in the Regiment, Corps, Troop, or Company under the immediate Command of such Justice, and all Warrants, Acts, and Things made, done, and appointed by such Justice for or concerning the same shall be void.

66. The Innholder or other Person on whom any Soldier is billeted in Great Britain shall, if

required by such Soldier, furnish him for every Day of the March, and for a Period not exceeding Two Days when halted at the intermediate Place upon the March, and for the Day of the Arrival at the Place of final Destination, with One hot Meal in each Day, the Meal to consist of such Quantities of Diet and Small Beer as may be fixed by Her Majesty's Regulations, not exceeding One Pound and a Quarter of Meat previous to being dressed, One Pound of Bread, One Pound of Potatoes or other Vegetables, and Two Pints of Small Beer, and Vinegar, Salt, and Pepper, and for such Meal the Innholder or other Person furnishing the same shall be paid the Sum of Tenpence, and Twopence Halfpenny for a Bed; and all Innholders and other Persons on whom Soldiers may be billeted in Great Britain or Ireland, except when on the March in Great Britain and entitled to be furnished with the hot Meal as aforesaid, shall furnish such Soldiers with a Bed and with Candles, Vinegar, and Salt, and shall allow them the Use of Fire, and the necessary Utensils for dressing and eating their Meat, and shall be paid in consideration thereof the Sum of Fourpence per Diem for each Soldier; and the Sum to be paid to the Innholder or other Person on whom any of the Horses belonging to Her Majesty's Forces shall be billeted in Great Britain or Ireland for Ten Pounds of Oats, Twelve Pounds of Hay, and Eight Pounds of Straw, shall be One Shilling and Ninepence per Diem for each Horse; and every Officer or Non-commissioned Officer commanding a Regiment, Detachment, or Party shall, every Four Days, or before they shall quit their Quarters if they shall not remain so long as Four Days, settle and discharge the just Demands of all Victuallers or other Persons upon whom such Officers, Soldiers, or Horses are billeted, out of the Pay and Subsistence of such Officers and Soldiers, before any Part of the said Pay or Subsistence be distributed to them respectively; and if any such Officer or Non-commissioned Officer shall not pay the same as aforesaid, then, upon Complaint, and Oath made thereof by any Two Witnesses before Two Justices of the Peace for the County, Riding, Division, Liberty, City, Borough, or Place where such Quarters were situated, sitting in Quarter or Petty Sessions, the Secretary of State for the War Department is hereby required (upon Certificate of the Justices before whom such Oath was made of the Sum due upon such Accounts, and the Persons to whom the same is owing,) to give Orders to the Agent of the Regiment or Corps to pay the Sums due to such Victuallers or other Persons as aforesaid, and to charge the same against such Officers; and in case any Soldier be suddenly ordered to march, and the respective Commanding Officers or Non-commissioned Officers are not enabled to make Payment of the

Sums due for the Lodging or Victualling of the Men and Stabling or Forage for the Horses, every such Officer or Non-commissioned Officer shall, before his Departure, make up the Account with every Person upon whom such Soldier may have been billeted, and sign a Certificate thereof; which Account and Certificate shall be transmitted by such Officer or Non-commissioned Officer to the Agent of the Regiment or Corps, who is hereby required to make immediate Payment thereof, and to charge the same to the Account of such Officer or Non-commissioned Officer.

67. All Powers and Provisions relating to Soldiers shall be construed to extend to Non-commissioned Officers, unless when otherwise provided; and all Powers and Provisions relating to Justices shall be construed to extend to all Magistrates authorized to act as such in their respective Jurisdictions and to Chief Magistrates of exclusive local Jurisdictions; and all the Powers given to and Regulations made for the Conduct of Constables in relation to the billeting of Officers and Soldiers, and all Penalties and Forfeitures for any Neglect thereof, shall extend to all Tithingmen, Headboroughs, and such like Officers, and to all Inspectors or other Officers of Police, and to High Constables and other Chief Officers and Magistrates of Cities, Towns, Villages, Hamlets, Parishes, and Places in England and Ireland, and to all Justices of the Peace, Magistrates of Burghs, Commissioners of Police, and other Chief Officers and Magistrates of Cities, Towns, Villages, Parishes, and Places in Scotland, who shall act in the Execution of this Act in relation to billeting; and all Powers and Provisions for billeting Officers and Soldiers in Victualling Houses shall extend and apply to all Inns, Hotels, Livery Stables, Alehouses, and to the Houses of Sellers of Wine by Retail, whether British or Foreign, to be drunk in their own Houses, or Places thereunto belonging, and to all Houses of Persons selling Brandy, Spirits, Strong Waters, Cider, or Metheglin, by Retail, in Great Britain and Ireland; and in Ireland, when there shall not be found sufficient Room in such Houses, then to billeting Soldiers in such Manner as has been heretofore customary: Provided that no Officer or Soldier shall be billeted in Great Britain in any private Houses, or in any Canteen held or occupied under the Authority of the War Department, or upon Persons who keep Taverns only, being Vintners of the City of London admitted to their Freedom of the said Company in right of Patrimony or Apprenticeship, notwithstanding such Persons who keep such Taverns only have taken out Victualling Licences, nor in the House of any Distiller kept for distilling Brandy and Strong Waters, nor in the House of any Shopkeeper whose principal Dealing shall

be more in other Goods and Merchandise than in Brandy and Strong Waters, so as such Distillers and Shopkeepers do not permit tipping in such Houses, nor in the House of Residence in any Part of the United Kingdom of any Foreign Consul duly accredited as such.

68. For the regular Provision of Carriages for Her Majesty's Forces, and their Baggage, in their Marches in Great Britain and Ireland, all Justices of the Peace within their several Jurisdictions, being duly required thereunto by an Order from Her Majesty, or the General of Her Forces, or other Person duly authorized in that Behalf, shall, on Production to them of such Order, or a Copy thereof, certified by the Commanding Officer, by some Officer or Non-commissioned Officer of the Regiment or Corps so ordered to March, issue a Warrant to any Constable having Authority to act in any Place from, through, near, or to which the Troop shall be ordered to march, (for each of which Warrants the Fee of One Shilling only shall be paid,) requiring him to provide the Carriages, Horses, and Oxen, and Drivers therein mentioned, and allowing sufficient Time to do the same, specifying the Places from and to which the said Carriages shall travel, and the Distance between the Places, for which Distance only so specified Payment shall be demanded, and which Distance shall not, except in Cases of pressing Emergency, exceed a Day's March prescribed in the Order of Route, and shall in no Cases exceed Twenty-five Miles; and the Constables receiving such Warrants shall order such Persons as they shall think proper, having Carriages, to furnish the requisite Supply, who are hereby required to furnish the same accordingly; and when sufficient Carriages cannot be procured within the proper Jurisdiction, any Justice of the next adjoining Jurisdiction shall, by a like Course of Proceeding, supply the Deficiency; and in order that the Burden of providing Carriages may fall equally, and to prevent Inconvenience arising from there being no Justice near the Place where Troops may be quartered on the March, any Justice residing nearest to such Place may cause a List to be made out once in every Year of all Persons liable to furnish such Carriages, and of the Number and Description of their said Carriages, (which List shall at all seasonable Hours be open to the Inspection of the said Persons,) and may by Warrant under his Hand authorize the Constable within his Jurisdiction to give Orders to provide Carriages, without any special Warrant for that Purpose, which Orders shall be valid in all respects; and all Orders for such Carriages shall be made from such Lists in regular Rotation, as far as the same can be done.

69. In every Case in which the whole Distance

for which any Carriage shall be impressed shall be under One Mile the Rate of a full Mile shall be paid; and the Rates to be paid for Carriages impressed shall be, in Great Britain, for every Mile which a Waggon with Four or more Horses, or a Wain with Six Oxen or Four Oxen and Two Horses, shall travel, One Shilling; and for every Mile any Waggon with narrow Wheels, or any Cart with Four Horses, carrying not less than Fifteen Hundredweight, shall travel, Ninepence; and for every Mile any other Cart or Carriage with less than Four Horses, and not carrying Fifteen Hundredweight, shall travel, Sixpence; and in Ireland, for every Hundredweight loaded on any Wheel Carriage, One Halfpenny per Mile; and in Great Britain such further Rates may be added, not exceeding a total Addition per Mile of Fourpence, Threepence, or Twopence, to the respective Rates of One Shilling, Ninepence, or Sixpence, as may seem reasonable to the Justices assembled at General Sessions for their respective Districts, or to the Recorder at the Sessions of the Peace of any Municipal City, Borough, or Town; and the Order of such Justices or Recorder shall specify the average Price of Hay and Oats at the nearest Market Town at the Time of fixing such additional Rates, the Period for which the Order shall be enforced not exceeding Ten Days beyond the next General Sessions; and no such Order shall be valid unless a Copy thereof, signed by the presiding Magistrate and One other Justice, or by the Recorder, shall be transmitted to the Secretary of State for the War Department within Three Days after the making thereof; and also in Great Britain when the Day's March shall exceed Fifteen Miles the Justice granting his Warrant may fix a further reasonable Compensation, not exceeding the usual Rate of Hire fixed by this Act; and when any additional Rates or Compensation shall be granted, the Justice shall insert in his own Hand in the Warrant the Amount thereof, and the Date of the Order of Sessions, if fixed by Sessions, and the Warrant shall be given to the Officer commanding as his Voucher; and the Officer or Non-commissioned Officer demanding Carriages by virtue of the Warrant of a Justice shall, in Great Britain, pay the proper Sums into the Hands of the Constables providing Carriages, who shall give Receipts for the same on unstamped Paper; and in Ireland the Officers or Non-commissioned Officers as aforesaid shall pay the proper Sums to the Owners or Drivers of the Carriages, and One Third Part of such Payment shall be made before the Carriage be loaded, and all the said Payments in Ireland shall be made, if required, in the Presence of a Justice or Constable; and no Carriage shall be liable to carry more than Thirty Hundredweight in Great Britain, and in Ireland no Car shall be liable to

carry more than Six Hundredweight, and no Dray more than Twelve Hundredweight; but the Owner of such Carriages in Ireland consenting to carry a greater Weight shall be paid at the same Rate for every Hundredweight of the said Excess; and the Owners of such Carriages in Ireland shall not be compelled to proceed, though with any less Weight, under the Sum of Threepence a Mile for each Car and Sixpence a Mile for each Dray; and the Loading of such Carriages in Ireland shall be first weighed, if required, at the Expense of the Owner of the Carriage, if the same can be done in a reasonable Time, without Hindrance to Her Majesty's Service; provided that a Cart with One or more Horses for which the Furnisher shall receive Ninepence a Mile shall be required to carry Fifteen Hundredweight at the least; and no Penalties or Forfeitures in any Act relating to Highways or Turnpike Roads in the United Kingdom shall apply to the Number of Horses and Oxen, or Weight of Loading of the aforesaid Carriages, which shall not on that Account be stopped or detained; and whenever it shall be necessary to impress Carriages for the March of Soldiers from Dublin, at least Twenty-four Hours Notice of such March, and in case of Emergency as long Notice as the Case will admit, shall be given to the Lord Mayor of Dublin, who shall summon a proportional Number of Cars and Drays, at his Discretion, out of the licensed Cars and Drays and other Cars and Drays within the County of the said City, and they shall by Turns be employed on this Duty at the Prices and under the Regulations herein-before mentioned; and no Country Cars, Drays, or other Carriages coming to Markets in Ireland shall be detained or employed against the Will of the Owners in carrying the Baggage of the Army on any Pretence whatsoever.

70. It shall be lawful for Her Majesty, or for the Lord Lieutenant or Chief Governor of Ireland, by Her or their Order, distinctly stating that a Case of Emergency doth exist, signified by the Secretary of State for the War Department, or, if in Ireland, by the Chief Secretary or Under Secretary, or the First Clerk in the Military Department, to authorize any General or Field Officer commanding Her Majesty's Forces in any District or Place, or the Chief Acting Agent for the Supply of Stores and Provisions, by Writing under his Hand reciting such Order of Her Majesty or Lord Lieutenant or Chief Governor aforesaid, to require all Justices within their several Jurisdictions in Great Britain and Ireland to issue their Warrants for the Provision, not only of Waggons, Wains, Carts, and Cars kept by or belonging to any Person and for any Use whatsoever, but also of Saddle Horses, Coaches,

Postchaises, Chaises, and other Four-wheeled Carriages kept for Hire, and of all Horses kept to draw Carriages licensed to carry Passengers, and also of Boats, Barges, and other Vessels used for the Transport of any Commodities whatsoever upon any Canal or navigable River, as shall be mentioned in the said Warrants, therein specifying the Place and Distance to which such Carriages or Vessels shall go; and on the Production of such Requisition, or a Copy thereof certified by the Commanding Officer, to such Justice, by any Officer of the Corps ordered to be conveyed, or by any Officer of the War Department, such Justice shall take all the same Proceedings in regard to such additional Supply so required on such Emergency as he is by this Act required to take for the ordinary Provision of Carriages; and all Provisions whatsoever of this Act as regards the procuring of the ordinary Supply of Carriages, and the Duties of Officers and Non-commissioned Officers, Justices, Constables, and Owners of Carriages, in that Behalf, shall be to all Intents and Purposes applicable for the providing and Payment, according to the Rates of Posting or of Hire usually paid for such other Description of Carriages or Vessels so required on Emergency, according to the Length of the Journey or Voyage in each Case, but making no Allowance for Post Horse Duty, or Turnpike, Canal, River, or Lock Tolls, which Duty or Tolls are hereby declared not to be demandable for such Carriages and Vessels while employed in such Service or returning therefrom; and it shall be lawful to convey thereon, not only the Baggage, Provisions, and Military Stores of such Regiment, Corps, or Detachment, but also the Officers, Soldiers, Servants, Women, Children, and other Persons of and belonging to the same.

71. It shall be lawful for the Justices of the Peace assembled at their Quarter Sessions to direct the Treasurer to pay, without Fee, out of the Public Stock of the County or Riding, or if such Public Stock be insufficient then out of Monies which the said Justices shall have Power to raise for that Purpose, in like Manner as for County Gaols and Bridges, such reasonable Sums as shall have been expended by the Constables within their respective Jurisdictions for Carriages and Vessels, over and above what was or ought to have been paid by the Officer requiring the same, regard being had to the Season of the Year and the Condition of the Ways by which such Carriages and Vessels are to pass; and in Scotland such Justices shall direct such Payments to be made out of the Rogue Money and Assessments directed and authorised to be assessed and levied by an Act of the Twentieth and Twenty-first Years of the Reign of Her present Majesty, Chapter Seventy-two.

72. It shall be lawful for the Lord Lieutenant or other Chief Governor for the Time being of Ireland to depute, by Warrant under his Hand and Seal, some proper Person to sign Routes in Cases of Emergency, for the marching of any of Her Majesty's Forces in Ireland, in the Name of such Lord Lieutenant or Chief Governor.

73. All Her Majesty's Officers and Soldiers, on Duty or on their March, and their Horses and Baggage, and all Recruits marching by Route, and all Prisoners under Military Escort, and all enrolled Pensioners in Uniform when called out for Training or in aid of the Civil Power, and all Carriages and Horses belonging to Her Majesty or employed in Her Service under the Provisions of this Act, or in any of Her Majesty's Colonies, when conveying any such Persons as aforesaid, or their Baggage, or returning from conveying the same, shall be exempted from Payment of any Duties and Tolls on embarking or disembarking from or upon any Pier, Wharf, Quay, or Landing Place, or in passing along or over any Turnpike or other Roads or Bridges, otherwise demandable by virtue of any Act already passed or hereafter to be passed, or by virtue of any Act or Ordinance, Order, or Direction of any Colonial Legislature or other Authority in any of Her Majesty's Colonies; provided that nothing herein contained shall exempt any Boats, Barges, or other Vessels employed in conveying the said Persons, Horses, Baggage, or Stores along any Canal from Payment of Tolls in like Manner as other Boats, Barges, and Vessels are liable thereto, except when employed in Cases of Emergency as herein-before enacted.

74. When any Soldiers on Service have Occasion in their March by Route to pass regular Ferries in Scotland, the Officer commanding may at his Option pass over with his Soldiers as Passengers, and shall pay for himself and each Soldier One Half only of the ordinary Rate payable by single Persons, or may hire the Ferry Boat for himself and his Party, debarring others for that Time, and shall in all such Cases pay only Half the ordinary Rate for such Boat.

75. Every Soldier entitled to his Discharge shall, if then serving abroad, be sent, if he shall so require, to Great Britain or Ireland free of Expense, and shall be entitled to receive Marching Money from the Place of his being landed (or, if discharged at home, shall receive Marching Money from the Place of his Discharge,) to the Parish or Place in which he shall have been originally enlisted, or at which he shall at the Time of his Discharge decide to take up his Residence, such Place not being at a greater Distance from the Place of his Discharge than the Place of his original Enlistment.

76. Nothing in this Act contained shall be construed to extend to exempt any Officer or Soldier from being proceeded against by the ordinary Course of Law, when accused of Felony, or of Misdemeanor, or of any Crime or Offence other than the Misdemeanors and Offences herein-before mentioned; and if any Commanding Officer shall neglect or refuse, on Application being made to him for that Purpose, to deliver over to the Civil Magistrate any Officer or Soldier under his Command, or shall wilfully obstruct, neglect, or refuse to assist the Officers of Justice in apprehending any Officer or Soldier under his Command, so accused as aforesaid, such Commanding Officer shall, upon Conviction thereof in any of Her Majesty's Superior Courts at Westminster, Dublin, or Edinburgh, or in any Court of Record in India, be deemed to be thereupon cashiered, and shall be thenceforth utterly disabled to have or hold any Civil or Military Office or Employment in the United Kingdom of Great Britain and Ireland or in Her Majesty's Service; and a Certificate of such Conviction, containing the Substance and Effect of the Indictment only, omitting the formal Part, with the Copy of the Entry of the Judgment of the Court thereon, shall be transmitted to the Judge Advocate General in London.

77. For enforcing a prompt Observance of the Rules and Orders for the due Appropriation of the Public Funds applicable to Army Services, and in order that a true and regular Account may be kept and rendered by the Agents for the several Corps, the said Agents are hereby required to observe such Orders as shall from Time to Time be given by Her Majesty under Her Sign Manual, or by the Secretary of State for the War Department, or by Her Majesty's Lord Lieutenant or Chief Governor of Ireland, or by the Lord Treasurer or the Commissioners of Her Majesty's Treasury; and if any Person, being or having been an Agent, shall refuse or neglect to comply with such Orders in relation to his Duty as Agent, or shall unlawfully withhold or detain the Pay of any Officer or Soldier for a longer Period than the Space of One Month after the Receipt thereof, he shall for the First Offence forfeit the Sum of One hundred Pounds, and, if still an Agent, for the Second Offence be discharged from his Employment as an Army Agent, and be utterly disabled to have or hold such Employment thereafter, or, if he have ceased to be an Army Agent, shall for the Second and every succeeding Offence forfeit the Sum of Two hundred Pounds.

78. Every Person, not being an authorized Army Agent, who shall negotiate or act as Agent for or in relation to the Purchase, Sale, or Exchange of any Commission in Her Majesty's

Army, shall forfeit for every such Offence the Sum of One hundred Pounds; and every Person, whether authorized as an Army Agent or not, who shall receive any Money or Reward in respect of any such Purchase, Sale, or Exchange, or who shall negotiate or receive for any Purpose whatsoever any Money or Consideration where no Price is allowed by Her Majesty's Regulations, or any Money or Consideration exceeding the Amount so allowed, shall forfeit One hundred Pounds, and treble the Value of the Consideration where the Commission is not allowed to be sold, or treble the Excess of such Consideration beyond the regular Price.

79. Every Person, not having any Military Commission, who shall give or procure to be given any untrue Certificate, whereby to excuse any Soldier for his Absence from any Muster or any other Service which he ought to attend or perform, or who shall directly or indirectly cause to be taken any Money or Gratuity for mustering any Soldiers, or for signing any Muster Rolls or Duplicates thereof, shall forfeit for every such Offence the Sum of Fifty Pounds; and any Person who shall falsely be mustered, or offer himself to be mustered, or lend or furnish any Horse to be falsely mustered, shall, upon Conviction before some Justice of the Peace residing near the Place where such Muster shall be made, forfeit for every such Offence the Sum of Twenty Pounds; and the Informer, if he belongs to Her Majesty's Service, shall, if he demand it, be forthwith discharged.

80. Every Person (except such Person or Persons as shall be authorized by Beating Order under the Hand of the Secretary of State for the War Department) who shall cause to be advertised, posted, or dispersed Bills for the Purpose of procuring Recruits or Substitutes for the Line, Embodied Militia, or Her Majesty's Indian Forces, or shall open or keep any House, Place of Rendezvous, or Office, or receive any Person therein under such Bill or Advertisement, as connected with the Recruiting Service, or shall directly or indirectly interfere therewith, without Permission in Writing from the Adjutant General, or from the Secretary of State in Council of India, (as the Case may be,) shall forfeit for every such Offence a Sum not exceeding Twenty Pounds.

81. Any Person who shall in any Part of Her Majesty's Dominions, or by any Means whatsoever, directly or indirectly, procure any Soldier to desert, or attempt to procure or persuade any Soldier to desert, and any Person who, knowing that any Soldier is about to desert, shall aid or assist him in deserting, or, knowing any Soldier to be a Deserter, shall conceal such Deserter, or aid or assist such Deserter in concealing himself, or aid or

assist in his Rescue, shall be deemed guilty of a Misdemeanor, and shall, on Conviction thereof before any Two Justices acting for the County, District, City, Burgh, or Place where any such Offender shall at any Time happen to be, be liable to be committed to the Common Gaol or House of Correction, there to be imprisoned, with or without Hard Labour, for such Term not exceeding Six Calendar Months as the convicting Justices shall think fit.

82. Any Officer or Soldier who shall, in pursuit of any Deserter, forcibly enter into or break open any Dwelling House or Outhouse, or shall give any Order under which any Dwelling House or Outhouse shall be forcibly entered into or broken open, without a Warrant from One or more Justices of the Peace, shall, on Conviction thereof before Two Justices of the Peace, forfeit a Sum not exceeding Twenty Pounds.

83. If any Person shall convey or cause to be conveyed into any Military Prison appointed to be a public Prison under this Act any Arms, Tools, or Instruments, or any Mask or other Disguise, in order to facilitate the Escape of any Prisoner, or shall by any Means whatever aid and assist any Prisoner to escape or in attempting to escape from such Prison, whether an Escape be actually made or not, such Person shall be deemed guilty of Felony, and upon being convicted thereof shall be kept to Penal Servitude for any Term not less than Four Years and not exceeding Six Years, or be imprisoned, with or without Hard Labour, for any Term not exceeding Two Years; and if any Person shall bring or attempt to bring into such Prison, in contravention of the existing Rules thereof, any spirituous or fermented Liquor, he shall for every such Offence be liable to a Penalty not exceeding Twenty Pounds and not less than Ten Pounds, or to be imprisoned, with or without Hard Labour, for any Time not exceeding Three Calendar Months; and if any Person shall bring into such Prison, to or for any Prisoner, without the Knowledge of the Governor, any Money, Clothing, Provisions, Tobacco, Letters, Papers, or any other Articles not allowed by the Rules of the Prison to be in the Possession of a Prisoner, or shall throw into the said Prison any such Articles, or shall by Desire of any Prisoner, without the Sanction of the Governor, carry out of the Prison any of the Articles aforesaid, he shall for every such Offence be liable to a Penalty not exceeding Five Pounds, or to be imprisoned, either with or without Hard Labour, for any Time not exceeding One Calendar Month; and if any Person shall assault or violently resist any Officer of such Prison in the Execution of his Duty, or shall aid or excite any Person so to assault or resist any such Officer, he shall for

every such Offence be liable to a Penalty not exceeding Five Pounds, or to be imprisoned, with or without Hard Labour, for any Time not exceeding One Calendar Month, or, if the Offender be a Soldier already under Sentence of Imprisonment, he shall be liable for every such Offence, upon Conviction thereof by a Board of not less than Three of the Visitors of the Prison, to be imprisoned, either with or without Hard Labour, for any Time not exceeding Six Calendar Months, in addition to his original Sentence, or to be subjected to Corporal Punishment not exceeding Fifty Lashes, or upon Conviction thereof by a single Visitor to be imprisoned, with or without Hard Labour, for any Time not exceeding Seventy-two Hours, in addition to his original Sentence, or to be subjected to Corporal Punishment not exceeding Twenty-five Lashes; or if such Soldier shall, within Forty-eight Hours of the Expiration of his original or of any additional Sentence, be guilty of any Offence against the Rules of the Prison, he may for every such Offence, on Conviction thereof by a Board or by a single Visitor, be ordered to be kept in Prison for a Period not exceeding Seventy-two Hours in either a dark or light Cell, and with or without Hard Labour or Solitary Confinement, on a Bread and Water Diet, or otherwise; and all the Provisions of any Act or Acts of Parliament for the Regulation or better ordering of Gaols, Houses of Correction, or Prisons in Great Britain shall be deemed to apply to all Military Prisons so far as any such Provision relates to such Offences; and it shall be lawful for the Governor, Provost Marshal, Officer, or Servant of any Military Prison to use and exercise all the Powers and Authorities given by any such Act to the Gaoler, Keeper, or Turnkey of any Prison, or to his or their Assistants, to apprehend or to cause Offenders to be apprehended, in order to their being taken before a Justice or Justices of the Peace; and all the Powers and Authorities given by any such Act to any Justice or Justices of the Peace to convict Offenders in any of the above Cases, together with the Forms of Convictions contained in any such Act, shall be applicable to the like Offences when committed in respect of Military Prisons; and all the Provisions contained in any such Act relating to Suits and Actions prosecuted against any Person for anything done in pursuance of such Act shall be deemed to apply to all Suits and Actions prosecuted against any Person acting in pursuance of such Act in respect of Military Prisons.

84. Any Governor, Provost Marshal, Gaoler, or Keeper of any public Prison, Gaol, House of Correction, Lock-up House, or other Place of Confinement, who shall refuse to receive and to confine, or to discharge or deliver over, any Military Offender in the Manner herein-before

prescribed, shall forfeit for every such Offence the Sum of One hundred Pounds.

85. Any Person who shall knowingly detain, buy, exchange, or receive from any Soldier or Deserter or any other Person acting for or on his Behalf, on any Pretence whatsoever, or who shall solicit or entice any Soldier, or shall be employed by any Soldier, knowing him to be such, to sell any Arms, Ammunition, Medals for good Conduct or for Distinguishment or other Service, Clothes, or Military Furniture, or any Provisions, or any Sheets or other Articles used in Barracks provided under Barrack Regulations, or Regimental Necessaries, or any Article of Forage provided for any Horses belonging to Her Majesty's Service, or who shall have in his or her Possession or Keeping any such Arms, Ammunition, Medals, Clothes, Furniture, Provisions, Spirits, Articles, Necessaries, or Forage, and shall not give a satisfactory Account how he or she came by the same, or shall change the Colour of any Clothes as aforesaid, shall forfeit for every such Offence any Sum not exceeding Twenty Pounds, together with treble the Value of all or any of the several Articles of which such Offender shall so become or be possessed; and if any Person having been so convicted shall afterwards be guilty of any such Offence, he shall for every such Offence forfeit any Sum not exceeding Twenty Pounds but not less than Five Pounds, and the Treble Value of all or any of the several Articles of which such Offender shall have so become possessed, and shall in addition to such Forfeiture be committed to the Common Gaol or House of Correction, there to be imprisoned, with or without Hard Labour, for such Term, not exceeding Six Calendar Months, as the convicting Justice or Justices shall think fit; and upon any Information against any Person for a Second or any subsequent Offence, a Copy of the former Conviction, certified by the proper Officer having the Care or Custody of such Conviction, or any Copy of the same proved to be a true Copy, shall be sufficient Evidence to prove such former Conviction; and if any credible Person shall prove on Oath before a Justice of the Peace, or Person exercising like Authority according to the Laws of the Part of Her Majesty's Dominions in which the Offence shall be committed, a reasonable Cause to suspect that any Person has in his or her Possession, or on his or her Premises, any Property of the Description herein-before described, on or with respect to which any such Offence shall have been committed, such Justice may grant a Warrant to search for such Property as in the Case of stolen Goods; and if upon such Search any such Property shall be found, the same shall and may be seized by the Officer charged with the Execution of such Warrant, who shall bring the

Offender in whose Possession the same shall be found before the same or any other Justice of the Peace, to be dealt with according to Law: Provided always, that it shall be lawful for the Legislature of any of Her Majesty's Foreign Dominions, on the Recommendation of the Officer or Officers for the Time being administering the Government thereof, but not otherwise, to make Provision by Law for reducing such pecuniary Penalty, if not exceeding Twenty Pounds, to such Amount as may to such Legislature appear to be better adapted to the Ability and pecuniary Means of Her Majesty's Subjects and others inhabiting the same, which reduced Penalty shall be sued for and recovered in such and the same Manner as the full Penalty hereby imposed: Provided also, that it shall be competent to Her Majesty, or to the Person or Persons administering the Government of any such Foreign Dominions as aforesaid, to exercise, in respect of the Laws so to be passed as aforesaid, all such Powers and Authorities as are by Law vested in Her Majesty or in any such Officer or Officers as aforesaid in respect of any other Law made or enacted by any such Legislature.

86. If any Constable or other Person who by virtue of this Act shall be employed in billeting any Officers or Soldiers in any Part of the United Kingdom shall presume to billet any such Officer or Soldier in any House not within the Meaning of this Act, without the Consent of the Owner or Occupier thereof; or shall neglect or refuse to billet any Officer or Soldier on Duty, when thereunto required, in such Manner as is by this Act directed, provided sufficient Notice be given before the Arrival of such Troops; or shall receive, demand, or agree for any Money or Reward whatsoever, in order to excuse any Person from receiving such Officer or Soldier; or shall quarter any of the Wives, Children, Men or Maid Servants of any Officers or Soldiers, in any such Houses, against the Consent of the Occupiers; or shall neglect or refuse to execute such Warrants of the Justices as shall be directed to him for providing Carriages, Horses, or Vessels, or shall demand more than the legal Rates for the same; or if any Person ordered by any Constable in manner herein-before directed to provide Carriages, Horses, or Vessels shall refuse or neglect to provide the same according to the Orders of such Constable, or shall do any Act or Thing by which the Execution of any Warrants for providing Carriages, Horses, or Vessels shall be hindered; or if any Constable shall neglect to deliver in to the Justices at Quarter Sessions Lists of Officers and Soldiers of the Foot Guards quartered according to the Provisions of this Act, or shall wilfully cause to be delivered defective Lists of the same; or if any Person liable by this Act to have any Officer or Soldier quartered

upon him shall refuse to receive and to afford proper Accommodation or Diet in the House in which such Officer or Soldier is quartered, and to furnish the several Things directed to be furnished to Officers and Soldiers, or shall neglect or refuse to furnish good and sufficient Stables, together with good and sufficient Oats, Hay, and Straw, in Great Britain and Ireland, for each Horse, in such Quantities and at such Rates as herein-before provided; or if any Innkeeper or Victualler not having good and sufficient Stables shall refuse to pay over to the Person or Persons who may provide Stabling such Allowances by way of Compensation as shall be directed by any Justice of the Peace, or shall pay any Sum or Sums of Money to any Soldier on the March in lieu of furnishing in Kind the Diet and Small Beer to which such Soldier is entitled; or if any Toll Collector shall demand and receive Toll from any of Her Majesty's Officers or Soldiers, on Duty or on their March, for themselves or for their Horses, or from any Recruits marching by Route, or from any Prisoners under Military Escort, or from any enrolled Pensioners in Uniform when called out for Training or in aid of the Civil Power, or for any Carriages or Horses belonging to Her Majesty, or employed in Her Service under the Provisions of this Act, or in any of Her Majesty's Colonies, when conveying Persons or Baggage or returning therefrom, every such Constable, Victualler, Toll Keeper, or other Person respectively shall forfeit for every such Offence, Neglect, or Refusal any Sum not exceeding Five Pounds nor less than Forty Shillings; and if any Person shall personate or represent himself to be a Soldier or a Recruit, with the view of fraudulently obtaining a Billet, or Money in lieu thereof, he shall for every such Offence forfeit any Sum not exceeding Five Pounds nor less than Twenty Shillings.

87. If any Military Officer shall take upon himself to quarter Soldiers otherwise than is limited and allowed by this Act, or shall use or offer any Menace or Compulsion to or upon any Mayor, Constable, or other Civil Officer, tending to deter and discourage any of them from performing any Part of their Duty under this Act, or tending to induce any of them to do anything contrary to their said Duty, such Officer shall for every such Offence (being thereof convicted before any Two or more Justices of the County by the Oath of Two credible Witnesses) be deemed and taken to be thereupon cashiered, and shall be utterly disabled to hold any Military Employment in Her Majesty's Service; provided that a Certificate of such Conviction shall be transmitted by One of the said Justices to the Judge Advocate in London, who is hereby required to certify the same to the Commander-in-Chief and Secretary of State for the War De-

partment, and that the said Conviction be affirmed at some Quarter Sessions of the Peace of the said County held next after the Expiration of Three Months after such Certificate of the Justice shall have been transmitted as aforesaid; and if any Military Officer shall take, or knowingly suffer to be taken, from any Person, any Money or Reward for excusing the quartering of Officers or Soldiers, or shall billet any of the Wives, Children, Men or Maid Servants of any Officer or Soldier, in any House, against the Consent of the Occupier, he shall, upon being convicted thereof before a General Court-martial, be cashiered; and if any Officer shall constrain any Carriage to travel beyond the Distances specified in the Justice's Warrant, or shall not discharge the same in due Time for their Return home on the same Day, if it be practicable, except in the Case of Emergency for which the Justice shall have given Licence, or shall compel the Driver of any Carriage to take up any Soldier or Servant (except such as are sick) or any Woman to ride therein, except in the Cases of Emergency as aforesaid, or shall force any Constable, by threatening Words, to provide Saddle Horses for himself or Servants, or shall force Horses from their Owners, or in Ireland shall force the Owner to take any Loading until the same shall be first duly weighed, if the same can be done within reasonable Time, or shall, contrary to the Will of the Owner or his Servant, permit any Person whatsoever to put any greater Load upon any Carriage than is directed by this Act, such Officer shall forfeit for every Offence any Sum not exceeding Five Pounds nor less than Forty Shillings.

88. For the better Preservation of Game and Fish in or near Places where any Officers shall at any Time be quartered, be it enacted, That every Officer who shall, without Leave in Writing from the Person or Persons entitled to grant such Leave, take, kill, or destroy any Game or Fish in the United Kingdom of Great Britain and Ireland, shall for every such Offence forfeit the Sum of Five Pounds.

89. Any Action which shall be brought against any Person for anything to be done in pursuance of this Act shall be brought within Six Calendar Months after the doing thereof, and it shall be lawful for every such Person to plead therunto the General Issue Not Guilty, and to give all special Matter in Evidence to the Jury; and if the Verdict shall be for the Defendant in any such Action, or the Plaintiff therein become nonsuited, or suffer any Discontinuance thereof, or if in Scotland such Court shall see fit to acquit the Defendant or dismiss the Complaint, the Court in which the said Matter shall be tried shall allow unto the Defendant Treble Costs, for

which the said Defendant shall have the like Remedy as in other Cases where Costs are by Law given to Defendants; and every Action against any Person for anything done in pursuance of this Act, or against any Member or Minister of a Court-martial in respect of any Sentence of such Court, or of anything done by virtue or in pursuance of such Sentence, shall be brought in some One of the Courts of Record at Westminster, or in Dublin, or in India, or in the Court of Session in Scotland, and in no other Court whatsoever.

90. All Offences for which any Penalties and Forfeitures are by this Act imposed not exceeding Twenty Pounds, over and above any Forfeiture of Value or Treble Value, shall and may be determined, and such Penalties and Forfeitures and Forfeiture of Value or Treble Value recovered, in every Part of the United Kingdom, by and before One or more Justice or Justices of the Peace, under the Provisions of an Act passed in the Eleventh and Twelfth Years of the Reign of Her Majesty Queen Victoria, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary Convictions and Orders;" Provided always, that in all Cases in which there shall not be sufficient Goods whereon any Penalty or Forfeiture can be levied, the Offender may be committed and imprisoned for any Time not exceeding Six Calendar Months; which said recited Act shall be used and applied, in Scotland and in Ireland, for the Recovery of all such Penalties and Forfeitures, as fully to all Intents as if the said recited Act had extended to Scotland and Ireland, anything in the said recited Act, or in an Act passed in the Fourteenth and Fifteenth Years of the Reign of Her Majesty Queen Victoria, intituled "An Act to consolidate and amend the Acts regulating the Proceedings at Petty Sessions, and the Duties of Justices of the Peace out of Quarter Sessions, in Ireland," to the contrary notwithstanding; and all such Offences committed in the British Isles or in any of Her Majesty's Dominions beyond the Seas may be determined, and the Penalties and Forfeitures and Forfeiture of Value or Treble Value recovered, before any Justices of the Peace, or Persons exercising like Authority according to the Laws of the Part of Her Majesty's Dominions in which the Offence shall be committed; and all Penalties and Forfeitures by this Act imposed exceeding Twenty Pounds shall be recovered by Action in some of the Courts of Record at Westminster, or in Dublin, or in India, or in the Court of Session in Scotland, and in no other Court in the United Kingdom, and may be recovered in the British Isles, or in any other Parts of Her Majesty's Dominions, in any of the Royal

or Superior Courts of such Isles or other Parts of Her Majesty's Dominions.

91. One Moiety of every Penalty, not including any Treble Value of any Articles, adjudged or recovered under the Provisions of this Act, shall go to the Person who shall inform or sue for the same, and the Remainder of the Penalty, together with the Treble Value, of any Articles, or, where the Offence shall be proved by the Person who shall inform, the whole of the Penalty, shall be paid, in the United Kingdom, to the General Agent for the Recruiting Service in London, and in India to the Military Secretary of the Government of the Presidency to which the Court by whom the Penalty shall be adjudicated shall be subject, and elsewhere in Her Majesty's Dominions to the Local Military Accountant, to be at the Disposal of the Secretary of State for the War Department, anything in an Act passed in the Fifth and Sixth Years of the Reign of His late Majesty King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or in any other Act or Acts, to the contrary notwithstanding. Every Justice or Court adjudging any Penalty under this Act shall report the same immediately, if in the United Kingdom, to the said Secretary of State, if in India to the said Military Secretary, and if elsewhere in Her Majesty's Dominions to the General or other Officer commanding at the Station.

92. Any Justice in the United Kingdom within whose Jurisdiction any Soldier in Her Majesty's Army, or on the Permanent Staff of the Militia, having a Wife or Child, shall be billeted, may summon such Soldier before him in the Place where he is billeted, (which Summons he is hereby directed to obey,) and take his Examination in Writing, upon Oath, touching the Place of his last legal Settlement, and such Justice shall give an attested Copy of such Examination to the Person examined, to be by him delivered to his Commanding Officer, to be produced when required; which said Examination and such attested Copy thereof shall be at any Time admitted as good and legal Evidence of such last legal Settlement before any Justices or at any General or Quarter Sessions, although such Soldier be dead or absent from the Kingdom; provided that in case any Soldier shall be again summoned to make Oath as aforesaid, then, on such Examination or such attested Copy thereof being produced by him or by any other Person on his Behalf, such Soldier shall not be obliged to take any other Oath with regard to his legal Settlement, but shall leave a Copy of such Examination, or a Copy of such attested Copy of Examination, if required; provided also, that when no such Examination shall have been

required, the Statement made by the Recruit on his Attestation of his Place of Birth shall be taken to be his last Place of Settlement until legally disproved.

93. When any Person shall hold any Canteen under proper Authority of the War Department, it shall be lawful for any Two Justices within their respective Jurisdictions to grant or transfer any Beer, Wine, or Spirit Licence to such Persons, without regard to Time of Year or to the Notices or Certificates required by any Act in respect of such Licences; and the Commissioners of Excise, or their proper Officers within their respective Districts, shall also grant such Licences as aforesaid; and such Persons so holding Canteens, and having such Licences, may sell therein Victuals and Excisable Liquors, as empowered by such Excise Licence, without being subject to any Penalty or Forfeiture.

94. All Muster Rolls and Accounts and Pay and Pension Lists which are required to be verified by Declaration shall be so verified and attested free of Stamp Duty and without Fee or Reward paid for such Declaration or Attestation.

95. All Commissaries, Regimental Paymasters, and all other Accountants for Military Services, Storekeepers, and Barrack Masters, upon making up their Accounts, and all Commissaries and Storekeepers upon returning from any Foreign Service, shall severally make the respective Declarations described in the Schedule to this Act annexed; which Declarations, if made in any Part of the United Kingdom, shall be made before some Justice, or other Person authorized to administer Oaths and Declarations, and if made on Foreign Service shall be made before the Officer commanding in chief, or the Second in Command, or the Quartermaster or Deputy Quartermaster General or any Assistant Quartermaster General of the Army, who shall respectively have Power to administer and receive the same.

96. All Oaths and Declarations which are authorized and required by this Act may be administered (unless where otherwise provided) by any Justice of the Peace, or other Person having Authority to administer Oaths and Declarations; and any Person taking a false Oath or Declaration where an Oath or Declaration is authorized or required by this Act shall be deemed guilty of wilful and corrupt Perjury, or of wilfully making a false Declaration, and being thereof duly convicted shall be liable to such Pains and Penalties as by Law any Person convicted of wilful and corrupt Perjury is subject and liable to; and every Commissioned Officer convicted before a General Court-martial of Per-

jury, or of wilfully making a false Declaration, shall be cashiered, and every Soldier or other Person amenable to the Provisions of this Act found guilty thereof by a General, District, or Garrison Court-martial shall be punished at the Discretion of such Court. In India, in all Cases where any Oath is hereby required to be taken, or any Person is hereby required to be sworn, a solemn Declaration or Affirmation may be substituted, if by the Laws for the Time being in force in India such Declaration or Affirmation would be allowed to be substituted in the Place of an Oath, in case the Party were about to depose as a Witness in a Civil Action in any of the Supreme Courts at the Presidencies; and any Person wilfully and knowingly giving false Testimony on Oath or solemn Declaration or Affirmation in any Case wherein such Oath or solemn Declaration or Affirmation shall have been made for the Purpose of this Act, or any Proceedings under this Act, shall be deemed guilty of wilful and corrupt Perjury, and, being duly convicted thereof before a Court-martial or otherwise, shall be liable to such Pains and Penalties as by any Law in force in England, or by any Law in force in India, any Persons convicted of wilful and corrupt Perjury are subject and liable to.

97. All Crimes and Offences which have been committed against any former Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters, or against any Act for punishing Mutiny and Desertion of Officers and Soldiers in the Service of the East India Company, or against any of the Articles of War made and established by virtue of either of the same, may, during the Continuance of this Act, be tried and punished in like Manner as if they had been committed against this Act; and every Warrant for holding any Court-martial under any such former Act shall remain in full Force, and all Proceedings of Courts-martial convened and held under any such Warrant shall be continued, notwithstanding the Expiration of such Act: Provided always, that no Person shall be liable to be tried or punished for any Offence against any of the said Acts or Articles of War which shall appear to have been committed more than Three Years before the Date of the Warrant for such Trial, unless the Person accused, by reason of his having absented himself, or of some other manifest Impediment, shall not have been amenable to Justice within that Period, in which Case such Person shall be liable to be tried at any Time not exceeding Two Years after the Impediment shall have ceased.

98. It shall be the Duty of all Officers and Soldiers to observe and conform to the Pro-

visions contained in "The Regimental Debts Act, 1863," and in the Regulations for the better Execution of the Purposes of the said Act prescribed from Time to Time by Warrant under the Royal Sign Manual.

99. In all Places in India where any Body of Her Majesty's Forces may be serving situate beyond the Jurisdiction of any Courts of Requests, or other Courts for enforcing Small Demands, established at the Cities of Calcutta, Madras, and Bombay respectively, Actions of Debt, and all Personal Actions against Officers or against Persons licensed to act as Sutlers, or other Persons amenable to the Provisions of this Act not being Soldiers, shall be cognizable before a Court of Requests composed of Military Officers, and not elsewhere, provided the Value in question shall not exceed Four hundred Rupees, and that the Defendant was a Person of the above Description when the Cause of Action arose, which Court the Commanding Officer of any Camp, Garrison, Cantonment, or Military Post is hereby authorized and empowered to convene; and the said Court shall in all practicable Cases consist of Five Commissioned Officers, and in no Instance of less than Three, and the President thereof shall in all practicable Cases be a Field Officer, and in no Case be under the Rank of a Captain, and every Member shall have served Five Years as a Commissioned Officer; and the President and Members assisting at any such Court, before any Proceedings be had before it, shall take the following Oath, which Oath shall be administered by the President of the Court to the other Members thereof, and to the President by any Member having first taken the Oath; (that is to say,)

'I swear, that I will duly administer Justice according to the Evidence in the Matters that shall be brought before me.
'So help me GOD.'

And all Witnesses before any such Court shall be examined in the same Manner as in the Case of a Trial by Court-martial; and it shall be competent for such Court, upon finding or awarding any Debt or Damage, either to award Execution thereof generally, or to direct specially that the whole or any Part thereof shall be stopped and paid over to the Plaintiff out of any Part not exceeding One Half of any Pay or Allowance, or out of any other Public Money which may respectively be coming to the Defendant in the current or any future Month or Months, or to direct the same to be so paid by Instalments; and in all Cases where the Execution shall be awarded generally the Debt, if not paid forthwith, shall be levied by Seizure and public Sale of such of the Defendant's Goods and Property as may be found within the Camp, Garrison, Cantonment, or Military Post, under a written

Order of the Commanding Officer, grounded on the Judgment of the Court; and all Orders of such Commanding Officer as to the Manner of such Sale, or the Person by whom the same shall be made, or otherwise respecting the same, shall be valid and binding; and any Goods and Property of the Defendant found within the Limits of the Camp, Garrison, Cantonment, or Military Post to which the Defendant shall be long at any subsequent Time shall be liable to be seized and sold in like Manner in satisfaction of any Remainder of such Debt or Damages; and if any Question shall arise whether any such Effects or Property are liable to be taken in Execution as aforesaid, the Decision and Order of the said Commanding Officer shall be final and conclusive with respect to the same, and if sufficient Goods shall not be found within the Limits of the Camp, Garrison, Cantonment, or Military Post, then any Public Money or any Part not exceeding One Half of the Pay or Allowances accruing to the Defendant shall be stopped in liquidation of such Debt or Damages; and if such Defendant shall not receive Pay as an Officer or from any Public Department, but be a Sutler, Servant, or Follower, he may be arrested by like Order of the Commanding Officer, and imprisoned in some convenient Place within the Military Boundaries for any Period not exceeding Two Months, unless the Debt be sooner paid; and the said Commanding Officer shall not, nor shall any Person acting on his Orders in respect of the Matters aforesaid, incur any Liability to any Person or Persons whomsoever for any Act done by him in pursuance of the Provisions aforesaid; and in Cases where the said Court shall direct specially that the whole or any Part of the Debt or Damages shall be stopped and paid out of Part of any Pay or Allowances, or out of any Public Money, the same shall be stopped and paid accordingly in conformity with such Direction: Provided always, that nothing hereinbefore contained shall enable any such Action as aforesaid to be brought in the said Court by any Officer or Soldier against any Officer.

100. The Government of any of the Presidencies in India may suspend the Proceedings of any Court-martial held in India on any Officer or Soldier belonging to Her Majesty's Indian Forces within such Presidencies respectively; and if any Officer belonging to Her Majesty's Indian Forces shall think himself wronged by the Officer commanding the Regiment, and shall upon due Application made to him not receive the Redress to which he may consider himself entitled, he may complain to his Commander-in-Chief in order to obtain Justice, who is hereby required to examine into such Complaint, and thereupon, either by himself or by his Adjutant General, to make his Report to the Government of the Presidency to

which such Officer belongs, in order to receive the further Directions of such Government.

101. Any Officer or Soldier, or other Person subject to this Act, who shall be serving in the Territories of any Foreign State in India or in any Country in India under the Protection of Her Majesty, or at any Place in Her Majesty's Dominions in India (other than Prince of Wales Island, Singapore, or Malacca), at a Distance of upwards of One hundred and twenty Miles from the Presidencies of Fort William, Fort Saint George, and Bombay respectively, and who shall be accused of having committed Treason or any other Crime which, if committed in England, would be Felony, may be tried by a General Court-martial, to be appointed by the General or other Officer commanding in chief in such Place for the Time being, and, if found guilty, shall be liable to be sentenced by such Court-martial to suffer such Punishment as might legally have been awarded by any of Her Majesty's Courts of ordinary Criminal Jurisdiction within Her Majesty's Dominions in India in respect of an Offence of a like Nature and Degree, and committed within the Jurisdiction of such last-mentioned Court; but no Sentence of a General Court-martial for any such Offence shall be carried into execution until the same shall have been duly confirmed; and it shall be lawful for such General or other Officer commanding in chief as aforesaid to confirm the Sentence of any such General Court-martial; and such General or other Officer as aforesaid may, if he shall think fit, suspend, mitigate, or remit the Sentence; or, in the Case of a Sentence of Penal Servitude, may commute the same to Imprisonment, with or without Hard Labour, for such Period as to him shall seem fit: Provided always, that in all Cases wherein a Sentence of Death or Penal Servitude shall have been awarded by any such General Court-martial held for the Trial of a Commissioned Officer, or where a Sentence of Death shall have been awarded by any such General Court-martial held for the Trial of any Person subject to this Act other than a Commissioned Officer, such Sentence shall not be carried into execution until it shall have been duly approved by the Governor General in Council, or Governor in Council of the Presidency in the Territories subordinate to which the Offender shall have been tried: Provided also, that any Person who may have been so tried as aforesaid shall not be tried for the same Offence by any other Court whatsoever.

102. This Act shall be and continue in force within Great Britain from the Twenty-fifth Day of April One thousand eight hundred and sixty-eight inclusive until the Twenty-fifth Day of April One thousand eight hundred and sixty-

nine; and shall be and continue in force within Ireland, and in Jersey, Guernsey, Alderney, Sark, and Isle of Man, and the Islands thereto belonging, from the First Day of May One thousand eight hundred and sixty-eight inclusive until the First Day of May One thousand eight hundred and sixty-nine; and shall be and continue in force within the Garrison of Gibraltar, the Mediterranean, and in Spain and Portugal, from the First Day of August One thousand eight hundred and sixty-eight inclusive until the First Day of August One thousand eight hundred and sixty-nine; and shall be and continue in force in all other Parts of Europe where Her Majesty's Forces may be serving, and in the West Indies and America, from the First Day of September One thousand eight hundred and sixty-eight inclusive until the First Day of September One thousand eight hundred and sixty-nine; and shall be and continue in force in India, and within the Cape of Good Hope, the Isle of France or Mauritius and its Dependencies, Saint Helena, and the Settlements on the Western Coast of Africa, from the First Day

of January One thousand eight hundred and sixty-nine inclusive until the First Day of January One thousand eight hundred and seventy; and shall be and continue in force within British Columbia and Vancouver's Island from the Date of the Promulgation thereof in General Orders there inclusive until the First Day of January One thousand eight hundred and seventy; and shall be and continue in force in all other Places from the First Day of February One thousand eight hundred and seventy inclusive until the First Day of February One thousand eight hundred and seventy-one: Provided always, that this Act shall, from and after the Receipt and Promulgation thereof in General Orders in any Part of Her Majesty's Dominions or elsewhere beyond the Seas, become and be in full Force, anything herein stated to the contrary notwithstanding.

103. The Ninth Section of The Army Enlistment Act, 1867, and the Tenth Section of the same Act, except as to Enlistments which may have been made thereunder, are hereby repealed.

SCHEDULES referred to by the foregoing Act.

NOTICE to be given to a RECRUIT at the Time of his ENLISTMENT.

Date	186 .
* _____	
TAKE Notice, That you enlisted with	
at	o'Clock†
on the	Day of
Regiment [instead of the Words "for the Regiment" any Words may be substituted which are applicable to the Case], and if you do not come to [here name some Place] on or before	
o'Clock†	on the Day of

* Name of the Recruit. † A.M. or P.M. as the Case may be.

for the Purpose of being taken before a Justice, either to be attested or to release yourself from your Engagement by repaying the Enlisting Shilling and any Pay you may have received as a Recruit, and by paying Twenty Shillings as Smart Money, you will be liable to be punished as a Rogue and Vagabond.

You are hereby also warned that you will be liable to the same Punishment if you make any wilfully false Representation at the Time of Attestation, or false Answers to the Questions now asked of you.

Signature of the Non-commissioned Officer serving the Notice. }

QUESTIONS this Day put to the RECRUIT before ENLISTMENT, as required by the MUTINY ACT.

1. What is your Name?	_____
2. In what Parish, and in or near what Town, and in what County were you born?	_____
3. What is your Age?	_____
4. What is your Trade or Calling?	_____
5. Are you an Apprentice?	_____
6. Are you married, or a Widower, and, if so, have you any Children?	_____
7. Do you now belong to any Regiment or any Corps in Her Majesty's Army, or to the Militia, or to the Naval Coast Volunteers, or to the Royal Naval Reserve Force?	_____

8. Have you ever served in the Army, Marines, or in Her Majesty's Indian Forces? _____
9. Have you ever been rejected as unfit for Her Majesty's Service? _____
10. Have you ever been marked with the Letter D. or Letters B.C.? _____
- _____
- _____

ATTESTATION PAPER.

Questions to be put to the Recruit before Attestation.

1. What is your Name? _____
2. In what Parish, and in or near what Town, and in what County were you born? _____
3. What is your Age? _____ Years _____ Months.
4. What is your Trade or Calling? _____
5. Are you an Apprentice? _____
6. Are you married? _____
7. { Do you now belong to the Militia, or to the Naval Coast Volunteers, or to the Royal Naval Reserve Force? or Do you belong to any Regiment or Corps in Her Majesty's Army? _____
8. Have you ever served in the Army, Marines, Militia, Navy, or in Her Majesty's Indian Forces? * _____

* If so, the Recruit is to state the Particulars of his former Service, and the Cause of his Discharge, and is to produce his Parchment Certificate of Discharge.

9. Have you ever been rejected as unfit for Her Majesty's Service or for Her Majesty's Indian Forces, upon any prior Enlistment? _____
10. Have you ever been marked with the Letter "D" or the Letters "BC"? _____
11. Where, when, and by whom were you enlisted? _____
12. Did you receive a Notice, and did you understand its Meaning? _____
13. For what Bounty and Kit did you enlist? _____ and a free Kit.
14. Have you any Objection to make to the Manner of your Enlistment? _____
15. Are you willing to be attested to serve in the Regiment of _____ or for "General Service" for the Term of Twelve Years, provided Her Majesty should so long require your Services; and also for such further Term, not exceeding Twelve Months, as shall be directed by the Commanding Officer on any Foreign, Colonial, or Indian Station? _____

Signature of Recruit _____

Witness _____

DECLARATION to be made by RECRUIT on ATTESTATION.

_____, do solemnly and sincerely declare, That to the best of my Knowledge and Belief the above Answers to the foregoing Questions made and signed by me are true; and that I am willing to be attested for the Term of Twelve Years, provided Her Majesty should so long require my Services, and also for such further Term, not exceeding Twelve Months, as shall be directed by the Commanding Officer on any Foreign, Colonial, or Indian Station.

Signature of Recruit _____

Signature of Witness _____

OATH to be taken by a RECRUIT on ATTESTATION.

I _____ do make Oath, That I will be faithful and bear true Allegiance to Her Majesty, Her Heirs and Successors, and that I will, as in Duty bound, honestly and faithfully defend Her Majesty, Her Heirs and Successors, in Person, Crown, and Dignity, against all Enemies, and will observe and obey all Orders of Her Majesty, Her Heirs and Successors, and of the Generals and Officers set over me.

So help me GOD.

Witness my Hand,

Signature of Recruit _____

Witness present _____

The above Questions were asked of the said _____ and answered by him in my Presence, as herein recorded; and the said _____ made the above Declaration and Oath before me at this _____ Day of _____ One thousand eight hundred and _____ at _____ o'Clock, M.

Signature of the Justice _____

Note.—The Recruit should, if he requires it, receive a certified Copy of the Declaration.

It is desirable that at least Half an Hour beyond the Twenty-four Hours prescribed by the Mutiny Act should have expired before Attestation, and that a Recruit should invariably be attested at least Half an Hour before the Expiration of Ninety-six Hours from the Time of Enlistment.

DECLARATION to be made by a SOLDIER, or PERSON having been a SOLDIER, on renewing his Service.

I _____ do declare, That I am at present ⁽¹⁾ in Captain _____ Company, in the _____ Regiment; ⁽²⁾ that I enlisted on the _____ Day of _____ for a Term of _____ Years; that I am of the Age of _____ Years; and that I will serve Her Majesty, Her Heirs and Successors, in _____ Regiment ⁽³⁾ for such further Term as shall complete a total Service of Twenty-one Years, provided my Services should so long be required, and also for such further Term, not exceeding Twelve Months, as shall be directed by the Commanding Officer on any Foreign, Colonial, or Indian Station.

Declared before me _____

Date _____

Place, at _____

Signature of Soldier. _____

Signature of Witness. _____

⁽¹⁾ Or was, as the Case may be.

⁽²⁾ The foregoing Portion of this Declaration may be altered, by substituting the Word "Corps" for "Regiment," to suit each particular Case.

FORM of OATH to be taken by a MASTER whose APPRENTICE has absconded.

I _____ of _____ do make Oath, That I am by Trade a _____ and that _____ was bound to serve as an Apprentice to me in the said Trade, by Indenture dated the _____ Day of _____ for the Term of _____ Years; and that the said _____ did on or about the _____ Day of _____ abscond and quit my Service without my Consent; and that to the best of my Knowledge and Belief the said _____ is aged about _____ Years. Witness my Hand at _____ the _____ Day of _____ One thousand eight hundred and _____ Sworn before me at _____ this _____ Day of _____ One thousand eight hundred and _____

FORM of JUSTICE's CERTIFICATE to be given to the MASTER of an APPRENTICE.

_____ } I _____ One of Her Majesty's
to wit. } Justices of the Peace of _____
certify, That _____ of _____
before me at _____ the _____ came _____
_____ Day _____

of One thousand eight hundred and , and made Oath that he was by Trade a , and that was bound to serve as an Apprentice to him in the said Trade, by Indenture dated the Day of for the Term of Years; and that the said Apprentice did on or about the Day of abscond and quit the Service of the said without his Consent, and that to the best of his Knowledge and Belief the said Apprentice is aged about Years.

other than Public Purposes, according to the Duty of my Office.

Declared before me by the }
within-named
this Day of }
Justice of the Peace of
or Commander-in-Chief,
or Second in Command, et
cetera, the Army serving in
et cetera [as the
Case may be].

FORM of OATH to be taken by a MASTER whose indentured LABOURER in any of Her Majesty's Colonies or Possessions has absconded.

I of do make Oath, That was bound to me to serve as an Indentured Labourer by Indenture dated the Day of for the Term of Years, and that the said did on or about the Day of abscond and quit my Service without my Consent.

Witness, &c. [as for Apprentice.]

FORM of JUSTICE'S CERTIFICATE to be given to the MASTER of an indentured LABOURER.

I One of Her Majesty's }
to wit. } Justices of the Peace of
certify, That of came
before me at the Day
of and made Oath that
was bound to serve as an indentured Labourer
to him by Indenture dated the Day
of for the Term of
Years, and that the said indentured Labourer did
on or about the Day of
abscond and quit the Service of the said
without his Consent.

FORM of DECLARATION of ATTESTATION of a COMMISSARY'S or PURVEYOR'S ACCOUNTS.

I do solemnly and sincerely declare, That I have not applied any Monies or Stores or Supplies under my Care or Distribution to my own Use, or to the private Use of any other Person by way of Loan to such Person or otherwise, or in any Manner applied them, or knowingly permitted them to be applied, to any

FORM of DECLARATION of ATTESTATION of a STOREKEEPER'S ACCOUNTS.

I Storekeeper at do hereby solemnly and sincerely declare, That I have charged myself in this Account with the several Sums drawn for or received by me on Imprests, or for Rents, Sale of old Stores, or for any other Article or Service; that they are just and true, and include every Sum for which I am accountable during the Period stated. I also solemnly declare, that I have not, directly or indirectly, received any Profit, Fee, Emolument, or Advantage whatever beyond my Salary and authorized Allowances, except the trifling Advantage which may have arisen in respect to the fractional Parts of a Penny in the Totals of the Pay Lists, as sanctioned by the Regulations of 19th December 1832 ^{five} (See Art. 246, at Page 65, of Home Regulations); and I further solemnly declare, that the several Sums of Money for which I have taken Credit as Disbursements in this Account, amounting to have been actually and bona fide paid by me for the respective Services, without any Deductions, to the several Persons entitled to the same, and that the Receipts which accompany this Account have been actually signed and witnessed by the Persons stated therein; and I make this Declaration, conscientiously believing the same to be true

Storekeeper at
Declared before me at
this Day of 18 }

Magistrate for

FORM of DECLARATION of ATTESTATION of a BARRACK MASTER'S ACCOUNTS.

I , Barrack Master of the Barracks at do hereby solemnly and sincerely declare, That I have charged myself in this Account with the

No.

DESCRIPTION RETURN of

himself" as the Case may be,] on the
mitted to Confinement at

a Deserter from [insert Regiment or Corps].

who was apprehended [or "surrendered
Day of and was com-
Day of

Age -	-	-	-	-	-	-	
Height	-	-	-	-	-	-	Feet. Inches.
Complexion	-	-	-	-	-	-	
Hair	-	-	-	-	-	-	
Eyes	-	-	-	-	-	-	
Marks	-	-	-	-	-	-	
Probable Date of Enlistment, and where	-	-	-	-	-	-	
Probable Date of Desertion, and from what Place	-	-	-	-	-	-	
Name and Occupation and Address of the Person by whom or through whose Means the Deserter was apprehended and secured.							
* Particulars in the Evidence on which the Prisoner is committed, and showing whether he surrendered or was apprehended, and in what Manner, and upon what Grounds.							

* It is important for the Public Service, and for the Interest of the Deserter, that this Part of the Return should be accurately filled up, and the Details should be inserted by the Magistrate in his own Handwriting, or, under his Direction, by his Clerk.

I do hereby certify, that the Prisoner has been duly examined before me as to the Circumstances herein stated, and has declared in my Presence that he† a Deserter from the above-mentioned Corps.

Signature and Address
of Magistrate.

Signature of Prisoner.

Signature of Informant.

I certify, that I have inspected the Prisoner, and consider him† for Military Service.

Signature of Military
Medical Officer, or of § Private
Medical Practitioner.

† Insert "fit" or "unfit," as the Case may be, and, if unfit, state the Cause of Unfitness.

§ No Fee will be allowed to a private Medical Practitioner where a Military Medical Officer is stationed, unless it is shown that his Services were not available.

† Insert "is" or "is not," as the Case may be.

CAP. XV.

Marine Mutiny.

ABSTRACT OF THE ENACTMENTS.

1. Power to Lord High Admiral, &c. to make Articles for the Punishment of Mutiny, Desertion, &c.
2. As to Offences against former Mutiny Acts and Articles of War. Limitation as to Time.
3. Provisions of this Act to extend to Jersey, &c.
4. The ordinary Course of Law not to be interfered with.

5. No Person tried by Civil Power to be punished by Court-martial for same Offence except by cashiering, &c.
6. Marines to be subject to the Discipline of the Navy while on board Ship.
7. Power to Lord High Admiral, &c. to grant Commissions for holding General Courts-martial, &c.
Place where Offenders may be tried.
8. Power of General Courts-martial.
9. Powers of District or Garrison Courts-martial.
10. Powers of Divisional and Detachment Courts-martial.
11. Courts-martial on Line of March or in Transport Ships, &c.
12. Powers of Detachment General Courts-martial.
13. Officers of the Marine and Land Forces may sit in conjunction on Courts-martial.
14. If no Superior Officer of Land Forces is present in Command of a District, &c., an Officer of Marines may convene a Court-martial.
15. President of Courts-martial.
16. Proceedings at Trial.
17. Swearing and summoning Witnesses.
18. No Second Trial, but Revision allowed.
19. Crimes punishable with Death.
20. Commutation of Death for Penal Servitude or Imprisonment, &c.
21. Embezzlement punishable by Penal Servitude, Imprisonment, &c.
22. As to Execution of Sentences of Penal Servitude in the United Kingdom,
23. As to Execution of Sentences in the Colonies.
24. Sentence of Penal Servitude may be commuted for Imprisonment.
25. Of Forfeitures, when combined with Penal Servitude.
26. Disposal of Convict after Sentence of Penal Servitude.
27. Power to inflict Corporal Punishment in certain Cases.
28. Power to inflict Corporal Punishment and Imprisonment.
29. Power to commute Corporal Punishment.
30. Power to commute a Sentence of cashiering.
31. Forfeiture of Pay and Pension by Sentence of Court-martial.
32. Forfeiture of Pay on Conviction of Desertion or Felony.
33. Forfeiture of Pay when in Confinement; or during Absence on Commitment under a Charge, or in Arrest for Debt; or when Prisoner of War; or when convicted of Desertion or Absence without Leave; or when absent without Leave.
34. Forfeiture of Pay and Liquor for habitual Drunkenness.
35. Forfeiture of Pay for Drunkenness on Duty.
36. Stoppages.
37. Discharge with Ignominy.
38. Marking Deserters or Marines discharged with Ignominy.
39. Power of Imprisonment by different Kinds of Courts-martial.
40. Imprisonment of Offender already under Sentence.
41. Term and Place of Imprisonment.
42. Proviso for Removal of Prisoners.
43. Custody of Prisoners under Military Sentence in Common Gaols.
44. Subsistence of Prisoners in Common Gaols.
45. Notice to be given of Expiration of Imprisonment in Common Gaols.
46. Military Prisons established under any Act for punishing Mutiny and Desertion in the Army to be deemed public Prisons.
47. Musters, and Penalty on false Musters.
48. Verifying of Muster Rolls.
49. Trials for Desertion after subsequent Re-enlistment.
50. Apprehension of Deserters. Transfer of Deserters.
51. Penalty on Marines attempting to desert from Head Quarters.
52. Temporary Custody of Deserters in Gaols.
53. Fraudulent Confession of Desertion.
54. Punishment for inducing Marines to desert.
55. Extension of Furlough in case of Sickness.
56. Marines liable to be taken out of Her Majesty's Service only for Felony and certain Misdemeanors, or for Debts amounting to 30l. and upwards; but not liable to be taken out of Her Majesty's Service for Debts under 30l., or for not maintaining their Families, or for Breach of Contract.
57. Officers not to be Sheriffs, Mayors, &c.

58. *Questions to be put to Recruits on enlisting.*
59. *Recruits when deemed to be enlisted.*
60. *When Recruits to be taken before a Justice.*
61. *Dissent and Relief from Enlistment.*
62. *Attesting of Recruits.*
63. *Recruits until they have been attested or received Pay not triable by Court-martial, but in certain Cases punishable as Rogues and Vagabonds.*
64. *Attested Recruits triable in some Cases either before Two Justices or before a Court-martial.*
65. *Recruits absconding.*
66. *As to Militiamen enlisting into Regular Forces.*
67. *Volunteer Permanent Staff Officers enlisting into Regular Forces.*
68. *Penalty on Persons offending as to Enlistment.*
69. *As to Re-enlistment abroad.*
70. *Apprentices enlisting to be liable to serve after the Expiration of their Apprenticeship.*
71. *Claims of Masters to Apprentices.*
72. *No Apprentice claimed by the Master shall be taken away without a Warrant. Punishment of Apprentices enlisting.*
73. *Removal of Doubts as to Attestation of Marines.*
74. *Power to Admiralty to order Pay to be withheld.*
75. *Billeting of Marines.*
76. *Allowance to Innkeepers.*
77. *Supply of Carriages.*
78. *Rates for Carriages.*
79. *As to Supply of Carriages, &c. in Cases of Emergency.*
80. *Justices of Peace to direct Payment of Sums expended for Carriages, &c.*
81. *Lord Lieutenant of Ireland may depute Persons to sign Routes.*
82. *Exemption from Tolls.*
83. *Marching Money on Discharge.*
84. *Penalties upon Civil Subjects offending against the Laws relating to Billets and Carriages.*
85. *Penalty upon Officers of Marines so offending.*
86. *Penalty for forcible Entry in pursuit of Deserters without Warrant.*
87. *Penalty for purchasing Clothes, &c. from any Marine.*
88. *Penalty on unlawful recruiting.*
89. *Penalty on killing Game without Leave.*
90. *Limitations of Actions.*
91. *Recovery of Penalties.*
92. *Appropriation of Penalties.*
93. *Licences of Canteens.*
94. *Mode of recording a Marine's Settlement.*
95. *Administration of Oaths. Perjury.*
96. *Definition of Terms. Marines not to be billeted in private Houses, &c.*
97. *Duration of Act.*
Schedule.

An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore.
(3d April 1868.)

WHEREAS it is judged necessary for the Safety of the United Kingdom, and the Defence of the Possessions of this Realm, that a Body of Royal Marine Forces should be employed in Her Majesty's Fleet and Naval Service, under the Direction of the Lord High Admiral of the United Kingdom, or the Commissioners for executing the Office of Lord High Admiral aforesaid: And whereas the said Forces may frequently be quartered or be on shore, or sent to do Duty or be on board Transport Ships or Merchant Ships or

Vessels, or Ships or Vessels of Her Majesty, or other Ships or Vessels, or they may be under other Circumstances in which they will not be subject to the Laws relating to the Government of Her Majesty's Forces by Sea: And whereas no Man can be forejudged of Life or Limb, or subjected in Time of Peace to any Kind of Punishment within this Realm, by Martial Law, or in any other Manner than by the Judgment of his Peers, and according to the known and established Laws of this Realm; yet nevertheless it being requisite for the retaining of such Forces in their Duty that an exact Discipline be observed, and that Marines who shall mutiny or stir up Sedition, or shall desert Her Majesty's Service, or be guilty of any other Crime or

offence in breach of or to the Prejudices of good Order and Discipline, be brought to a more exemplary and speedy Punishment than the usual Forms of the Law will allow: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. It shall be lawful for the said Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral aforesaid, from Time to Time to make, ordain, alter, and establish Rules and Articles of War, under the Hand of the said Lord High Admiral, or under the Hands of any Two or more of the said Commissioners, for the better Government of Her Majesty's Royal Marine Forces, and for the Punishment of Mutiny, Desertion, Immorality, Breach of Discipline, Misbehaviour, Neglect of Duty, and any other Offence or Misconduct of which they shall be guilty, in any Place on shore or afloat in or out of Her Majesty's Dominions, or at any Time when or under any Circumstances in which they shall not be amenable to the Laws for the Government of Her Majesty's Ships, Vessels, and Forces by Sea, and for regulating the Proceedings of Courts-martial, which Rules and Articles shall be judicially taken notice of by all Judges and in all Courts whatsoever; and Copies of the same shall, as soon as conveniently may be after the same shall have been made, be transmitted by the Secretary of the Admiralty for the Time being (certified under his Hand) to the Judges of Her Majesty's Superior Courts at Westminster, Dublin, and Edinburgh respectively, and also to the Governors of Her Majesty's Dominions abroad; provided that no Person within the United Kingdom of Great Britain and Ireland or within the British Isles shall by such Articles of War be subject to suffer any Punishment extending to Life or Limb, or to be kept in Penal Servitude, except for Crimes which are by this Act expressly made liable to such Punishment as aforesaid, or shall be subject, with reference to any Crimes made punishable by this Act, to be punished in any Manner which may be inconsistent with the Provisions of this Act.

2. All Crimes and Offences committed against any former Act made for the Regulation of the Royal Marine Forces while on shore, or against any of the Rules, Regulations, or Articles of War made and established by virtue of the same, may, during the Continuance of this Act, be tried, inquired of, and punished in like Manner as if they had been committed against this Act; and every Warrant for holding any Court-martial under any former Act shall remain in full Force notwithstanding the Expiration of such Act;

and all Proceedings of any Court-martial upon any Trial begun under the Authority of such former Act shall not be discontinued by the Expiration of the same: Provided always, that no Person shall be liable to be tried and punished for any Offence against any of the said Acts or Articles of War which shall appear to have been committed more than Three Years before the Date of the Commission or Warrant for such Trial, unless the Person accused, by reason of his having absented himself, or of some other manifest Impediment, shall not have been amenable to Justice within that Period, in which Case such Person shall be liable to be tried at any Time not exceeding Two Years after the Impediment shall have ceased; and provided also, that if any Officer or Marine in any Place beyond the Seas shall commit any of the Offences punishable by Court-martial under this Act, and shall escape and come or be brought into this Realm before he be tried for the same, he shall, when apprehended, be tried for the same as if such Offence had been committed within this Realm.

3. This Act shall extend to the Islands of Jersey, Guernsey, Alderney, Sark, and Man, and the Islands thereto belonging, as to the Provisions herein contained for enlisting of Recruits, whether Minors or of full Age, and swearing and attesting such Recruits, and for mustering and paying, and to the Provisions for Trial and Punishment of Officers and Marines who shall be charged with Mutiny and Desertion or any other of the Offences which are by this Act declared to be punishable by the Sentence of a Court-martial, and also to the Provisions which relate to the Punishment of Persons who shall conceal Deserters, or shall knowingly buy, exchange, or otherwise receive any Arms, Medals for good Conduct or for distinguished or other Service, Clothes, Military Furniture, or Regimental Necessaries from any Marine or Deserter, or who shall cause the Colour of any such Clothes to be changed; and also to the Provisions for exempting Marines from being taken out of Her Majesty's Service for not supporting or for leaving chargeable to any Parish any Wife or Child or Children, or on account of any Breach of Contract to serve or work for any Employer, or on account of any Debts under Thirty Pounds in the said Islands.

4. Nothing in this Act contained shall be construed to extend to exempt any Officer or Marine from being proceeded against by the ordinary Course of Law when accused of Felony or Misdemeanor, or of any Misdemeanor other than the Misdemeanor of refusing to comply with an Order of Justices for the Payment of Money; and any Commanding Officer who shall neglect or refuse, when due Application shall be

made to him for that Purpose, to deliver over to the Civil Magistrate any Officer or Marine, or who shall wilfully obstruct, neglect, or refuse to assist any Peace Officer in apprehending any such Offender, shall, upon Conviction thereof in any of Her Majesty's Courts at Westminster, Dublin, or Edinburgh, be deemed to be there-upon cashiered, and shall be utterly disabled to hold any Civil or Military Office or Employment in Her Majesty's Service; and a Certificate of such Conviction shall be transmitted to the Secretary of the Admiralty.

5. No Person subject to this Act having been acquitted or convicted of any Crime or Offence by the Civil Magistrate or by the Verdict of a Jury shall be liable to be again tried for the same Crime or Offence by a Court-martial, or to be punished for the same otherwise than by cashiering in the Case of a Commissioned Officer, or in the Case of a Warrant Officer by Reduction to an inferior Class, or to the Rank of a Private Marine, by Order of the Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral, or in the Case of a Non-commissioned Officer, by Reduction to the Ranks, by Order of the Commandant of the Division to which such Non-commissioned Officer may belong; and whenever any Officer or Marine shall have been tried before a Court of ordinary Criminal Jurisdiction, the Clerk of the Court or other Officer having the Custody of the Records of such Court, or the Deputy of such Clerk, shall, if required by the Officer commanding the Division to which such Officer or Marine belongs, transmit to him a Certificate containing the Substance and Effect only, omitting the formal Part, of the Indictment, Conviction, and Entry of Judgment thereon or Acquittal of such Officer or Marine, and shall be allowed for such Certificate a Fee of Three Shillings.

6. All of Her Majesty's Royal Marine Forces shall, during the Time they shall be respectively borne on the Books of or be on board any of Her Majesty's Ships or Vessels in Commission, either as Part of the Complement or as Supernumeraries, or otherwise, be subject and liable in every respect to the Laws for the Government of Her Majesty's Forces by Sea, and to the Rules and Discipline of the Royal Navy for the Time being, and shall and may be proceeded against and punished for Offences committed by them whilst so borne or on board, in the same Manner as the Officers and Seamen employed in the Royal Navy may be tried or punished; except when and so long as any Marine Officers or Marines shall be landed from any of Her Majesty's Ships, and be employed in Military Operations on shore, and when on such Occasions the Senior Naval Officer present shall deem it expedient to issue an Order declaring that such

Marine Officers and Marines shall during such Employment on shore be subject to the Regulations of this Act, in which Cases, and while such Order shall remain in force, they shall be subject to such Regulations, and be tried and punished under this Act accordingly for any Offences to be committed by them while so on shore; and, with or without any Commission or Warrant from the said Lord High Admiral or the said Commissioners for that Purpose, the Officer commanding in chief or commanding for the Time being any such Marine Officers or Marines shall have Power and Authority to convene, and to authorize any Officer to convene, Courts-martial under this Act, as Occasion may require, for the Trial of Offences committed by any of the Royal Marine Forces, whether the same shall have been committed before or after such Officer shall have taken upon himself such Command: Provided always, that if any Marine Officer or Marine so borne on the Books of any of Her Majesty's Ships or otherwise shall commit any Offence for which he shall not be amenable to a Naval Court-martial, he may be tried and punished for the same in the same Manner as other Officers or Marines may be tried and punished for the like Offences under the Authority of this Act; or if the Commissioners for executing the Office of Lord High Admiral aforesaid so direct, he may be so tried and punished for any Offence committed by him on shore, whether he be or be not amenable to a Naval Court-martial for the same.

7. It shall be lawful for the said Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral aforesaid, from Time to Time to grant Commissions or Warrants under the Hand of the said Lord High Admiral, or under the Hands of any Two or more of the said Commissioners, for the holding of General and other Courts-martial within the United Kingdom of Great Britain and Ireland, and elsewhere out of the same, in like Manner as has been heretofore used, and for bringing Offenders against this Act and the Articles of War to Justice, and to erect and constitute Courts-martial, as well within the said United Kingdom and the British Isles as in any of Her Majesty's Garrisons or Dominions or elsewhere beyond the Seas, and to grant Commissions or Warrants to the Officer or Officers commanding in chief or commanding for the Time being any of Her Majesty's Royal Marine Forces, as well within the said United Kingdom as Her Majesty's other Dominions, and in any Foreign Parts out of the same Dominions, for convening, as well as for authorising any Officer to convene, Courts-martial, as Occasion may require, for the Trial of Offences committed by any of the Royal Marine Forces, whether the same shall have been

committed before or after such Officer shall have taken upon himself such Command, or before or after any such Commission or Warrant shall be granted, provided that the Officer so authorized be not below the Degree of a Field Officer, except in detached Situations beyond Seas, where a Captain may be authorized to convene District or Garrison Courts-martial; and any Person subject to this Act who shall, in any of Her Majesty's Dominions or elsewhere, commit any of the Offences for which he may be liable to be tried by Court-martial by virtue of this Act or of the Articles of War, may be tried and punished for the same in any Part of Her Majesty's Dominions, or other Place where he may have come or be after the Commission of the Offence, as if the Offence had been committed where such Trial shall take place.

8. Every General Court-martial convened within the United Kingdom or the British Isles shall consist of not less than Nine Commissioned Officers, each of whom shall have held a Commission from Her Majesty for Three Years before the Date of the Assembly of the Court. Every General Court-martial shall have Power to sentence any Officer of Marines or Marine to suffer Death, Penal Servitude, Imprisonment, Forfeiture of Pay or Pension, or any other Punishment which shall accord with the Usage of the Service; but no Sentence of Death by a Court-martial shall pass unless Two Thirds at least of the Officers present shall concur therein. No Sentence of Penal Servitude shall be for a Period of less than Five Years, and no Sentence of Imprisonment shall be for a Period longer than Two Years.

9. Every District or Garrison Court-martial convened within the United Kingdom or the British Isles shall consist of not less than Seven Commissioned Officers, and shall have the same Power as a General Court-martial to sentence any Marine to such Punishments as shall accord with the Provisions of this Act; provided that the Sentence of a District or Garrison Court-martial shall be confirmed by the General Officer, Governor, or Senior Officer in command of the District, Garrison, Island, or Colony, and that no such District or Garrison Court-martial shall have Power to try a Commissioned Officer, or to pass any Sentence of Death or Penal Servitude.

10. A Divisional or Detachment Court-martial shall consist of not less than Five Commissioned Officers, unless it be found impracticable to assemble that Number, in which Case Three shall be sufficient, and shall have Power to sentence any Marine to Corporal Punishment or to Imprisonment, and Forfeiture of Pay, in such Manner as shall accord with the Provisions of this Act.

11. In Cases of Mutiny and Insubordination accompanied with personal Violence or of other Offences committed on the Line of March, or on board any Transport Ship, Convict Ship, or Merchant Vessel, the Offender may be tried by a Divisional or Detachment Court-martial, and the Sentence may be confirmed and carried into execution on the Spot by the Officer in immediate Command, provided that the Sentence shall not exceed that which a Divisional Court-martial is competent to award.

12. It shall be lawful for any Officer commanding any Detachment or Portion of Her Majesty's Royal Marine Forces, upon Complaint made to him of any Offence committed against the Property or Person of any Inhabitant of or Resident in any Country in which Her Majesty's Royal Marine Forces are so serving, by any Person under the immediate Command of any such Officer, to summon and cause to be assembled a Detachment General Court-martial, which shall consist of not less than Three Commissioned Officers, for the Trial of any such Person, notwithstanding such Officer shall not have received any Warrant empowering him to assemble Courts-martial; and every such Court-martial shall have the same Powers in regard to summoning and examining Witnesses, Trial of and Sentence upon Offenders, as are granted by this Act to General Courts-martial: Provided always, that no Sentence of any such Detachment Court-martial shall be executed until the Officer commanding the Army to which the Division, Brigade, Detachment, or Party to which any Person so tried shall belong shall have approved and confirmed the same.

13. When it is necessary or expedient, a Court-martial composed exclusively of Officers of the Royal Marines, or a Court-martial composed of Officers of Her Majesty's Army, or of Her Majesty's Indian Army, or of both or of either, together with Officers of the Royal Marines, whether the Commanding Officer by whose Order such Court-martial is assembled belongs to the Land or to the Marine Forces, may try a Person belonging to any One of the said Three Services; provided that when the Person to be tried shall belong to Her Majesty's Royal Marine Forces, then the Provisions of this Act, or of such Act as shall be then and there in force for the Regulation of Her Majesty's Royal Marine Forces while on shore, and the Oaths therein respectively prescribed, and the Rules and Articles of War relating to the Royal Marines then and there in force, shall be applicable to such Court, and the Proceedings thereof and relating thereto; but where the Person to be tried shall belong to Her Majesty's Army, or shall belong to Her Majesty's Indian Army, and

be within the United Kingdom, then the Proceedings of such Court shall be regulated as if the Court were composed of Officers of Her Majesty's Army only, and the Provisions of the Act then and there in force for the Punishment of Mutiny and Desertion, and for the better Payment of the Army and their Quarters, and the Oaths therein prescribed, and the Rules and Articles of War relating to Her Majesty's Army then and there in force, shall be applicable to such Court, and the Proceedings thereof and relating thereto; and where the Person to be tried shall belong to Her Majesty's Indian Army, and be out of the United Kingdom, the Provisions of such Act or Acts as shall be then and there in force for punishing Mutiny and Desertion of Officers and Soldiers in Her Majesty's Indian Army, and the Rules and Articles of War, if any, relating to such Officers and Soldiers then and there in force, shall be applicable to such Court, and the Proceedings thereof and relating thereto.

14. Provided there be no Superior Officer of Her Majesty's Land Forces present in Command of a District, Garrison, Station, or Place where Marines may be serving, it shall be lawful for any Officer of the Royal Marine Corps of the Degree of a Field Officer, and holding a Commission from the Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral, for that Purpose, but not otherwise, to convene or assemble a District or Garrison Court-martial, to be composed as before stated, and for such Court to proceed to try any Marine or Marines below the Rank of Commissioned Officer for any of the Offences cognizable by a District or Garrison Court-martial; but the Sentence so awarded by any such Court shall not be carried into effect until the Senior Officer of the Royal Marines in the District, Garrison, Station, or Place, not being a Member of the Court, shall have confirmed the same: Provided always, that if there be any such Superior Officer of Her Majesty's Land Forces present in Command of the District, Garrison, Station, or Place where Marines may be, in such Case it shall be lawful for him to convene or assemble such District or Garrison Court-martial for the Trial of any Marine or Marines below the Rank of a Commissioned Officer, and for such Court-martial to try any such Marine or Marines in conformity with the Provisions of this Act and the Articles of War to be made in pursuance hereof; but the Sentence which may be awarded by any such Court which may be convened or assembled by any such Superior Officer shall not be carried into effect until such Superior Officer shall have confirmed the same.

15. The President of every Court-martial shall

be appointed by or under the Authority of the Officer convening such Courts, and shall in no Case be the confirming Officer, or the Officer whose Duty it has been to investigate the Charges on which the Prisoner is to be arraigned, nor, in the Case of a General Court-martial, under the Degree of a Field Officer, unless where a Field Officer cannot be had, nor in any Case whatsoever under the Degree of a Captain, save in the Case of a Detachment General Court-martial holden out of Her Majesty's Dominions, or of a Divisional or Detachment Court-martial holden on the Line of March, or on board a Transport Ship, Convict Ship, Merchant Vessel, or Troop Ship not in Commission, or on any Foreign Station where a Captain cannot be had: Provided always, that in the Case of a Detachment General Court-martial holden out of Her Majesty's Dominions the Officer convening such Court may be the President thereof.

16. In all Trials by Court-martial, as soon as the President and other Officers appointed to serve thereon shall be assembled, their Names shall be read over in the Hearing of the Prisoner, who shall thereupon be asked if he objects to being tried by the President or by any of such Officers, and if the Prisoner shall then object to the President, such Objection, unless allowed by Two Thirds at least of the other Officers appointed to form the Court, shall be referred to the Decision of the Authority by whom such President shall have been appointed; but if he object to any Officer other than the President, such Objection shall be decided by the President and the other Officers so aforesaid appointed to form the Court; and when the Place of the President or other Officer in respect of whom any Challenge shall have been made and allowed shall be supplied by some Officer in respect of whom no Challenge shall be made or allowed, or if no Challenge whatever shall have been made, or, if made, not allowed, the President and the other Officers composing a General Court-martial shall take the Oaths in the Schedule to this Act annexed before the Judge Advocate or his Deputy, or Person officiating as Judge Advocate, and on Trials by other Courts-martial before the President of such Court, who are hereby respectively authorized to administer the same, and any sworn Member may administer the Oath to the President; and as soon as the said Oaths shall have been administered to the respective Members, the President of the Court is hereby authorized and required to administer to the Judge Advocate, or the Person officiating as such, the Oath in the Schedule to this Act annexed; and no Proceeding or Trial shall be had upon any Offence but between the Hours of Eight of the Clock in the Morning and Four in the Afternoon, except in

Cases which require an immediate Example, and except in the East Indies, where such Proceedings or Trial may be had between the Hours of Six in the Morning and Four in the Afternoon.

17. All General and other Courts-martial shall have Power and Authority and are hereby required to administer an Oath to every Witness or other Person who shall be examined before such Court in any Matter relating to any Proceeding before the same; and every Person, as well Civil as Military, who may be required to give or produce Evidence before a Court-martial, shall, in the Case of General Courts-martial, be summoned by the Judge Advocate, or the Person officiating as such, and in the Case of all other Courts-martial by the President of the Court; and all Persons so summoned and attending as Witnesses before any Court-martial shall, during their necessary Attendance in or on such Courts, and in going to and returning from the same, be privileged from Arrest, and shall, if unduly arrested, be discharged by the Court out of which the Writ or Process issued by which such Witness was arrested; or if such Court be not sitting, then by any Judge of the Superior Courts of Westminster or Dublin, or of the Court of Session in Scotland, or of the Courts of Law in the East or West Indies, or elsewhere, according as the Case shall require, upon its being made to appear to such Court or Judge by any Affidavit in a summary Way that such Witness was arrested in going to, attending upon, or returning from or attending upon such Court-martial; and all Witnesses so duly summoned as aforesaid who shall not attend on such Courts, or attending shall refuse to be sworn, or not produce the Documents being under their Power or Control required to be produced by them, or, being sworn, shall refuse to give Evidence or to answer all such Questions as the Court may legally demand of them, shall be liable to be attached in the Court of Queen's Bench in London or Dublin, or in the Court of Session, Sheriff or Stewart Courts in Scotland, or in the Courts of Law in the East or West Indies, or in any of Her Majesty's Colonies, Garrisons, or Dominions in Europe or elsewhere, respectively, upon Complaint made, in like Manner as if such Witness had, after being duly summoned or subpoenaed, neglected to attend on a Trial in any Proceeding in the Court in which such Complaint shall be made: Provided always, that nothing in this Act contained shall be construed to render an Oath necessary in any Case where by Law a solemn Affirmation may be made instead thereof.

18. No Officer or Marine who shall be acquitted or convicted of any Offence shall be liable to be tried a Second Time by the same or any other

Court-martial for the same Offence; and no Finding, Opinion, or Sentence given by any Court-martial, and signed by the President thereof, shall be revised more than once, nor shall any additional Evidence in respect of any Charge on which the Prisoner then stands arraigned be received by the Court on any Revision.

19. If any Person who is or shall be commissioned or in Pay as an Officer of Royal Marines, or who is or shall be listed or in Pay as a Non-commissioned Officer, Drummer, or Private Man in Her Majesty's Royal Marine Forces, shall at any Time during the Continuance of this Act, while on shore in any Place within the said Kingdom, or in any other of Her Majesty's Dominions, or in any Foreign Parts out of such Dominions, or on board any Transport Ship, or Merchant Ship or Vessel, or any Ship or Vessel of Her Majesty, or on board any Convict Hulk or Ship, or any other Ship or Vessel, or in any Place whatever, where or while being in any Circumstances in which he shall not be subjected to, or not be liable to or punishable by, the Laws relating to the Government of Her Majesty's Forces by Sea, begin, excite, cause, or join in any Mutiny or Sedition in Her Majesty's Marine or other Forces, or shall not use his utmost Endeavours to suppress any such Mutiny or Sedition, or shall conspire with any other Person to cause a Mutiny, or coming to the Knowledge of any Mutiny or intended Mutiny shall not without Delay give Information thereof to his Commanding Officer; or shall misbehave himself before the Enemy; or shall shamefully abandon or deliver up any Garrison, Fortress, Post, or Guard committed to his Charge, or which he shall have been commanded to defend; or shall compel the Governor or Commanding Officer of any Garrison, Fortress, or Post to deliver up to the Enemy or to abandon the same; or shall speak Words or use any other Means to induce such Governor or Commanding Officer or any other to misbehave before the Enemy, or shamefully to abandon or deliver up any Garrison, Fortress, Post, or Guard committed to their respective Charge, or which he or they shall be commanded to defend; or shall leave his Post before being regularly relieved, or shall sleep on his Post; or shall hold Correspondence with or give Advice or Intelligence to any Rebel, Pirate, or Enemy of Her Majesty, either by Letters, Messages, Signs, Tokens, or any other Ways or Means whatever; or shall treat or enter into any Terms with any such Rebel, Pirate, or Enemy, without the Licence of the Lord High Admiral of the said United Kingdom, or the Commissioners for executing the Office of Lord High Admiral aforesaid, for the Time being; or shall strike or use or offer

any Violence against his Superior Officer being in the Execution of his Office, or shall disobey any lawful Command of his Superior Officer; or who being confined in a Military Prison shall offer any Violence against a Visitor or other Officer being in the Execution of his Office, or shall violate any Law or Regulation of or relating to any Military Prison; or shall desert from Her Majesty's Royal Marine Forces; every Person so offending in any of the Matters before mentioned, whether such Offence be committed within this Realm, or in any other of Her Majesty's Dominions, or in Foreign Parts upon Land or upon the Sea, shall suffer Death or Penal Servitude or such other Punishment as by a Court-martial shall be awarded: Provided always, that any Non-commissioned Officer or Marine in Pay in any Division or Company who shall, without having first obtained a regular Discharge therefrom, enlist himself in any other Division or Company, may be deemed to have deserted Her Majesty's Service, and shall be liable to be punished accordingly.

20. In all Cases where the Punishment of Death shall have been awarded by a General Court-martial or by a Detachment General Court-martial it shall be lawful for Her Majesty, or, if in any Place out of the United Kingdom or British Isles, for the Commanding Officer having Authority to confirm Sentence, instead of causing such Sentence to be carried into execution, to order the Offender to be kept to Penal Servitude for any Term not less than Five Years, or to suffer such Term of Imprisonment, with or without Hard Labour, and with or without Solitary Confinement, as shall seem meet to Her Majesty or to the Officer commanding as aforesaid.

21. Any Officer or Marine, or any Person employed or in any way concerned in the Care or Distribution of any Money, Provisions, Forage, Arms, Clothing, Ammunition, or other Stores belonging to any of Her Majesty's Forces or for Her Majesty's Use, who shall embezzle, fraudulently misapply, wilfully damage, steal, or receive the same knowing them to have been stolen, or shall be concerned therein or connive thereat, may be tried for the same by a General Court-martial, and sentenced to be kept in Penal Servitude for any Term not less than Five Years, or to suffer such Punishment of Fine, Imprisonment, Dismissal from Her Majesty's Service, Reduction to the Ranks, if a Warrant or Non-commissioned Officer, as such Court shall think fit, according to the Nature and Degree of the Offence; and every such Offender shall, in addition to any other Punishment, make good at his own Expense the Loss and Damage sustained; and in every such Case the Court is required to ascertain by Evidence the Amount of such Loss or Damage,

and to declare by their Sentence that such Amount shall be made good by such Offender; and the Loss and Damage so ascertained as aforesaid shall be a Debt to Her Majesty, and may be recovered in any of Her Majesty's Courts at Westminster or in Dublin, or the Court of Exchequer in Scotland, or in any Court in Her Majesty's Colonies where the Person sentenced by such Court-martial shall be resident after the said Judgment shall be confirmed and made known, or the Offender, if he shall remain in the Service, may be put under Stoppages not exceeding One Half of his Pay and Allowances until the Amount so ascertained shall be recovered.

22. Whenever Her Majesty shall intend that any Sentence of Penal Servitude heretofore or hereafter to be passed upon any Offender by any Court-martial shall be carried into execution for the Term specified in such Sentence, or for any shorter Term, or shall be graciously pleased to commute as aforesaid to Penal Servitude any Sentence of Death which shall have been passed by any such Court, such Sentence, together with Her Majesty's Pleasure upon the same, shall be notified in Writing by the Lord High Admiral, or by any Two or more of the Commissioners for executing the said Office of Lord High Admiral, for the Time being, to any Justice of the Queen's Bench, Common Pleas, or Baron of the Exchequer, and thereupon such Justice or Baron shall make an Order for the Penal Servitude of such Offender upon the Terms and for the Time which shall be specified in such Notification, and shall do all such other Acts consequent upon such Notification as any such Justice or Baron is authorized to make or do by any Statute or Statutes in force at the Time of making any such Orders in relation to Penal Servitude of Offenders; and such Order, and other Acts to be so made and done as aforesaid, shall be obeyed and executed by such Person in whose Custody such Offender shall at that Time be, and by all other Persons whom it may concern, and shall be as effectual, and have all the same Consequences, as any Order made under the Authority of any Statute with respect to any Offender in such Statute mentioned; and every Sheriff, Gaoler, Keeper, Governor, or Superintendent whom it may concern, and all Constables and other Persons, shall be bound to obey the aforesaid Order and Orders, be assistant in the Execution thereof, and be liable to the same Punishment for Disobedience to or for interrupting the Execution of such Order, as they would be if the same had been made under the Authority of any such Act of Parliament; and every Person so ordered to be kept in Penal Servitude shall be subject respectively to all and every the Penalties and Provisions made by Law and in force concerning

Persons under Sentence of Penal Servitude, or receiving Her Majesty's Pardon on condition of Penal Servitude; and from the Time when such Order of Penal Servitude shall be made every Law and Statute in force touching the Escape of Felons, or their afterwards returning or being at large without Leave, shall apply to such Offender, and to all Persons aiding, abetting, contriving, or assisting in any Escape or intended Escape or the returning without Leave of any such Offender; and the Judge who shall make any Order of Penal Servitude as aforesaid shall direct the Notification of Her Majesty's Pleasure, and his own Order made thereupon, to be filed and kept of Record in the Office of the Clerk of the Crown of the Court of Queen's Bench; and the said Clerk shall have a Fee of Two Shillings and Sixpence only for filing the same, and shall, on Application, deliver a Certificate in Writing (not taking more than Two Shillings and Sixpence for the same) to such Offender, or to any Person applying in his or Her Majesty's Behalf, showing the Christian and Surname of such Offender, his Offence, the Place where the Court was held before which he was convicted, the Sentence, and the Conditions on which the Order of Penal Servitude was made; which Certificate shall be sufficient Proof of the Conviction and of the Sentence of such Offender, and also of the Terms in which such Order for his Penal Servitude was made, in any Court and in any Proceeding wherein it may be necessary to inquire into the same; and it shall be lawful for any Judge of the Queen's Bench, Common Pleas, or Exchequer in Ireland to make an Order that any such Offender convicted in Ireland shall be kept in Penal Servitude in England, and such Order shall be in all respects as effectual in England as though such Offender had been convicted in England, and the Order had been made by any Judge of the Queen's Bench, Common Pleas, or Exchequer in England.

23. Whenever any Sentence of Penal Servitude heretofore or hereafter passed upon any Offender by any Court-martial holden in any Part of Her Majesty's Foreign Dominions, or elsewhere beyond the Seas, is to be carried into execution for the Term specified in such Sentence, or for any shorter Term, or when Sentence of Death passed by any such Court-martial has been or shall as aforesaid be commuted to Penal Servitude, the same shall be notified by the Officer commanding Her Majesty's Forces at the Presidency or Station where the Offender may come or be, if in India to the Chief Judge or any Judge of the Chief Civil Court of the Presidency or Province in which the Court-martial has been held; and if in any other Part of Her Majesty's Foreign Dominions, to the Chief Justice or some other Judge therein, who shall make Order for the Penal Ser-

vitute or intermediate Custody of such Offender; and upon any such Order being made it shall be duly notified to the Governor of the Presidency if in the East Indies, or to the Governor of the Colony if in any of Her Majesty's Colonies, or to the Person who shall for the Time being be exercising the Office of Governor of such Presidency or Colony, who on Receipt of such Notification shall cause such Offender to be removed or sent to some other Colony or Place, or to undergo his Sentence within the Presidency or Colony where the Offender was so sentenced or where he may come or be as aforesaid in obedience to the Directions for the Removal and Treatment of Convicts which shall from Time to Time be transmitted from Her Majesty through One of Her Principal Secretaries of State to such Presidency or Colony; and such Offender, shall, according to such Directions, undergo the Sentence of Penal Servitude which shall have been passed upon him either in the Presidency or Colony in which he has been so sentenced or in the Colony or Place to which he has been so removed or sent, and whilst such Sentence shall remain in force shall be liable to be imprisoned and kept to Hard Labour, and otherwise dealt with under such Sentence, in the same Manner as if he had been sentenced to be imprisoned with Hard Labour during the Term of his Penal Servitude by the Judgment of a Court of competent Jurisdiction in such Presidency or Colony or in the Colony or Place to which he has been so removed or sent respectively.

24. In any Case where a Sentence of Penal Servitude shall have been awarded by a General or Detachment General Court-martial, it shall be lawful for Her Majesty, or, if in any Place out of the United Kingdom or British Isles, for the Officer commanding in chief Her Majesty's Forces there serving, instead of causing such Sentence to be carried into execution, to order that the Offender be imprisoned, with or without Hard Labour, and with or without Solitary Confinement, for such Term not exceeding Two Years as shall seem meet to Her Majesty or to the Officer commanding as aforesaid.

25. Where an Award of any Forfeiture, or of Deprivation of Pay, or of Stoppages of Pay shall have been added to any Sentence of Penal Servitude, it shall be lawful for the said Lord High Admiral or the said Commissioners, or, if in any Place out of the United Kingdom or British Isles, for the Officer commanding in chief Her Majesty's Forces there serving, in the event of the Sentence being commuted for Imprisonment, to order such Award of Forfeiture, Deprivation of Pay, or Stoppages of Pay to be enforced, mitigated, or remitted as may be deemed expedient.

26. When any Sentence of Death shall be commuted for Penal Servitude, or when any Marine shall by Court-martial be adjudged to Penal Servitude as authorized by this Act, it shall be lawful for the Commanding Officer of the Division to which such Marine shall have belonged or may belong to cause him to be detained and conveyed to any Gaol or Prison, there to remain in safe Custody until he shall be removed therefrom by due Authority under an Order for his Penal Servitude to be made by some Justice of the Queen's Bench or Common Pleas or Baron of the Exchequer as aforesaid; and that a Certificate of his Sentence, after the same shall have been approved by the Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral, (such Certificate to be signed by the Commanding Officer of the Division from which he shall be sent,) shall be a sufficient Order, Requisition, and Authority to the Governor, Keeper, or Superintendent of the Gaol or Prison to receive and detain him: Provided always, that in case of any such Offender being so conveyed to Gaol or Prison the usual Allowance of Sixpence per Diem, or such other Sum as the said Lord High Admiral or the said Commissioners may at any Time or Times direct, shall be made to the Keeper of the Gaol or Prison for the Subsistence of such Offender during his Detention therein, which Allowance shall be paid by the Paymaster of the Division, upon Production to him, by the said Governor, Keeper, or Superintendent, of a Declaration, to be made by him before One of Her Majesty's Justices of the Peace of such County, of the Number of Days during which the Offender shall have been so detained and subsisted in such Gaol or Prison.

27. No Court-martial shall, for any Offence whatever committed in Time of Peace within the Queen's Dominions, have Power to sentence any Marine to Corporal Punishment: Provided that any Court-martial may sentence any Marine to Corporal Punishment while on active Service in the Field, or on board any Ship not in Commission, for Mutiny, Insubordination, Desertion, Drunkenness on Duty or on the Line of March; and no Sentence of Corporal Punishment shall exceed Fifty Lashes.

28. It shall be lawful for any General, District, or Garrison Court-martial to award Imprisonment, with or without Hard Labour, and with or without Solitary Confinement, such Confinement not exceeding the Periods prescribed herein-after or by the Articles of War, and in case of a Marine in addition to Corporal Punishment.

29. In all Cases in which Corporal Punishment shall form the whole or Part of the Sentence

awarded by any Court-martial, it shall be lawful for the Lord High Admiral of the United Kingdom of Great Britain and Ireland, or the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, or for the Officer authorized to confirm the Sentences of Courts-martial, to commute such Corporal Punishment to Imprisonment for any Period not exceeding Forty-two Days, with or without Hard Labour, and with or without Solitary Confinement, or to mitigate such Sentence, or instead of such Sentence to award Imprisonment for any Period not exceeding Twenty Days, with or without Hard Labour, and with or without Solitary Confinement, and Corporal Punishment, to be inflicted in the Prison, not exceeding Twenty-five Lashes, and the Solitary Confinement herein-before mentioned shall in no Case exceed Seven Days at a Time, with Intervals of not less than Seven Days between each Period of such Confinement.

30. It shall be lawful for Her Majesty, in all Cases whatsoever, instead of causing a Sentence of cashiering to be put in execution, to order the Offender to be reprimanded, or, in addition thereto, to suffer such Loss of Army or Regimental Rank, or both, as may be deemed expedient.

31. Any General Court-martial may, in addition to any other Punishment which such Court may award, sentence any Offender to Forfeiture of all Advantage as to additional Pay, Good-conduct Pay, and to Pension on Discharge, which might have otherwise accrued from the Length of his former Service, or to Forfeiture of such Advantage absolutely, whether it might have accrued from past Service, or might accrue from future Service, or to Forfeiture of any Annuity and Medal which may have been granted for former meritorious Service, or of the Gratuity and Medal awarded for former good Conduct, and of all Medals and Decorations, according to the Nature of the Case; and any District or Garrison Court-martial may also, in addition to any Punishment which such Court may award, sentence any Offender to such Forfeiture for Desertion, or for disgraceful Conduct,

In wilfully maiming or injuring himself or any other Marine, whether at the Instance of such other Marine or not, or of causing himself to be maimed or injured by any other Person, with Intent thereby to render himself or such other Marine unfit for Service:

In wilfully doing any Act, or wilfully disobeying any Orders, whether in Hospital or otherwise, thereby producing or aggravating Disease or Infirmary, or delaying his Cure:

In malingering or feigning Disease:

In tampering with his Eyes, with Intent thereby to render himself unfit for Service :

In stealing or embezzling Government Property or Stores, or in receiving the same knowing the same to have been stolen :

In stealing any Money or Goods the Property of a Comrade, of a Marine Officer, or of any Marine Mess or Band, or in receiving any such Money or Goods knowing the same to have been stolen :

In making any false or fraudulent Accounts, Returns, Matters, or Entries, or assisting or conniving at the same being made, or producing the same as true, knowing the same to be false or fraudulent :

In stealing or embezzling or fraudulently mis-applying Public Money intrusted to him :

Or in committing any other Offence of a felonious or fraudulent Nature, to the Injury of, or with Intent to injure, any Person, Civil, Marine, or Military :

Or for any other disgraceful Conduct, being of a cruel, indecent, or unnatural Kind.

32. Every Marine who shall be found guilty by a Court-martial of Desertion, of wilfully maiming or injuring himself or any other Marine, whether at the Instance of such other Marine or not, or of causing himself to be maimed or injured by any other Person, with Intent thereby to render himself or such other Marine unfit for Service, of tampering with his Eyes with Intent thereby to render himself unfit for Service, such Finding having been confirmed, or found guilty by a Jury of Felony in any Court of ordinary Criminal Jurisdiction in England or Ireland, or of any Crime or Offence in any Court of Criminal Judicature in any Part of the United Kingdom, or in any Dominion, Territory, Colony, Settlement, or Island belonging to or occupied by Her Majesty out of the United Kingdom, which would, if committed in England, amount to Felony, shall thereupon forfeit all Advantage as to additional Pay, Good-conduct Pay, and to Pension on Discharge which might have otherwise accrued from the Length of his former Service, in addition to any Punishment which such Court may award; and every Marine who may be so convicted, or who may be sentenced to Penal Servitude, or discharged with Ignominy, shall thereupon likewise forfeit all Medals which he may be in possession of, whether for Sea or Field Service or for good Conduct, together with any Annuity or Pension or Gratuity, if any, thereto appertaining; and any Sergeant reduced to the Ranks by Sentence of Court-martial may, by the Order of the same Court, be made to forfeit any Annuity or Pension and Medal for meritorious Service, or any or either of them, which may have been conferred upon him.

33. If any Non-commissioned Officer or Marine, by reason of his Imprisonment, whether under Sentence of a Court-martial or of any other Court duly authorized to pass such Sentence, or by reason of his Confinement for Debt, or by reason of his Desertion, or, being an Apprentice, by reason of his being allowed to serve out his Time with his Master, shall have been absent from his Duty during any Portion of the Time limited by his Enlistment or Re-engagement or Prolongation of Service, as herein-after provided, such Portion of his Time shall not be reckoned as a Part of the limited Service for which such Non-commissioned Officer or Marine was enlisted or re-engaged, or for which his Time of Service may have been prolonged; and no Marine shall be entitled to Pay, or to reckon Service towards Pay or Pension, when in Confinement under a Sentence of any Court, or during any Absence from Duty by Commitment or Confinement as a Deserter by Confession or under any Charge of which he shall be afterwards convicted, either by Court-martial or by any Court of ordinary Criminal Jurisdiction, or whilst in Confinement for Debt; and when any Marine shall be absent as a Prisoner of War he shall not be entitled to Pay, or to reckon Service towards Pay or Pension, for the Period of such Absence, but upon rejoining Her Majesty's Service due Inquiry shall be made by a Court-martial, and unless it shall be proved to the Satisfaction of such Court that the said Marine was taken Prisoner through wilful Neglect of Duty on his Part, or that he had served with or under, or in some Manner aided, the Enemy, or that he had not returned as soon as possible to Her Majesty's Service, he may thereupon be recommended by such Court to receive either the whole of such Arrears of Pay, or a Proportion thereof, and to reckon Service during his Absence; and any Marine who shall be convicted of Desertion, or of Absence without Leave, shall, in addition to any Punishment awarded by the Court, forfeit his Pay for the Day or Days during which he was in a State of Desertion, or during his Absence without Leave; and if any Marine shall absent himself without Leave for any Period, and shall not account for the same to the Satisfaction of the Commanding Officer, or if any Marine shall be guilty of any other Offence which the Commanding Officer may not think necessary to bring before a Court-martial, the Commanding Officer may, in addition to any minor Punishment he is authorized to award, order that such Marine shall be imprisoned for such Period not exceeding One hundred and sixty-eight Hours, with or without Hard Labour, and with or without Solitary Confinement, as the said Commanding Officer may think fit, and such Marine shall forfeit his Pay for any Day or Days on which he may be so imprisoned; and the said Command-

ing Officer may moreover order that, in addition to or instead of such Imprisonment and Forfeiture, or any other Punishment which he has Authority to inflict, any Marine who shall have so absented himself as aforesaid shall forfeit his Pay for the Day or Days during which he shall have so absented himself; and, in pursuance of any such Order as aforesaid, the Pay of the Marine shall be accordingly forfeited: Provided always, that such Marine shall not be liable to be afterwards tried by a Court-martial for any Offence for which he shall have been so punished, ordered to suffer Imprisonment, Punishment, or Forfeiture as last aforesaid: Provided also, that any Marine who shall be so ordered to suffer Imprisonment or Forfeiture of Pay shall, if he so request, have a Right to be tried by a Court-martial for his Offence, instead of submitting to such Imprisonment or Forfeiture: Provided also, that it shall be lawful for the said Lord High Admiral or the said Commissioners to order or withhold the Payment of the whole or any Part of the Pay of any Officer or Marine during the Period of Absence by any of the Causes aforesaid.

34. Any General, Garrison, or District Court-martial before which any Marine shall be convicted of habitual Drunkenness shall deprive such Marine of such Portion of his Pay for such Period not exceeding Two Years, and under such Restrictions and Regulations as may accord with the Articles of War to be made in pursuance of this Act, subject to Restoration on subsequent good Conduct; and every Divisional or Detachment Court-martial shall deprive a Marine convicted of a Charge of habitual Drunkenness of such Portion of his additional or regular Pay for such Period not exceeding Six Months, and under such Restrictions and Regulations as may accord with the said Articles of War, subject to Restoration on subsequent good Conduct; and in addition to such Deprivation of Pay the Court may, if it shall think fit, sentence such Offender to any other Punishment whatsoever which the Court may be competent to award: Provided that a Marine so sentenced to the Forfeiture of Pay who shall be quartered or removed to a Station where Liquor forms a Part of his Ration, and is issued in Kind, shall be deprived of his Liquor in Kind, instead of being deprived of One Penny of his daily Pay, for so long a Time as he shall remain in such Station, and such Sentence of Forfeiture of Pay shall remain in force.

35. Any Court-martial may sentence any Marine for being drunk on Duty under Arms to be deprived of a Penny a Day of his Pay for any Period not exceeding Sixty Days, and for being

drunk when on any Duty not under Arms, or for Duty or on Parade or on the Line of March, to be deprived of a Penny a Day of his Pay for any Period not exceeding Thirty Days, and such Deprivation may in either Case be in addition to any other Punishment whatsoever which such Court may award.

36. In addition to any other Punishment which the Court may award, a Court-martial may further direct that any Offender may be put under Stoppages until he shall have made good—

Any Bounty fraudulently obtained by him by Desertion from his Corps and enlisting in some other Corps or in the Militia:

Any Loss, Disposal of, or Damage occasioned by him in any of the Instances of disgraceful Conduct herein specified:

Any Loss, Disposal of, or Destruction of, or Damage or Injury to any Property whatsoever, occasioned by his wilful or negligent Misconduct:

Any Loss, Disposal of, or Destruction of, or Damage or Injury to his Arms, Clothing, Instruments, Equipments, Accoutrements, or Necessaries, or any extra Article of Clothing or Equipment that he may have been put in possession of and ordered to wear on the Recommendation of the Surgeon for the Benefit of his Health, or making away with or pawning any Medal or Decoration for Service or for general good Conduct which may have been granted to him by Order of Her Majesty or by Order of the East India Company, or any Medal or Decoration which may have been granted to him by any Foreign Power, or any Loss, Disposal of, or Destruction of, or Damage or Injury to the Arms, Clothing, Instruments, Equipments, Accoutrements, or Necessaries of any Officer or Marine, occasioned by his wilful or negligent Misconduct:

Any Expense necessarily incurred by his Drunkenness or other Misconduct:

Provided always, that, except in the Case of the Loss, Disposal of, or Destruction of, or Damage or Injury to Arms, Clothing, Instruments, Equipments, Accoutrements, or Necessaries, in which Case the Court may by its Sentence direct that the said Stoppages shall continue till the Cost of replacing or repairing the same be made good, the Amount of any Loss, Disposal, Destruction, Damage or Injury, or Expense, shall be ascertained by Evidence, and the Offender shall be placed under Stoppages for such an Amount only as shall be proved to the Satisfaction of the Court: Provided also, that when an Offender is put under Stoppages for making away with or pawning any Medal or Decoration, the Amount shall be credited to the Public, but the Medal or Decoration in question shall not be replaced,

except under special Circumstances, to be determined by the Lord High Admiral or the Commissioners for executing the Office of Lord High Admiral aforesaid: Provided also, that so much only of the Pay of the Marine may be stopped and applied as shall, after satisfying the Charges for Messing and Washing, leave him a Residue at the least of One Penny a Day.

37. Whenever any Marine shall have been convicted of Desertion or of any such disgraceful Conduct as is herein-before described, and the Court in respect of such disgraceful Conduct shall have made the Forfeiture of all Claim to Pension on Discharge a Part of the Sentence passed on such Marine, such Court may further sentence him to be discharged with Ignominy from Her Majesty's Service: Provided always, where an Award of any of the Forfeitures herein-before mentioned, or of Deprivation of Pay, or of Stoppages of Pay, shall have been added to a Sentence of Transportation or Penal Servitude, it shall be lawful for the Lord High Admiral or the Commissioners for executing the Office of Lord High Admiral, or, if in the East Indies, for the Officer commanding in chief Her Majesty's Land Forces in India, in the event of the Sentence of Transportation or Penal Servitude being commuted to Imprisonment, to order such Award of Forfeiture, Deprivation of Pay, or Stoppages of Pay to be enforced, mitigated, or remitted as may be deemed expedient.

38. On the first and on every subsequent Conviction for Desertion the Court-martial, in addition to any other Punishment, may order the Offender to be marked, Two Inches below and One Inch in rear of the Nipple of the Left Breast, with the Letter D, such Letter not to be less than an Inch long, and to be marked upon the Skin with some Ink or Gunpowder or other Preparation, so as to be clearly seen and not liable to be obliterated; a Court-martial may, upon sentencing any Offender to be discharged with Ignominy, also sentence him to be marked on the Right Breast with the Letters B.C., and the confirming Officer may order such Sentence in respect of the Marking to be carried into effect.

39. A General or District or Garrison Court-martial may sentence any Marine to Imprisonment, with or without Hard Labour, and may also direct that such Offender shall be kept in Solitary Confinement for any Portion or Portions of such Imprisonment, in no Case exceeding Fourteen Days at a Time, nor Eighty-four Days in any One Year, with Intervals between the Periods of Solitary Confinement of not less Duration than such Periods; and when the Imprisonment awarded shall exceed Three Months, the Court-martial shall imperatively order that

the Solitary Confinement shall not exceed Seven Days in any One Month of the whole Imprisonment awarded, with Intervals between the Periods of Solitary Confinement of not less Duration than such Periods; and any Divisional or Detachment Court-martial may sentence any Marine to Imprisonment, with or without Hard Labour, for any Period not exceeding Forty-two Days, and may also direct that such Marine be kept in Solitary Confinement for any Portion or Portions of such Imprisonment, not exceeding Fourteen Days at a Time, with Intervals between them of not less Duration than such Periods of Solitary Confinement: Provided always, that when any Court-martial, whether General, Garrison, or District, or Divisional or Detachment, shall direct that the Imprisonment shall be Solitary Confinement only, or when any Sentence of Corporal Punishment shall have been commuted to Imprisonment only, the Period of such Solitary Confinement shall in no Case exceed Fourteen Days.

40. Whenever Sentence shall be passed by a Court-martial on an Offender already under Sentence, either of Imprisonment or of Penal Servitude, the Court may award Sentence of Imprisonment or Penal Servitude for the Offence for which he is under Trial to commence at the Expiration of the Imprisonment or Penal Servitude to which he shall have been so previously sentenced, although the aggregate of the Terms of Imprisonment or Penal Servitude respectively may exceed the Term for which either of those Punishments could be otherwise awarded.

41. Save as herein specially provided, every Term of Penal Servitude or Imprisonment under the Sentence of a Court-martial, whether original or revised, shall be reckoned as commencing on the Day on which the original Sentence and Proceedings shall be signed by the President; and the Place of Imprisonment under the Sentences of Courts-martial shall be appointed by the Court or the Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral, or the Commanding Officer of the Division to which the Offender belongs or is attached, or the Officer commanding the District, Garrison, Island, or Colony.

42. In the Case of a Prisoner undergoing Imprisonment under Sentence of a Court-martial, or as Part of commuted Punishment, in any public Prison other than a Military Prison, or in any Gaol or House of Correction or elsewhere, in any Part of the United Kingdom, it shall be lawful for the said Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral, for the Time being, in all Cases, or for the Officer who confirmed the Proceedings

of the Court, or the Officer commanding the Division or the District or Garrison in which such Prisoner may be, to give, as often as Occasion may arise, an Order in Writing directing that the Prisoner be discharged, or be delivered over to Military Custody, whether for the Purpose of being removed to some other Prison or Place in the United Kingdom, there to undergo the Remainder or any Part of his Sentence, or for the Purpose of being brought before a Court-martial either as a Witness or for Trial; and in the Case of a Prisoner undergoing Imprisonment under the Sentence of a Court-martial in any public Prison other than a Military Prison, or in any Gaol or House of Correction, in any Part of Her Majesty's Dominions other than the United Kingdom, it shall be lawful for the said Lord High Admiral or the said Commissioners, or for the Officer commanding the Royal Marines there serving, in the Case of any such Prisoner, to give as often as Occasion may arise an Order in Writing directing that the Prisoner be discharged, or be delivered over to Military or other Custody, whether for the Purpose of being removed to some other Prison or Place in any Part of Her Majesty's Dominions, there to undergo the Remainder or any Part of his Sentence, or for the Purpose of being brought before a Court-martial either as a Witness or for Trial; and in the Case of any Prisoner who shall be removed by any such Order from any such Prison, Gaol, or House of Correction, either within the United Kingdom or elsewhere, to some other Prison or Place, either in the United Kingdom or elsewhere, the Officer or Authorities who gave such Order shall also give an Order in Writing directing the Governor, Provost Marshal, Gaoler, or Keeper of such other Prison or Place to receive such Prisoner into his Custody, and specifying the Offence of which such Prisoner shall have been convicted, and the Sentence of the Court, and the Period of Imprisonment which he is to undergo, and the Day and the Hour on which he is to be released; and such Governor, Provost Marshal, Gaoler, or Keeper shall keep such Offender in a proper Place of Confinement, with or without Hard Labour, and with or without Solitary Confinement, according to the Sentence of the Court, and during the Time specified in the said Order, or until he be duly discharged or delivered over to other Custody before the Expiration of that Time under an Order duly made for that Purpose; and in the Case of a Prisoner undergoing Imprisonment under the Sentence of a Court-martial in any Military Prison in any Part of Her Majesty's Dominions, the Secretary of State for War, or any Person duly authorized by him in that Behalf, shall have the like Powers in regard to the Discharge and Delivery over of such Prisoners to Military or other Custody as may be lawfully exercised by

any of the Authorities above mentioned in respect of any Prisoners undergoing Confinement as aforesaid in any public Prison other than a Military Prison, or in any Gaol or House of Correction in any Part of Her Majesty's Dominions; and such Prisoner in any of the Cases herein-before mentioned shall accordingly, on the Production of any such Order as is herein-before mentioned, be discharged or delivered over, as the Case may be: Provided always, that the Time during which any Prisoner under Sentence of Imprisonment by a Court-martial shall be detained in such Military or other Custody under such Order as aforesaid shall be reckoned as Imprisonment under the Sentence, for whatever Purpose such Detention shall take place, and such Prisoner may during such Time, either when on board Ship or otherwise, be subjected to such Restraint as is necessary for his Detention and Removal.

43. Every Governor, Provost Marshal, Gaoler, or Keeper of any public Prison, or of any Gaol or House of Correction, in any Part of Her Majesty's Dominions, shall receive into his Custody any Military Offender under Sentence of Imprisonment by a General or other Court-martial, upon Delivery to him of an Order in Writing in that Behalf from the Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral, or from the Officer commanding the Division or Detachment to which the Offender belongs or did last belong or is attached, which Order shall specify the Period of Imprisonment or Remainder of Imprisonment which the Offender is to undergo, and the Day and Hour of the Day on which he is to be released or be otherwise disposed of; and such Governor, Provost Marshal, Gaoler, or Keeper shall keep such Offender in a proper Place of Confinement, with or without Hard Labour, and with or without Solitary Confinement, according to the Sentence of the Court, and during the Time specified in the said Order, or until he be discharged or delivered over to other Custody before the Expiration of that Time, under an Order duly made for that Purpose; and whenever Marines are called out in aid of the Civil Power, or are stationed in Billets, or are on the Line of March, every Governor, Provost Marshal, Gaoler, or Keeper of any public Prison, Gaol, House of Correction, Lock-up House, or other Place of Confinement shall receive into his Custody any Marine for a Period not exceeding Seven Days, upon Delivery to him of an Order in Writing in that Behalf from the Officer commanding such Marine; and any Governor, Provost Marshal, Gaoler, or Keeper of any public Prison, Gaol, House of Correction, Lock-up House, or other Place of Confinement who shall refuse to receive

and to confine, or to discharge or deliver over, any Marine Offender in the Manner herein prescribed, shall forfeit for every such Offence the Sum of One hundred Pounds.

44. The Gaoler or Keeper of any public Prison, Gaol, House of Correction, Lock-up House, or other Place of Confinement in any Part of Her Majesty's Dominions shall diet and supply every Marine imprisoned therein under the Sentence of a Court-martial or as a Deserter with Fuel and other Necessaries according to the Regulations of such Place of Confinement, and shall receive on account of every Marine during the Period of his Imprisonment Sixpence per Diem, or such other Sum as the said Lord High Admiral or the said Commissioners may at any Time or Times direct, which the Secretary of the Admiralty shall cause to be issued out of the Subsistence of such Marine, upon Application in Writing signed by any Justice within whose Jurisdiction such Place of Confinement shall be locally situated, together with a Copy of the Order of Commitment, and which Sum of Sixpence per Diem, or such other Sum as aforesaid, shall be carried to the Credit of the Fund from which the Expense of such Place of Confinement is defrayed.

45. Every Gaoler or Keeper of any public Prison, Gaol, House of Correction, or other Place of Confinement, to whom any Notice shall have been given, or who shall have Reason to know or believe, that any Person in his Custody for any Debt or Contempt, or upon any Charge for any Offence, civil, criminal, or military, is a Marine, shall on receiving him into Custody give Notice thereof to the Secretary of the Admiralty, and also, previous to the Expiration of the Period of the Confinement or Imprisonment of such Marine, give to the Secretary of the Admiralty One Month's Notice of the Period of such Expiration of Confinement or Imprisonment, or if there shall not be sufficient Time for a Month's Notice, then the longest practicable Notice thereof, specifying the Day and Hour of the Day on and at which he is to be released; and for every Default of giving either or any of such Notices such Gaoler or Person shall forfeit the Sum of Twenty Pounds; and moreover every Gaoler or other Person having such immediate Inspection as aforesaid shall, as soon as any such Marine shall be entitled to be discharged out of Custody, with all convenient Speed, safely and securely conduct and convey and safely and securely deliver every such Marine either unto the Officer commanding at the nearest Head Quarters of the Royal Marines or to the Officer commanding Her Majesty's Ship to which any such Marine may happen to belong, unless the said Commissioners shall, by Writing under the Hand of the Secretary of the Admiralty, or the Officer commanding at the nearest Head Quarters

of the Royal Marines, or the Officer commanding Her Majesty's Ship to which any such Marine may belong, shall, by Writing under his Hand, direct that such Marine be delivered to some other Officer or Person, in which Case he shall be delivered to such other Officer or Person accordingly, and the Officer or Person to whom such Marine shall be so delivered in accordance with this Act shall thereupon give to such Gaoler or Person delivering up such Marine a Certificate, directed to the Secretary of the Admiralty, specifying the Receipt of such Marine, and, if such Gaoler or other Person as aforesaid has conducted or conveyed any such Marine, specifying the Place from and to which he shall have been conducted and conveyed as aforesaid; and such Gaoler or Person who shall have so conducted, conveyed, and delivered any such Marine shall, upon the Production of such Certificate, be entitled to receive of and from the Accountant General of Her Majesty's Navy the Sum of One Shilling per Mile, and no more, for conducting, conveying, and delivering any such Marine as aforesaid; and every such Gaoler or other Person having such immediate Inspection as aforesaid who shall not safely and securely conduct, convey, or deliver any such Marine as aforesaid shall for every such Misconduct or Offence forfeit and pay the Sum of One hundred Pounds. In all Cases where the Marine in Custody is under Sentence to be discharged from the Service on the Completion of his Term of Imprisonment, and the Discharge Document is in the Hands of the Gaoler, such Gaoler shall not be required to make any Report thereof to the Secretary of the Admiralty or to the Deputy Adjutant General of Marines.

46. Every Military Prison which shall be established under or by virtue of any Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters, shall be deemed to be public Prisons within the Meaning of any Act now in force or hereafter to be in force for the Regulation of Her Majesty's Royal Marine Forces; and any Officer or Marine convicted by a Court-martial may be sent, by Order of the Commissioners for executing the Office of Lord High Admiral, to any such Military Prison, there to undergo such Punishment as may be awarded by the Sentence passed upon him, or until he be discharged or delivered up by an Order, as in the Case of a Discharge or Removal from any other Prison under this Act.

47. Musters, as have been customary, shall be taken of every Division or Company of Royal Marines once in every Calendar Month, as shall be appointed; and no Officer or Marine shall be absent from any such Muster, unless duly certified to be employed on some other Duty of the

Corps, or sick, or in Prison, or on Furlough; and every Person belonging to Her Majesty's Service who shall give or procure to be given any untrue Certificate thereby to excuse any Person from any Muster or other Service which he ought to attend or perform, or shall make any false or untrue Muster of Man or Horse, or who shall willingly allow or sign any false Muster or Duplicate thereof, or shall directly or indirectly take or receive any Money or Gratuity for mustering any Person, or for signing any Muster Roll or Duplicate, or shall knowingly muster any Person by a wrong Name, shall, upon Proof by Two Witnesses before a General Court-martial, for any such Offence be sentenced to be cashiered: Provided that it shall be lawful for Her Majesty, in all Cases whatsoever, instead of causing a Sentence of cashiering to be put in execution, to order the Offender to be reprimanded, or, in addition thereto, to suffer such Loss of Rank as may be deemed expedient; and any Person who shall fraudulently offer or procure himself to be falsely mustered, or lend or furnish any Horse to be falsely mustered, shall, upon Proof thereof by the Oaths of Two Witnesses before some Justice of the Peace residing near to the Place where such Muster shall be made, forfeit the Sum of Twenty Pounds, and the Informer, if he belongs to Her Majesty's Service, shall, if he demand it, be forthwith discharged; and if any Person not belonging to Her Majesty's Service shall give or sign any untrue Certificate of Illness or otherwise in order to excuse any Officer or Marine from Appearance at any Muster, or whereby Her Majesty's Service may be defrauded, every Person so offending shall for every such Offence forfeit the Sum of Fifty Pounds.

48. All Muster Rolls and Pay Lists of Royal Marines required to be verified upon Oath shall be sworn before and attested by any Justice of the Peace, without Fee or Reward to himself or his Clerk.

49. Every Marine shall be liable to be tried and punished for Desertion from any Corps into which he may have unlawfully enlisted, although he may of right belong to another Corps, and be a Deserter therefrom; and whether such Marine shall be tried for deserting from the Corps to which he may of right belong, or from the Corps into which he may have unlawfully enlisted, or for any other Desertion, every Desertion previous or subsequent to that for which he may at the Time be taking his Trial may, if duly stated in the Charges, be given in Evidence against him on such Trial.

50. Upon reasonable Suspicion that a Person is a Deserter it shall be lawful for any Constable,

or if no Constable can be immediately met with, then for any Officer or Marine or Soldier in Her Majesty's Service, or other Person, to apprehend or cause to be apprehended such suspected Person, and forthwith to bring him or cause him to be brought before any Justice living in or near the Place where he was so apprehended, and acting for the County or Borough wherein such Place is situate, or for the County adjoining such first-mentioned County or such Borough; and such Justice is hereby authorized and required to inquire whether such suspected Person is a Deserter, and from Time to Time to defer the said Inquiry, and to remand the said suspected Person, in the Manner prescribed by an Act passed in the Eleventh and Twelfth Years of the Reign of Her present Majesty, Chapter Forty-two, Section Twenty-one, and subject to every Provision therein contained; and if it shall appear to the Satisfaction of such Justice, by the Testimony of One or more Witnesses taken upon Oath, or by the Confession of such suspected Person, confirmed by some corroborative Evidence upon Oath, or by the Knowledge of such Justice, that such suspected Person is a Deserter, such Justice shall forthwith cause him to be conveyed in Civil Custody to the Head Quarters or Depôt of the Division to which he belongs, if stationed within a convenient and easily accessible Distance from the Place of Commitment, or if not so stationed then to the nearest or most convenient public Prison (other than a Military Prison) or Police Station legally provided as the Lock-up House for temporary Confinement of Persons taken into Custody, whether such Prison or Police Station be in the County or Borough in which such suspected Person was apprehended or in which he was committed, or not; or if the Deserter has been apprehended by a Party of Marines in charge of a Commissioned Officer, such Justice may deliver him up to such Party, unless the Officer shall deem it necessary to have the Deserter committed to Prison for safe Custody; and such Justice shall transmit an Account of the Proceedings, in the Form prescribed in the Schedule annexed to this Act, to the Secretary of the Admiralty, specifying thereon whether such Deserter was delivered to a Party of Marines in order to his being taken to the Head Quarters or Depôt of his Division, or whether such Deserter was committed to Prison, to the end that the Person so committed may be removed by an Order from the said Lord High Admiral, or the said Commissioners for executing the Office of Lord High Admiral, or Deputy Adjutant General of Royal Marines, and proceeded against according to Law; and such Justice shall also send to the Secretary of the Admiralty a Report stating the Names of the Persons by whom or by or through whose Means the Deserter was apprehended and secured, and the Secretary of the

Admiralty shall transmit to such Justice an Order upon the proper Department for the Payment of the Sum of Twenty Shillings as a Reward to the Person so certified to be entitled hereto; and for such Information, Commitment, and Report as aforesaid the Clerk of the said Justice shall be entitled to a Fee of Two Shillings and no more; and every Gaoler and other Person into whose Custody any Person charged with Desertion is committed shall, immediately upon the Receipt of the Person so charged into his Custody, pay such Fee of Two Shillings, and also, upon the Production of a Receipt from the Medical Practitioner who may have been required to examine such suspected Person, a Fee of Two Shillings and Sixpence, and shall notify the Fact to the Secretary of the Admiralty, and transmit also to the Secretary of the Admiralty a Copy of the Commitment, to the end that the Secretary of the Admiralty may order Repayment of such Fees; and that when any such Person shall be apprehended and committed as a Deserter in any Part of Her Majesty's Foreign Dominions, the Justice shall forthwith cause him to be conveyed to some public Prison, if the Detachment to which he is suspected to belong shall not be in such Part, or if the Detachment be in such Part, the Justice may deliver him into Custody at the nearest Military Post, although the Detachment to which such Person is suspected to belong may not be stationed at such Military Post, if within reasonable Distance; and such Justice shall in every Case transmit to the Officer commanding a Description Return in the Form prescribed in the Schedule to this Act annexed, to the end that such Person may be removed by the Order of such Officer, and proceeded against according to Law; and such Description Return, purporting to be duly made and subscribed in accordance with the Act, shall, in the Absence of Proof to the contrary, be deemed sufficient Evidence of the Facts and Matters therein stated: Provided always, that any such Person so committed as a Deserter in any Part of Her Majesty's Dominions shall, subject to the Provisions herein-after contained, be liable to be transferred, by Order of the Colonel Commandant or other Officer commanding, to serve in any Division, Corps, Detachment, or Party nearest to the Place where he shall have been apprehended, or to any other Division, Corps, Detachment, or Party to which the Lord High Admiral or the Commissioners for executing the Office of Lord High Admiral may deem it desirable that he should be transferred, and shall also be liable after such Transfer of Service to be tried and punished as a Deserter.

51. For and in respect of any Marine attempting to desert from any Head Quarters, the Party or Parties by whom he shall be apprehended

shall be entitled to a Reward of Ten Shillings, to be paid upon the delivering up of such Marine, which Sum of Ten Shillings shall be charged against and stopped and retained out of the Pay and Subsistence of every such Marine.

52. Every Gaoler or Keeper of any public Prison, Gaol, House of Correction, Lock-up House, or other Place of Confinement in any Part of Her Majesty's Dominions is hereby required to receive and confine therein every Deserter who shall be delivered into his Custody by any Marine or other Person conveying such Deserter under lawful Authority, on Production of the Warrant of the Justice of the Peace on which such Deserter shall have been taken, or some Order from the Admiralty, which Order shall continue in force until the Deserter shall have arrived at his Destination; and such Gaoler or Keeper shall be entitled to One Shilling for the safe Custody of the said Deserter while halted on the March, and to such Subsistence for his Maintenance as shall be directed by the said Lord High Admiral or the said Commissioners.

53. Any Person who, while serving in Her Majesty's Navy or in any of Her Majesty's Forces, or the Embodied Militia, shall to any Officer, or Subordinate, Warrant, Petty, or Non-commissioned Officer, fraudulently confess himself to be a Deserter from Her Majesty's Royal Marine Forces, shall be liable to be tried by any Court-martial under this Act, and punished according to the Sentence thereof; and any Person who shall voluntarily deliver himself up as and confess himself to be a Deserter from Her Majesty's Royal Marine Forces, or who, upon being apprehended for any Offence, shall in the Presence of the Justice confess himself to be a Deserter as aforesaid, shall be deemed to have been duly enlisted and to be a Marine, and shall be liable to serve in Her Majesty's Royal Marine Forces, whether such Person shall have been ever actually enlisted as a Marine or not; or in case such Person shall not be a Deserter from the Royal Marine Forces, or shall have been discharged therefrom or from any other Corps for any Cause whatever, or shall be incapable of Service, he shall, on Conviction thereof before Two Justices of the Peace at or near the Place where he shall deliver himself up or confess, or where he may at any Time happen to be, be adjudged to be punished, if in England, as a Rogue and Vagabond, and if elsewhere by Commitment to some Prison or House of Correction, there to be kept to Hard Labour for any Time not exceeding Three Months, or shall be deemed guilty of obtaining Money under false Pretences within the true Intent and Meaning, if in England or Ireland, of an Act passed in the Session

holden in the Twenty-fourth and Twenty-fifth Years of Queen Victoria, intituled "An Act to consolidate and amend the Statute Law of England and Ireland relating to Larceny and other similar Offences," or, if in Scotland, shall be deemed guilty of Falsehood, Fraud, and wilful Imposition; and every Person so deemed to be guilty of obtaining Money under false Pretences, or of Falsehood, Fraud, and wilful Imposition, (as the Case may be,) shall be liable to be proceeded against and punished accordingly; and the Confession and receiving Subsistence as a Marine by such Person shall be Evidence of the false Pretence, or of the Falsehood, Fraud, and Imposition, (as the Case may be,) and of the obtaining Money to the Amount of the Value of such Subsistence, and the Value of such Subsistence so obtained may be charged in the Indictment as so much Money received by such Person; and in case such Person shall have been previously convicted of the like Offence, or shall have been summarily convicted and punished in England as a Rogue and Vagabond, or in Scotland or Ireland by Commitment, for making a fraudulent Confession of Desertion, such former Conviction may be alleged in the Indictment, and may be proved upon the Trial of such Person; and in such Indictment for a Second Offence it shall be sufficient to state that the Offender was at a certain Time and Place convicted of obtaining Money under false Pretences as a Deserter, for making a fraudulent Confession of Desertion, without otherwise describing the said Offence; and a Certificate containing the Substance and Effect only (omitting the formal Part) of the Indictment and Conviction of the former Offence, purporting to be signed by the Clerk of the Court or other Officer having the Custody of the Record of the Court where the Offender was first convicted, or by the Deputy of such Clerk, or by the Clerk of the convicting Magistrates, shall, upon Proof of the Identity of the Person of the Offender, be sufficient Evidence of the First Conviction, without Proof of the Signature or official Character of the Person appearing to have signed such Certificate; and if the Person so confessing himself to be a Deserter shall be serving at the Time in Her Majesty's Royal Marine Forces he shall be deemed to be and shall be dealt with by all Justices and Gaolers as a Deserter.

54. Any Person who shall, in any Part of Her Majesty's Dominions, by any Means whatsoever, directly or indirectly procure any Marine to desert or absent himself from his Duty without Leave from his Commanding Officer, or attempt to procure or persuade any Marine to desert or absent himself from his Duty, and any Person who, knowing that any Marine is absent from his Duty without Leave from his Commanding

Officer, shall harbour or conceal such Marine, or aid or assist such Marine in concealing himself, or aid and assist in his Rescue, shall be deemed guilty of a Misdemeanor, and shall, on Conviction thereof before any Two Justices acting for the County, District, City, Burgh, or Place where any such Offender shall at any Time happen to be, be liable to be committed to the Common Gaol or House of Correction, there to be imprisoned, with or without Hard Labour, for such Term not exceeding Six Calendar Months as the convicting Justices shall think fit.

55. When there shall not be any Officer of Her Majesty's Land or Marine Forces of the Rank of Captain or of a Superior Rank, or any Adjutant of Militia, within convenient Distance of the Place where any Non-commissioned Officer or Marine, not borne on the Books of any of Her Majesty's Ships or Vessels in Commission as aforesaid, and who shall be on Furlough, shall be detained by Sickness or other Casualty rendering necessary an Extension of such Furlough, it shall be lawful for any Justice who shall be satisfied of such Necessity to grant an Extension of Furlough for a Period not exceeding One Month; and the said Justice shall immediately certify such Extension, and the Cause thereof, to the Commanding Officer of the Division or Detachment to which the Man belongs, if known, and if not, then to the Secretary of the Admiralty, in order that the necessary Allowance of Pay and Subsistence may be remitted to the Marine, who shall not during the Period of such Extension of Furlough be liable to be treated as a Deserter: Provided always, that nothing herein contained shall be construed to exempt any Marine from Trial and Punishment according to the Provisions of this Act for any false Representation made by him in that Behalf to the said Officer or Justice so extending the Furlough, or for any Breach of Discipline committed by him in applying for and obtaining the said Extension of Furlough.

56. Any Person enlisted into Her Majesty's Royal Marine Forces as a Marine, or who has received Marine Enlistment Money, shall be liable to be taken out of Her Majesty's Service only by Process or Execution on account of any Charge of Felony, or on account of Misdemeanor, or of any Crime or Offence other than the Misdemeanor of refusing to comply with an Order of Justices for the Payment of Money, or on account of an original Debt proved by Affidavit of the Plaintiff or of some one on his Behalf to amount to the Value of Thirty Pounds at the least over and above all Costs of Suit, such Affidavit to be sworn, without Payment of any Fee, before some Judge of the Court out of which Process or Execution shall issue, or before some

Person authorized to take Affidavits in such Court, of which Affidavit, when duly filed in such Court, a Memorandum shall, without Fee, be endorsed upon the Back of such Process, stating the Fact sworn to, and the Day of filing such Affidavit; but no Marine or other Person as aforesaid shall be liable by any Process whatever to appear before any Justice of the Peace or other Authority whatsoever, or to be taken out of Her Majesty's Service by any Writ, Summons, Order, Warrant, Judgment, Execution, or any Process whatever issued by or by the authority of any Court of Law, or any Magistrate, Justice or Justices of the Peace, or any other Authority whatsoever, for any original Debt not amounting to Thirty Pounds, or for not supporting or maintaining, or for not having supported or maintained, or for leaving or having left chargeable to any Parish, Township, or Place, or to the Common Fund of any Union, any Relation or Child which such Marine or Person might, if not in Her Majesty's Service, be committable by Law to relieve or maintain, or for neglecting to pay to the Mother of any Bastard Child, or to any Person who may have been appointed to have the Custody of such Child, any Sum to be paid in pursuance of an Order in that Behalf, or for the Breach of any Contract, Covenant, Agreement, or other Engagement whatever, by Parol or in Writing, or for having left or deserted his Employer or Master, or his Contract, Work, or Labour; and all Summonses, Warrants, Commitments, Indictments, Convictions, Judgments, and Sentences, on account of any of the Matters for which it is herein declared that a Marine is not liable to be taken out of Her Majesty's Service, shall be utterly illegal, and null and void to all Intents and Purposes; and any Judge of any such Court may examine into any Complaint made by a Marine or by his Superior Officer, and by Warrant under his Hand discharge such Marine, without Fee, he being shown to have been arrested contrary to the Intent of this Act, and shall award reasonable Costs to such Complainant, who shall have for the Recovery thereof the like Remedy as would have been applicable to the Recovery of any Costs which might have been awarded against the Complainant in any Judgment or Execution as aforesaid, or a Writ of Habeas corpus ad subjiciendum shall be awarded or issued, and the Discharge of any such Marine out of Custody shall be ordered thereupon; provided that any Plaintiff, upon Notice of the Cause of Action first given in Writing to any Marine or left at his last Quarters, may proceed in any Action or Suit to Judgment, and have Execution other than against the Body or Marine Necessaries or Equipments of such Marine: Provided also, that nothing herein contained relating to the leaving or deserting a Master or Employer, or to

the Breach of any Contract, Agreement or Engagement, shall apply to Persons who shall be really and bonâ fide Apprentices duly bound under the Age of Twenty-one Years, as herein prescribed.

57. No Person who shall be commissioned and in Full Pay as an Officer in the Royal Marine Forces, or who shall be employed in enlisting for such Forces, shall be capable of being nominated or elected to be Sheriff, and no such Officer and no Non-commissioned Officer of such Forces shall be capable of being nominated or elected to be a Constable, or Overseer, Guardian of any Union, or any Officer of a like Description, of any County, Hundred, Riding, City, Borough, Town, Division, Parish, or other Place, or to be Mayor, Portreeve, Alderman, or to hold any Office in any Municipal Corporation in any City, Borough, or Place in Great Britain or Ireland, or be summoned or shall serve as a Grand or Petit or other Juror or upon any Inquest, and any Summons for him to attend to serve as a Grand or Petit or other Juror or upon an Inquest shall be null and void; and every such Person is hereby exempted from Attendance and Service in accordance with any such Summons, and from all Fines, Pains, and Penalties for or in consequence of not attending or serving as aforesaid.

58. Every Person authorized to enlist Recruits for the Royal Marines shall first ask the Person offering to enlist whether he belongs to the Militia, and also such other Questions as the said Lord High Admiral or the said Commissioners may direct to be put to Recruits, and shall, immediately after giving him Enlisting Money, serve him with a Notice in the Form set forth in the Schedule to this Act annexed.

59. Every Person who shall receive Enlisting Money in manner aforesaid shall upon such Receipt be deemed to be enlisted as a Marine in Her Majesty's Service, and while he shall remain with the Recruiting Party shall be entitled to be billeted.

60. Every Person so enlisted as aforesaid shall, within Ninety-six Hours (any intervening Sunday, Christmas Day, or Good Friday not included), but not sooner than Twenty-four Hours after such Enlistment, appear, together with some Person employed in the Recruiting Service, before a Justice of the Peace, not being an Officer of the Marines, for the Purpose of being attested as a Marine, or of objecting to his Enlistment.

61. When a Recruit, upon appearing before a Justice for the Purposes aforesaid, shall dissent from or object to his Enlistment, and shall satisfy the Justice that the same was effected in any

respect irregularly, he shall forthwith discharge the Recruit absolutely, and shall report such Discharge to the Commandant of the Division for which the Marine shall have enlisted; but if the Recruit so dissenting shall not allege or shall not satisfy the Justice that the Enlistment was effected irregularly, nevertheless, upon Repayment of the Enlisting Money and of any Sum received by him in respect of Pay, and of a further Sum of Twenty Shillings as Smart Money, he shall be entitled to be discharged; and the Sum paid by such Recruit upon his Discharge shall be kept by the Justice, and, after deducting therefrom One Shilling as the Fee for reporting the Payment to the Secretary of the Admiralty and to the said Commandant, shall be paid over to any Person belonging to the Recruiting Party who may demand the same; and the Justice who shall discharge any Recruit shall in every Case give a Certificate thereof, signed with his Hand, to the Recruit, specifying the Cause thereof.

62. If the Recruit on appearing before a Justice shall not dissent from his Enlistment, or dissenting shall within Twenty-four Hours return and state that he is unable to pay the Sums mentioned in the last Section, he shall be attested as follows: the Justice, or some Person deputed by him, shall read to the Recruit the Questions set forth in the Form contained in the Schedule to this Act annexed, cautioning him that if he fraudulently make any false Answer thereto he shall be liable to be punished as a Rogue and Vagabond, and the Answers of the Recruit shall be recorded opposite to the said Questions, and the Justice shall require the Recruit to make and sign the Declaration in the said Form, and shall then administer to him the Oath of Allegiance in the said Form; and when the Recruit shall have signed the said Declaration and taken the Oath, the Justice shall attest the same by his Signature, and shall deliver to the Recruiting Officer the Declaration so signed and attested, and the Fee for such Attestation, including the Declaration and Oath, shall be One Shilling and no more; and any Recruit shall, if he so wish, be furnished with a certified Copy of the above-mentioned Declaration by the Officer who finally approved of him for the Service.

63. No Recruit, unless he shall have been attested or shall have received Pay other than Enlisting Money, shall be liable to be tried by Court-martial; but if any Recruit, previously to his being attested, shall by means of any false Answer obtain Enlistment Money, or shall make any false Statement in his Declaration, or shall refuse to answer any Question duly authorized to be put to Recruits for the Purpose of filling up such Declaration, or shall refuse or neglect to go before a Justice for the Purposes aforesaid, or

having dissented from his Enlistment shall wilfully omit to return and pay such Money as aforesaid, in any of such Cases it shall be lawful for any Two Justices within the United Kingdom, or for any One Justice out of the United Kingdom, acting for the County, District, City, Burgh, or Place where any such Recruit shall at any Time happen to be, when he shall be brought before them or him, if in England, to adjudge him to be a Rogue and Vagabond, and to sentence him to be punished accordingly, and if in Scotland or Ireland, or elsewhere in Her Majesty's Dominions, to be imprisoned with Hard Labour in any Prison or House of Correction for any Period not exceeding Three Calendar Months; and the Declaration made by the Recruit on his Attestation, purporting to be made and subscribed in accordance with the Schedule to this Act annexed, shall, in the Absence of Proof to the contrary, be deemed sufficient Evidence of such Recruit having represented the several Particulars as stated in such Declaration; and any Marine who shall have given any false Answer at the Time of or relative to his becoming a Marine shall forfeit all Pay, Wages, and other Monies, be the same Naval, Marine, or otherwise, which he might otherwise have been entitled to for any Period of Service in the Royal Marines.

64. Any Recruit who shall have been attested, and who shall afterwards be discovered to have given any wilfully false Answer to any Question directed to be put to Recruits, or shall have made any wilfully false Statement in the Declaration herein-before mentioned, shall be liable, at the Discretion of the said Lord High Admiral or the said Commissioners, to be proceeded against before Two Justices in the Manner herein-before mentioned, and by them sentenced accordingly, or to be tried by a District or Garrison Court-martial for the same, and punished in such Manner as such Court shall direct.

65. If any Recruit shall abscond so that it is not possible immediately to apprehend and bring him before a Justice for Attestation, the Recruiting Party shall produce to the Justice before whom the Recruit ought regularly to have been brought for that Purpose a Certificate of the Name and Place of Residence and Description of such Recruit and of his having absconded, and shall declare the same to be true, and the Justice to whom such Certificate shall be produced shall transmit a Duplicate thereof to the Secretary of the Admiralty in order that the same may appear in the *Police Gazette*.

66. If any Man while belonging to a Militia Regiment shall enlist in and be attested for Her Majesty's Royal Marines, he shall be liable to be

ried before a Court-martial on a Charge for Desertion; but it shall be lawful for the Secretary of State for War, on the Confession thereof of such Militiaman, or on other Proof thereof, to order that in lieu of his being so tried he shall be subjected to a Stoppage of One Penny a Day of his Pay for Eighteen Calendar Months, to be applied as the Secretary of State for War shall direct, and further to determine whether such Man shall be returned to his Militia Regiment after such Sum shall have been made good, or shall be deemed to be a Marine in the same manner as he would have been if he had not been a Militiaman at the Time of his Attestation.

67. If any Non-commissioned Officer of the Volunteer Permanent Staff shall enlist into the Royal Marines, he may be tried and punished as a Deserter, but if he confesses his Desertion the Secretary of State for War, instead of causing him to be tried and punished as a Deserter, may cause him to be returned to his Service on the Volunteer Permanent Staff, to be there put under stoppages from his Pay until he has repaid the amount of any Bounty received by him, and the expenses attending his Enlistment, and also the value of any Arms, &c. issued to him while on the Volunteer Permanent Staff, and not duly delivered up by him, or may cause him to be held to his Service in the Royal Marines with a Direction, if it seems fit, that his Term of Service herein shall not be reckoned for Pension until the Time when his Engagement on the Volunteer Permanent Staff would have expired, and may further cause him to be put under stoppages of One Penny a Day of his Pay until he has repaid the Expense attending his Engagement or Attestation on the Volunteer Permanent Staff, and also the Value of any Arms, Clothing, or Appointments issued to him while on the Volunteer Permanent Staff, and not duly delivered up by him.

68. Every Person subject to this Act who shall wilfully act contrary to any of its Provisions in any Matter relating to the enlisting or attesting of Recruits for Her Majesty's Service shall be liable to be tried for such Offence by a General Court-martial, and to be sentenced to such Punishment, other than Death or Penal Servitude, as such Court may award.

69. It shall be lawful for any Justice of the Peace or Person exercising the Office of a Magistrate within any of Her Majesty's Dominions abroad, or for the Officer commanding any Ship or Vessel of Her Majesty on the Books of which any Marine may be borne, or on board of which

any such Marine may be, or, notwithstanding anything in this Act contained, for the Commanding Officer of any Battalion or Detachment of Royal Marines, whether borne on the Books of any One of Her Majesty's Ships or otherwise, to re-engage or enlist and attest out of Great Britain or Ireland any Marine desirous of re-enlisting or re-engaging into Her Majesty's Royal Marine Forces, if such Marine be considered by such Commanding Officer, Justice, or Magistrate a fit Person to continue in Her Majesty's Service; and every such Commanding Officer, Justice, or Magistrate shall have the same Powers in that Behalf as are by this or any other Act of Parliament given to Justices of the Peace in the United Kingdom for all such Purposes of Enlistment and Attestation, and any Marine so re-enlisted or re-engaged shall be deemed to be an attested Marine.

70. Any Person duly bound as an Apprentice who shall enlist into Her Majesty's Royal Marine Forces, and shall falsely state to the Magistrate before whom he shall be carried and attested that he is not an Apprentice, shall be deemed guilty of obtaining Money by false Pretences, if in England or in Ireland, and of Falsehood, Fraud, and wilful Imposition, if in Scotland, and shall after the Expiration of his Apprenticeship, whether he shall have been so convicted and punished or not, be liable to serve as a Marine according to the Terms of the Enlistment, and if on the Expiration of his Apprenticeship he shall not deliver himself up to some Officer authorized to receive Recruits, such Person may be taken as a Deserter from Her Majesty's Royal Marine Forces.

71. No Master shall be entitled to claim an Apprentice who shall enlist as a Marine in Her Majesty's Service unless such Master shall, within One Calendar Month next after such Apprentice shall have left his Service, go before some Justice, and take the Oath mentioned in the Schedule to this Act annexed, and at the Time of making his Claim produce to the Officer under whose Command the Recruit shall be the Certificate of such Justice of his having taken such Oath, which Certificate such Justice is required to give in the Form in the Schedule to this Act annexed; nor unless such Apprentice shall have been bound, if in England, for the full Term of Five Years, (not having been above the Age of Fourteen Years when so bound,) and, if in Ireland, or in the British Isles, for the full Term of Five Years at the least, (not having been above the Age of Sixteen when so bound,) and, if in Scotland, for the full Term at least of Four Years, by a regular Contract or Indenture of Apprenticeship, duly extended, signed, and

tested, and binding on both Parties by the Law of Scotland prior to the Period of Enlistment, and unless such Contract or Indenture in Scotland shall, within Three Months after the Commencement of the Apprenticeship and before the Period of Enlistment, have been produced to a Justice of the Peace of the County in Scotland wherein the Parties reside, and there shall have been endorsed thereon by such Justice a Certificate or Declaration signed by him specifying the Date when and the Person by whom such Contract or Indenture shall have been so produced, which Certificate or Declaration such Justice of the Peace is hereby required to endorse and sign; nor unless any such Apprentice shall, when claimed by such Master, be under Twenty-one Years of Age: Provided always, that any Master of an Apprentice indentured for the Sea Service shall be entitled to claim and recover him in the Form and Manner above directed, notwithstanding such Apprentice may have been bound for a less Term than Five or Four Years as aforesaid: Provided also, that any such Master who shall give up the Indentures of Apprenticeship within One Month after the enlisting of such Apprentice shall be entitled to receive to his own Use so much of the Bounty payable to such Recruit as shall not have been paid to such Recruit before Notice given of his being an Apprentice.

72. No Apprentice claimed by his Master shall be taken from any Division, Detachment, Recruiting Party, or Ship of Her Majesty, except under a Warrant of a Justice residing near and within whose Jurisdiction such Apprentice shall then happen to be, and before whom he shall be carried; and such Justice shall inquire into the Matter upon Oath (which Oath he is hereby empowered to administer), and shall require the Production and Proof of the Indenture, and that Notice of the said Warrant has been given to the Commanding Officer, and a Copy thereof left with some Officer or Non-commissioned Officer of the Party, and that such Person so enlisted declared that he was no Apprentice; and such Justice, if required by such Officer or Non-commissioned Officer, shall commit the Offender to the Common Gaol of the County, Division, or Place for which such Justice is acting, and shall keep the Indenture to be produced when required, and shall bind over such Person as he may think proper to give Evidence against the Offender, who shall be tried at the next or at the Sessions immediately succeeding the next General or Quarter Sessions of such County, Division, or Place, unless the Court shall for just Cause put off the Trial; and the Production of the Indenture, with the Certificate of the Justice that the same was proved, shall be sufficient Evidence of the said Indenture; and every such Offender in Scotland may be tried by the Judge Ordinary in

the County or Stewartry in such and the like Manner as any Person may be tried in Scotland for any Offence not inferring a Capital Punishment: Provided always, that any Justice not required as aforesaid to commit such Apprentice may deliver him to his Master.

73. No Person who shall for Six Months, and either before or after the passing of this Act, have received Pay and be borne on the Strength and Pay List of any Division of Her Majesty's Royal Marine Forces, of which the last Quarterly Pay List (if produced) shall be Evidence, or been borne as a Marine on the Books of any of Her Majesty's Ships in Commission, shall be entitled to claim his Discharge on the Ground of Error or Illegality in his Enlistment or Attestation or Re-engagement, or on any other Ground whatsoever, but, on the contrary, every such Person shall be deemed to have been duly enlisted, attested, or re-engaged, as the Case may be.

74. It shall also be lawful for the Lord High Admiral, and also for the said Commissioners for executing the Office of Lord High Admiral, to give Orders for withholding the Pay of any Officer or Marine for any Period during which such Officer or Marine shall be absent without Leave, or improperly absent from his Duty, or in case of any Doubt as to the proper Issue of Pay to withhold it from the Parties aforesaid until the said Lord High Admiral or the said Commissioners shall come to a Determination upon the Case.

75. And whereas there is and may be Occasion for the marching and also for the quartering of the Royal Marine Forces when on shore: Be it enacted, That during the Continuance of this Act, upon the Order or Orders in Writing in that Behalf under the Hand of the Lord High Admiral, or the Hands of Two or more of the Commissioners for executing the Office of Lord High Admiral for the Time being, or upon the Order or Orders in Writing in that Behalf under the Hand of any Colonel Commandant or Commanding Officer of any Division of Royal Marines, it shall be lawful for all Constables and other Persons specified in this Act in Great Britain and Ireland, and they are hereby required, to billet the Officers and Marines, whether marching or otherwise, and all Staff and Field Officers Horses, and all Bât and Baggage Horses belonging to the Royal Marine Forces, when on actual Service, not exceeding for each Officer the Number for which Forage is or shall be allowed by Her Majesty's Regulations, in Victualling Houses and other Houses specified in this Act, taking care in Ireland not to billet less than Two Men in any

the House; and they shall be received by the Occupiers of the Houses in which they are so billeted, and be furnished by such Victualler with proper Accommodation in such Houses, and with separate Bed for each Marine, or if any Victualler shall not have sufficient Accommodation in the House upon which a Marine is billeted, then in some good and sufficient Quarters to be provided by such Victualler in the immediate Neighbourhood, and in Great Britain with Diet and Small Beer, and in Great Britain and Ireland with Stables, Oats, Hay, and Straw for such Horses as aforesaid, paying and allowing for the same the several Rates herein-after provided; and at no Time when Marines are on their March shall any of them be billeted above One Mile from the Place mentioned in the Route, there being always taken that the Billets be made out for the less distant Houses in which suitable Accommodation can be found before making out Billets for the more distant; and in all Places where Marines shall be billeted in pursuance of this Act, the Officers and their Horses shall be billeted in one and the same House, except in case of Necessity; and the Constables are hereby required to billet all Marines on their March in the Manner required by this Act upon the Occupiers of all Houses within One Mile of the Place mentioned in the Route, and whether they be in the same or a different County, in like Manner in every respect as if such Houses were all locally situated within such Place: Provided always, that nothing herein contained shall be construed so as to extend to authorize any Constable to billet Marines out of the County to which such Constable belongs when the Constable of the adjoining County shall be present and shall undertake to billet the due Proportion of Men in such adjoining County; and no more Billets shall at any Time be ordered than there are effective Marines and Horses present to be billeted; all such Billets, when made out by such Constables, shall be delivered into the Hands of the Commanding Officer present, or to the Non-commissioned Officer on the Spot; and if any Person shall find himself aggrieved by having an undue Proportion of Marines billeted in his House, and shall prefer his Complaint, if against a Constable or other Person not being a Justice, to One or more Justices, and if against a Justice, then to Two or more Justices, within whose Jurisdiction such Marines are billeted, such Justices respectively shall have Power to order such of the Marines to be removed and to be billeted upon other Persons as they shall see Cause; and when any Horses belonging to the Officers of Her Majesty's Royal Marine Forces shall be billeted upon the Occupiers of Houses who shall have no Stables, then, upon a written Requisition of the Officer commanding such Marines, the Constable shall be hereby required to billet the Horses upon some

other Person or Persons having Stables, and who are by this Act liable to have Officers and Marines billeted upon them, and any Two or more Justices of the Peace may order a proper Allowance to be paid by the Persons relieved to the Persons receiving such Horses, or to be applied in the furnishing the requisite Accommodation; and the Commanding Officer may exchange any Man or Horse billeted in any Place with another Man or Horse billeted in the same Place, for the Convenience or Benefit of the Service, provided the Number of Men and Horses do not exceed the Number at that Time billeted on such Houses respectively, and the Constables are hereby required to billet such Men and Horses so exchanged accordingly; and it shall be lawful for any Justice, at the Request of any Officer or Non-commissioned Officer commanding any Marines requiring Billets, to extend any Route, or to enlarge the District within which Billets shall be required, in such Manner as shall appear to be most convenient to Her Majesty's Service: Provided also, that to prevent or punish all Abuses in billeting Marines, it shall be lawful for any Justice, within his Jurisdiction, by Warrant or Order under his Hand, to require any Constable to give him an Account in Writing of the Number of Officers and Marines who shall be quartered by such Constables, together with the Names of the Persons upon whom such Officers and Marines are billeted, stating the Street or Place where such Persons dwell, and the Signs, if any, belonging to the Houses: Provided always, that no Officer shall be compelled or compellable to pay anything for his Lodging where he shall be duly billeted: Provided also, that no Justice being an Officer of Royal Marines shall directly or indirectly be concerned in billeting or appointing Quarters under this Act.

76. The Innholder or other Person on whom any Marine is billeted in Great Britain shall, if required by such Marine, furnish him for every Day on the March, and for a Period not exceeding Two Days, when halted at any intermediate Place upon the March, and for the Day of the Arrival at the Place of final Destination, with One hot Meal in each Day, the Meal to consist of such Quantities of Diet and Small Beer as may be fixed by Her Majesty's Regulations, not exceeding One Pound and a Quarter of Meat previously to being dressed, One Pound of Bread, One Pound of Potatoes or other Vegetables, and Two Pints of Small Beer, and Vinegar, Salt, and Pepper, and for such Meal the Innholder or other Person furnishing the same shall be paid the Sum of Tenpence, and Twopence Halfpenny for a Bed; and all Innholders and other Persons on whom Marines may be billeted in Great Britain or Ireland, except when on the March in Great Britain, and entitled to be fur-

nished with the hot Meal as aforesaid, shall furnish such Marines with a Bed and with Candles, Vinegar, and Salt, and shall allow them the Use of Fire, and the necessary Utensils for dressing and eating their Meat, and shall be paid in consideration thereof the Sum of Fourpence per Diem for each Marine; and the Sum to be paid to the Innholder or other Person on whom any of the Horses belonging to Her Majesty's Royal Marine Forces shall be billeted, in Great Britain or Ireland, for Ten Pounds of Oats, Twelve Pounds of Hay, and Eight Pounds of Straw, shall be One Shilling and Ninepence per Diem for each Horse; and every Officer or Non-commissioned Officer commanding a Division, Detachment, or Party shall every Four Days, or before they shall quit their Quarters if they shall not remain so long as Four Days, settle and discharge the just Demands of all Victuallers or other Persons upon whom such Officers, Marines, or Horses are billeted, out of the Pay and Subsistence of such Officers and Marines, before any Part of the said Pay or Subsistence be paid or distributed to them respectively; and if any such Officer or Non-commissioned Officer shall not pay the same as aforesaid, then, upon Complaint and Oath made thereof by any Two Witnesses before Two Justices of the Peace for the County, Riding, Division, Liberty, City, Borough, or Place where such Quarters were situate, sitting in Quarter or Petty Sessions, the Secretary of the Admiralty is hereby required, upon Certificate of the Justices before whom such Oath shall be made of the Sum due to Complainant, to order Payment of the Amount which shall be charged against such Officer; and in case of any Marines being suddenly ordered to march, and of the Commanding Officer or Non-commissioned Officer not being enabled to make Payment of the Sums due on account of Billets, every such Officer or Non-commissioned Officer shall before his Departure make up the Account with every Person upon whom any such Marines may have been billeted, and sign a Certificate thereof; which Account and Certificate, on being transmitted to the Secretary of the Admiralty, shall be immediately paid, and charged to the Account of such Officer or Non-commissioned Officer.

77. For the regular Provision of Carriages for the Royal Marine Forces and their Baggage on their Marches in Great Britain and Ireland, all Justices of the Peace within their several Jurisdictions, being duly required thereunto by Order of the said Lord High Admiral, or Two or more of the Commissioners for executing the said Office of Lord High Admiral for the Time being, or any Colonel Commandant or Commanding Officer of a Division of Royal Marines, shall, on the Production of such Order, or a Copy thereof certified by the Commanding Officer, to them or

any One or more of them, by the Officer or Non-commissioned Officer of the Party of Marines so ordered to march, issue a Warrant to any Constable having Authority to act in any Place from, through, near, or to which such Marines shall be ordered to march, (for each of which Warrants a Fee of One Shilling only shall be paid,) requiring him to provide the Carriages, Horses, Oxen, and Drivers therein mentioned, (allowing sufficient Time to do the same,) specifying the Places from and to which the said Carriages shall travel, and the Distance between the Places, for which Distance only so specified Payment shall be demanded, and which Distance shall not, except in Cases of pressing Emergency, exceed the Day's March prescribed in the Order of Route, and shall in no Case exceed Twenty-five Miles; and the Constables receiving such Warrant shall order such Persons as they shall think proper, having Carriages, to furnish the requisite Supply, who are hereby required to furnish the same accordingly; and in case sufficient Carriages cannot be procured within the proper Jurisdiction, any Justice of the next adjoining Jurisdiction shall, by a like Course of Proceeding, supply the Deficiency; and in order that the Burden of providing Carriages may fall equally, and to prevent Inconvenience arising from there being no Justice residing near the Place where Marines may be quartered on the March, the Justice or Justices residing nearest to such Place shall cause a List to be made out, at least once in every Year, of all Persons liable to furnish such Carriages, and of the Number and Description of their said Carriages, which List shall at all seasonable Hours be open to the Inspection of the said Persons, and shall by Warrant under his Hand authorize the Constables within his Jurisdiction to give Orders to provide Carriages without any special Warrant from him for that Purpose, which Orders shall be valid in all respects; and all Orders for such Carriages shall be made from such Lists in regular Rotation, so far as the same can be done.

78. In every Case in which the whole Distance for which any Carriage shall be impressed shall be under One Mile the Rate of a full Mile shall be paid; and the Rates to be paid for Carriages impressed shall be, in Great Britain, for every Mile which a Waggon with Four or more Horses, or a Wain with Six Oxen or Four Oxen and Two Horses, shall travel, One Shilling; and for every Mile any Waggon with narrow Wheels, or any Cart with Four Horses carrying not less than Fifteen Hundredweight, shall travel, Ninepence; and for every Mile every other Cart or Carriage with less than Four Horses, and not carrying Fifteen Hundredweight, shall travel, Sixpence; and in Ireland for every Hundredweight loaded on any Wheel Carriage One Halfpenny per Mile; and in Great Britain such further Rates may be

added, not exceeding a total additional Sum per Mile of Fourpence, Threepence, or Twopence to the respective Rates of One Shilling, Ninepence, and Sixpence, as may seem reasonable to the Justices assembled at General Sessions for their respective Districts, or to the Recorder at the Sessions of the Peace of any Municipal City, Borough, or Town; and the Order of such Justices or Recorder shall specify the average Price of Hay and Oats at the nearest Market Town at the Time of fixing such additional Rates, and the Period for which the Order shall be enforced, not exceeding Ten Days, beyond the next General Sessions; and no such Order shall be valid unless a Copy thereof, signed by the presiding Magistrate and One other Justice, or by the Recorder, shall be transmitted to the Secretary of the Admiralty within Three Days after the making thereof; and also in Great Britain when the Day's March shall exceed Fifteen Miles, the Justice granting his Warrant may fix a further reasonable Compensation not exceeding the usual Rate of Hire fixed by this Act; and when additional Rates or Compensation shall be granted, the Justice shall insert in his own Hand in the Warrant the Amount thereof, and the Date of the Order of Sessions, if fixed by Sessions, and the Warrant shall be given to the Officer commanding as his Voucher; and the Officer or Non-commissioned Officer demanding Carriages by virtue of the Warrant of a Justice shall, in Great Britain, pay down the proper Sums into the Hands of the Constable providing Carriages, who shall give Receipts for the same on unstamped Paper; and, in Ireland, the Officers or Non-commissioned Officers as aforesaid shall pay the proper Sums to the Owners or Drivers of the Carriages, and One Third Part of such Payment shall be made before the Carriage be loaded, and all the said Payments in Ireland shall be made, if required, in Presence of a Justice or Constable; and no Carriage shall be liable to carry more than Thirty Hundredweight in Great Britain, and in Ireland no Car shall be liable to carry more than Six Hundredweight, and no Dray more than Twelve Hundredweight; but the Owner of such Carriages in Ireland consenting to carry a greater Weight shall be paid at the same Rate for every Hundredweight of the said Excess; and the Owners of such Carriages in Ireland shall not be compelled to proceed, though with any less Weight, under the Sum of Threepence a Mile for each Car and Sixpence a Mile for each Dray; and the Loading of such Carriages in Ireland shall be first weighed, if required, at the Expense of the Owner of the Carriage, if the same can be done in a reasonable Time without Hindrance of Her Majesty's Service: Provided also, that a Cart with One or more Horses, for which the Furnisher shall receive Ninepence a Mile, shall be required to carry Fifteen Hundredweight at the least; and

that no Penalties or Forfeitures in any Act relating to Highways or Turnpike Roads in the United Kingdom shall apply to the Number of Horses or Oxen or Weight of Loading of the aforesaid Carriages, nor shall any such Carriages on that Account be stopped or detained; and whenever it shall be necessary to impress Carriages for the March of Marines from Dublin, at least Twenty-four Hours Notice of such March, and in case of Emergency as long Notice as the Case will admit, shall be given to the Lord Mayor of Dublin, who shall summon a proportional Number of Cars and Drays at his Discretion out of the licensed Cars and Drays and other Cars and Drays within the County of the said City, and they shall by Turns be employed on this Duty at the Prices and under the Regulations herein-before mentioned; and no Country Cars, Drays, or other Carriages coming to Markets in Ireland shall be detained or employed against the Will of the Owners in carrying the Baggage of Marines on any Pretence whatever.

79. It shall be lawful for the Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral, or the Lord Lieutenant or Chief Governors of Ireland, by their or his Orders distinctly stating that a Case of Emergency doth exist, signified by the Secretary of the Admiralty, or, if in Ireland, by the Chief Secretary or Under Secretary, or the First Clerk in the Military Department, to authorize any Commanding Officer of Her Majesty's Royal Marine Forces in any District or Place, or to the chief acting Agents for the Supply of Stores and Provisions, by Writing under his Hand, reciting such Order of the Lord High Admiral, or the said Commissioners, or Lord Lieutenant or Chief Governors aforesaid, to require all Justices within their several Jurisdictions in Great Britain and Ireland to issue their Warrants for the Provision, not only of Waggon, Wains, Carts, and Cars kept by or belonging to any Person and for any Use whatsoever, but also of Saddle Horses, Coaches, Postchaises, Chaises, and other Four-wheeled Carriages kept for Hire, and of all Horses kept to draw Carriages licensed to carry Passengers, and also of Boats, Barges, and other Vessels used for the Transport of any Commodities whatsoever upon any Canal or navigable River as shall be mentioned in the said Warrants, therein specifying the Place and Distance to which such Carriages or Vessels shall go; and on the Production of such Requisition, or a Copy thereof certified by the Commanding Officer, to such Justice, by any Officer of the Corps ordered to be conveyed, such Justice shall take all the same Proceedings in regard to such additional Supply so required on such Emergency as he is by this Act required to take for the ordinary Provision of Carriages; and all Pro-

visions whatsoever of this Act as regards the procuring of the ordinary Supply of Carriages, and the Duties of Officers and Non-commissioned Officers, Justices, Constables, and Owners of Carriages in that Behalf, shall be to all Intents and Purposes applicable for the providing and Payment according to the Rates of Posting or of Hire usually paid for such other Description of Carriages or Vessels so required on Emergency, according to the Length of the Journey or Voyage in each Case, but making no Allowance for Post Horse Duty, or Turnpike, Canal, River, or Lock Tolls, which Duty or Tolls are hereby declared not to be demandable for such Carriages and Vessels while employed in such Service or returning therefrom; and it shall be lawful to convey thereon not only the Baggage, Provisions, and Military Stores of such Detachment, but also the Officers, Marines, Servants, Women, Children, and other Persons of and belonging to the same.

80. It shall be lawful for the Justices of the Peace assembled at their Quarter Sessions to direct the Treasurer to pay, without Fee, out of the Public Stock of the County or Riding, or if such Public Stock be insufficient then out of Monies which the said Justices shall have Power to raise for that Purpose, in like Manner as for County Gaols and Bridges, such reasonable Sums as shall have been expended by the Constables within their respective Jurisdictions for Carriages and Vessels, over and above what was or ought to have been paid by the Officer requiring the same, regard being had to the Season of the Year and the Condition of the Ways by which such Carriages and Vessels are to pass; and in Scotland such Justices shall direct such Payments to be made out of the Rogues Money and Assessments directed and authorized to be assessed and levied by an Act passed during the Session holden during the Twentieth and Twenty-first Years of the Reign of Her present Majesty, Chapter Seventy-two.

81. It shall be lawful for the said Lord Lieutenant or other Chief Governor for the Time being of Ireland to depute, by Warrant under his Hand and Seal, some proper Person to sign Routes in Cases of Emergency for the marching of any of Her Majesty's Royal Marine Forces in Ireland, in the Name of such Lord Lieutenant or Chief Governor.

82. All Officers and Marines on Duty or on their March, being in proper Uniform, Dress or Undress, and their Horses and Baggage, and all Recruits marching by Route, and all Prisoners under Military Escort, and all Carriages and Horses belonging to Her Majesty or employed

in Her Service under the Provisions of this Act, or in any of Her Majesty's Colonies, when employed in conveying any such Persons as aforesaid or their Baggage, or returning from conveying the same, shall be exempted from the Payment of any Duties and Tolls on embarking or disembarking from or upon any Pier, Wharf, Quay, or Landing Place, or in passing along or over any Turnpike or other Roads or Bridges, otherwise demandable by virtue of any Act already passed or hereafter to be passed, or by virtue of any Prescription, Grant, or Custom, or by virtue of any Act or Ordinance, Order or Direction, of any Colonial Legislature or other Authority in any of Her Majesty's Colonies; and if any Toll Collector shall demand or receive Toll from any Marine Officer or Marine on Duty or on their March who shall be in proper Uniform, Dress or Undress, or for their Horses, and who by this Act is exempted from Payment thereof, or from any Recruits marching by Route, or from any Prisoners under Military Escort, or for any Carriages or Horses belonging to Her Majesty or employed in Her Service under the Provisions of this Act, when conveying Persons or Baggage, or returning therefrom, every such Collector shall for every such Offence be liable to a Penalty not exceeding Five Pounds; provided that nothing herein contained shall exempt any Boats, Barges, or other Vessels employed in conveying the said Persons, Horses, Baggage, or Stores along any Canal from Payment of Tolls in like Manner as other Boats, Barges, and Vessels are liable thereto, except when employed in Cases of Emergency as herein mentioned; and that when any Officers or Marines on Service shall have Occasion in the March by Route to pass regular Ferries in Scotland, the Officer commanding shall be at liberty to pass over with his Marines as Passengers, paying for himself and each Marine One Half only of the ordinary Rate payable by Passengers, or he shall be at liberty to hire the Ferry Boat for himself and his Party, debarring all others for that Time, and shall in such Case pay only Half the ordinary Rate for such Boat.

83. Every Marine upon being discharged from the Service shall be entitled to an Allowance (not exceeding in any Case the Amount of Twenty-one Days Marching Money) to enable him to reach his Home, or the Place at which he shall at the Time of his Discharge decide to take up his Residence, such Place not being at a greater Distance from the Place of his Discharge than the Place of his original Enlistment, which Allowance shall be calculated according to the Distance he has to travel: Provided always, that no Person who shall purchase his own Discharge, or be discharged on account of Misbehaviour, or at his own Desire, before the Expiration of his

Period of Service, shall be entitled to any such Allowance.

84. If any Constable or other Person who by virtue of this Act shall be employed in billeting any Officers or Marines in any Part of the United Kingdom shall presume to billet any such Officer or Marine in any House not within the Meaning of this Act, without the Consent of the Owner or Occupier thereof; or shall neglect or refuse to billet any Officer or Marine on Duty when thereunto required in such Manner as is by this Act directed, provided sufficient Notice be given before the Arrival of such Marines; or shall receive, demand, or agree for any Money or Reward whatsoever in order to excuse any Person from receiving any such Officer or Marine; or shall quarter any of the Wives, Children, Men or Maid Servants of any Officer or Marine in any such Houses against the Consent of the Occupiers; or shall neglect or refuse to execute such Warrants of the Justices as shall be directed to him for providing Carriages, Horses, or Vessels, or shall demand more than the legal Rates for the same; or if any Person ordered by any Constable in manner herein-before directed to provide Carriages, Horses, or Vessels shall refuse or neglect to provide the same according to the Orders of such Constable, or shall demand more than the legal Rates for the same, or shall do any Act or Thing by which the Execution of any Warrants for providing Carriages, Horses, or Vessels shall be hindered; or if any Person liable by this Act to have any Officer or Marine quartered on him shall refuse to receive any such Officer or Marine, or to afford him proper Accommodation or Diet in the House of such Person in which he is quartered, or to furnish the several Things directed to be furnished to Officers and Marines, or shall neglect or refuse to furnish good and sufficient Stables, together with good and sufficient Oats, Hay, and Straw in Great Britain and Ireland, for each Horse, in such Quantities and at such Rates as herein-before provided, or if any Innkeeper or Victualler not having good and sufficient Stables shall refuse to pay over to the Person or Persons who may provide Stabling such Allowance by way of Compensation as shall be directed by any Justice of the Peace, or shall pay any Sum of Money to any Marine on the March in lieu of furnishing in Kind the Diet and Small Beer to which such Marine is entitled; such Constable, Victualler, and other Person respectively shall forfeit for every Offence, Neglect, or Refusal any Sum not exceeding Five Pounds nor less than Forty Shillings; and if any Person shall personate or represent himself to be a Marine or Marine Recruit with the view of fraudulently obtaining a Billet or Money in lieu thereof, he shall for every such Offence forfeit

any Sum not exceeding Five Pounds nor less than Twenty Shillings.

85. If any Officer of Royal Marines shall take upon him to quarter Men otherwise than is allowed by this Act, or shall use or offer any Menace or Compulsion to or upon any Justice, Constable, or other Civil Officer tending to deter and discourage any of them from performing any Part of their Duty under this Act, or to do anything contrary thereto, such Officer shall for every such Offence, being thereof convicted before any Two or more Justices of the County by the Oath of Two credible Witnesses, be deemed and taken to be ipso facto cashiered, and shall be utterly disabled to hold any Military Employment in Her Majesty's Service; provided a Certificate of such Conviction be forthwith transmitted by the said Justices to the Secretary of the Admiralty, and that the Conviction be affirmed at some Quarter Sessions of the Peace for the said County to be held next after the Expiration of Three Months after such Certificate shall have been transmitted as aforesaid; and if any Marine Officer shall take or knowingly suffer to be taken from any Person any Money or Reward for excusing the quartering of Officers or Marines, or shall billet any of the Wives, Children, Men or Maid Servants of any Officer or Marine in any House against the Consent of the Occupier, he shall for any of the said Offences, upon being convicted thereof before a General Court-martial, be cashiered; and if any Officer shall constrain any Carriage to travel beyond the Distance specified in the Justice's Warrant, or shall not discharge the same in due Time for their Return home on the same Day if it be practicable, except in the Case of Emergency for which the Justice shall have given Licence, or shall compel the Driver of any Carriage to take up any Marine or Servant (except such as are sick) or any Woman to ride therein, except in Cases of Emergency as aforesaid, or shall force any Constable, by threatening Words, to provide Saddle Horses for himself or Servants, or shall force Horses from their Owners, or in Ireland shall force the Owner to take any Loading until the same shall be first duly weighed, if the same shall be required, and can be done within a reasonable Time, or shall, contrary to the Will of the Owner or his Servant, permit any Person whatsoever to put any greater Load upon any Carriage than is directed by this Act, he shall forfeit for every Offence any Sum not exceeding Five Pounds nor less than Forty Shillings.

86. Every Marine Officer or Marine who shall, without Warrant from One or more of Her Majesty's Justices, forcibly enter into or break open the Dwelling House or Outhouse of any Person whomsoever in pursuit of any Deserters,

shall, upon due Proof thereof, forfeit the Sum of Twenty Pounds.

87. Any Person who shall detain, buy, or exchange, or otherwise receive from any Marine or Marine Deserter, or any other Person acting for or on his Behalf, upon any Account or Pretence whatsoever, or who shall solicit or entice any Marine or Marine Deserter, or shall be employed by any Marine or Marine Deserter, knowing him to be such, to sell any Arms, Ammunition, Medals for good Conduct, or Distinguishment, or other Service, Marine Clothes, or Military Furniture, or any other Articles which, according to the Custom of the Marine Corps, are generally deemed Regimental or Divisional Necessaries, or any Provisions, Sheets, or other Articles used in Barracks or provided under Barrack Regulations, whether on shore or afloat, and whether the Marine or Marine Deserter or other Person be or be not borne on the Books of any One of Her Majesty's Ships, or be or be not embarked, or who shall have in his or her Possession or Keeping any Arms, Ammunition, Medals, Marine Clothes, or Military Furniture, or any other Articles which, according to the Custom of the Marine Corps, are generally deemed Regimental or Divisional Necessaries, or any Provisions, Spirits, Sheets, or other Articles used in Barracks or provided under Barrack Regulations, and shall not give a satisfactory Account how he or she came by the same, or shall change or cause the Colour or Mark of any such Clothes, Appointments, Necessaries, Sheets, or other Articles to be changed or defaced, or who shall pawn, sell, or deposit in any Place or with any Person such Articles of Regimental Necessaries, with or without the Consent of such Marine, shall forfeit for every such Offence any Sum not exceeding Twenty Pounds, together with Treble the Value of all or any of the several Articles; and if any Person having been at any Time previously convicted of either of the above Offences under this or any previous Act for the Regulation of Her Majesty's Royal Marine Forces while on shore shall afterwards be guilty of any such Offence, he or she shall for every such Offence forfeit any Sum not exceeding Twenty Pounds but not less than Five Pounds, and the Treble Value of all or any of the several Articles, and shall, in addition to such Forfeiture, be committed to the Common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned, with or without Hard Labour, for such Term not exceeding Six Calendar Months as the convicting Justice or Justices shall think fit; and upon any Information against any Person for a Second or any subsequent Offence, a Copy of the former Conviction, certified by the proper Officer having the Care or Custody of such Conviction, or any Copy of the same proved to be a true Copy, shall

be sufficient Evidence to prove such former Conviction; and if any credible Person shall prove, on Oath before a Justice of the Peace or Person exercising like Authority according to the Laws of that Part of Her Majesty's Dominions in which the Offence shall be committed, a reasonable Cause to suspect that any Person has in his or her Possession or on his or her Premises any Property of the Description herein-before described, on or with respect to which any such Offence shall have been committed, such Justice may and he is hereby required to grant a Warrant to search for such Property as in the Case of stolen Goods; and if upon such Search any such Property shall be found, the same shall and may be seized by the Officer charged with the Execution of such Warrant, who shall bring the Offender in whose Possession the same shall be found before the same or any other Justice of the Peace, to be dealt with according to Law.

88. Every Person (except such Recruiting Parties as may be stationed under Military Command) who shall cause to be advertised, posted, or dispersed Bills for the Purpose of procuring Recruits or Substitutes for the Royal Marines, or shall open or keep any House or Place of Rendezvous or Office, or receive any Person therein under such Bill or Advertisement as connected with the Marine Recruiting Service, or shall directly or indirectly interfere therewith, without Permission in Writing from the Lord High Admiral or the said Commissioners for executing the Office of Lord High Admiral, shall forfeit for every such Offence a Sum not exceeding Twenty Pounds.

89. For the better Preservation of the Game and Fish in or near Places where any Officer shall at any Time be quartered, every Officer who shall, without Leave in Writing from the Person or Persons entitled to grant such Leave, take, kill, or destroy any Game or Fish within the United Kingdom, shall for every such Offence forfeit the Sum of Five Pounds.

90. If any Action shall be brought against any Member or Members of a Court-martial to be assembled under the Authority of this Act, or of any Act heretofore passed for the Regulation of Her Majesty's Royal Marine Forces while on shore, in respect of the Proceedings or the Sentence thereof, or against any other Person, for anything done in pursuance or under the Authority of this Act, or of any Act heretofore passed for the Regulation of Her Majesty's Royal Marine Forces while on shore, the same shall be brought in some One of the Courts of Record at Westminster or Dublin, or in the Court of Session in Scotland, and shall be commenced within Six Months next after the Cause of Action shall arise,

and it shall be lawful for the Defendant or Defendants therein, or in any such Action now pending, to plead thereto the General Issue, and to give all special Matter in Evidence on the Trial; and if the Verdict shall be for the Defendant in any such Action, or if the Plaintiff shall become nonsuit or suffer any Discontinuance thereof, or if, in Scotland, the Court shall see fit to assolzie the Defendant or dismiss the Complaint, the Court in which the Matter shall be tried shall allow the Defendant Treble Costs, for the Recovery of which he shall have the like Remedy as in other Cases where Costs by the Laws of this Realm are given to Defendants.

91. All Offences for which any pecuniary Penalty or Forfeiture not exceeding Twenty-Pounds, over and above any Forfeiture of Value or Treble Value, is by this Act imposed, shall and may be heard and determined by any Justice of the Peace in or near to the Place where the Offence shall be committed, or where the Offender may at any Time happen to be; and all such Penalties and Forfeitures, and Forfeiture of Value and Treble Value, and also the reasonable Costs attending the Prosecution, to be duly ascertained and awarded by such Justice, shall and may be enforced and recovered in the same Manner as any pecuniary Penalties may be recovered under the Provisions of an Act passed in the Twelfth Year of the Reign of Her Majesty, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders:" Provided always, that in all Cases in which there shall not be sufficient Goods whereon any Penalty or Forfeiture or Treble Value can be levied, the Offender may be committed and imprisoned, with or without Hard Labour, for any Time not exceeding six Calendar Months; which said recited Act shall be used and applied in Scotland and in Ireland for the Recovery of all such Penalties and Forfeitures or Treble Value as fully to all Intents as if the said recited Act had extended to Scotland and Ireland, anything in the said recited Act, or in an Act passed in the Fourteenth and Fifteenth Years of the Reign of Her Majesty Queen Victoria, intituled "An Act to consolidate and amend the Acts regulating the Proceedings at Petty Sessions, and the Duties of Justices of the Peace out of Quarter Sessions, in Ireland," to the contrary notwithstanding; and all such Offences committed in the British Isles, or in any of Her Majesty's Dominions other than the United Kingdom, may be determined, and the Penalties and Forfeitures of Value or Treble Value recovered, before any Justices of the Peace or Persons exercising like Authority, according to the Laws of Her Majesty's Dominions in which the Offence shall be committed or the

Offender may at any Time happen to be, and for Default of Payment the Offender shall be punished as if the Offence had been committed in the United Kingdom; and all Penalties and Forfeitures by this Act imposed exceeding Twenty Pounds shall be recovered by Action in some of the Courts of Record at Westminster or in Dublin, or in the Court of Session in Scotland, and in no other Court in the United Kingdom, and may be recovered in the British Isles or in any other Part of Her Majesty's Dominions, in any of the Royal or Superior Courts of such Isles or other Parts of Her Majesty's Dominions.

92. One Moiety of every such Penalty or Forfeiture, not including any Treble Value of any Articles, shall go to the Person who shall inform or sue for the same, and the other Moiety, together with the Treble Value of such Articles, or, where the Offence shall be proved by the Person who shall inform, then the whole of the Penalty and such Treble Value, shall be paid over and applied in such Manner as the Lord High Admiral or the Commissioners for executing the Office of Lord High Admiral shall direct, anything in an Act passed in the Sixth Year of the Reign of His late Majesty King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or in any other Act or Acts of Parliament, to the contrary notwithstanding; and every Justice who shall adjudge any Penalty under this Act shall within Four Days thereafter at the furthest report the same, and his Adjudication thereof, to the Secretary of the Admiralty.

93. It shall be lawful for any Two Justices of the Peace, within their respective Jurisdictions, to grant or transfer any Licence for selling by Retail any Spirit, Beer, Wine, Cider, or Perry to any Person or Persons applying for the same who shall hold any Canteen under any Lease thereof, or by Agreement with any Department or other Authority under the said Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral for the Time being, without regard to the Time of Year, or any Notices or Certificates required by any Act in respect of such Licences; and the Commissioners of Excise or their proper Officers within their respective Districts shall also grant or transfer any such Licence as aforesaid; and such Persons holding such Canteens, and having such Licences as aforesaid, may sell therein Victuals, and all such excisable Liquors as they shall be licensed and empowered to sell, without being subject for so doing to any Penalty or Forfeiture whatever.

94. Any Justice in the United Kingdom, within whose Jurisdiction any Marine shall be

quartered on shore, may summon such Marine before him, which Summons such Marine is hereby required to obey, and take his Examination in Writing upon Oath touching the Place of his last legal Settlement; and such Justice shall give an attested Copy of such Examination to the Person so examined, to be by him delivered to his Commanding Officer to be produced when required; which said Examination and such attested Copy thereof shall be at any Time admitted as good and legal Evidence as to such legal Settlement before any Justice or at any General or Quarter Sessions of the Peace, although such Marine be dead or absent from the Kingdom: Provided always, that in case any Marine shall be again summoned to make Oath as aforesaid, then, on such Examination or such attested Copy being produced, such Marine shall not be obliged to make any other or further Oath with regard to his legal Settlement, but shall leave with such Justice a Copy of such Examination or a Copy of such attested Copy of Examination, if required: Provided also, that when no such Examination shall have been required, the Statement made on Oath by the Recruit on his Attestation of his Place of Birth shall be taken to be his last Place of Settlement until legally disproved.

95. All Oaths and Declarations which are authorized or required by this Act may be administered (unless where otherwise provided) by any Justice of the Peace or other Person having Authority to administer Oaths and Declarations; and any Person giving false Evidence, or taking a false Oath or Declaration where an Oath or Declaration is authorized or required to be taken by this Act, and being thereof duly convicted, shall be deemed guilty of wilful and corrupt Perjury, and shall be liable to such Pains and Penalties as Persons convicted of wilful and corrupt Perjury are or may be subject and liable to; and every Commissioned Officer convicted before a General Court-martial of Perjury shall be cashiered, and every Marine or other Person amenable to the Provisions of this Act found guilty thereof by a General or other Court-martial shall be punished at the Discretion of such Court.

96. All Clauses and Provisions in this Act contained relating to England shall be construed to extend to Wales and to the Town of Berwick-upon-Tweed; and the Provisions of this Act shall apply to all Persons who are or shall be commissioned or in Pay as an Officer of Royal Marines, or who are or shall be listed or in Pay as a Non-commissioned Officer or Marine; and all Clauses and Provisions relating to Marines shall be construed to include Non-commissioned Officers and Drummers, unless when otherwise

provided; and all Clauses and Provisions relating to Justices shall be construed to extend to all Magistrates authorized to act as such in their respective Jurisdictions; and all the Powers given to and Regulations made for the Conduct of Constables, and all Penalties and Forfeitures for any Neglect thereof, shall extend to all Tithingmen, Headboroughs, and such like Officers, and to all Inspectors or other Officers of Police, and to all High Constables and other Chief Officers and Magistrates of Cities, Towns, Villages, and Places in England and Ireland, and to all Justices of the Peace, Magistrates of Burghs, Commissioners of Police, and other Chief Officers and Magistrates of Cities, Towns, Villages, Parishes, and Places in Scotland, who shall act in the Execution of this Act; and all Powers and Provisions for billeting Marines in Victualling Houses shall extend and apply to all Inns, Hotels, Livery Stables, Alehouses, and to the Houses of Sellers of Wine by Retail, whether British or Foreign, to be drunk in their own Houses or Places thereunto belonging, to all Houses of Persons licensed to sell Beer, Ale, Porter, Cider, or Perry by Retail, to be consumed or drunk in their Dwelling Houses or Premises, and to all Houses of Persons selling Brandy, Spirits, Strong Waters, Cider, or Metheglin by Retail in Great Britain and Ireland; and in Ireland, when there shall not be found sufficient Room in such Houses, then Marines may be billeted in such Manner as has been heretofore customary: Provided always, that no Officer or Marine shall be billeted in Great Britain in any private Houses, or in any Canteen held or occupied under the Authority of the Admiralty, War, or Marine Department, or upon Persons who keep Taverns only, being Vintners of the City of London admitted to their Freedom of that Company in right of Patrimony or Apprenticeship, notwithstanding such Persons who keep such Taverns only have taken out Victualling Licences; nor in the House of any Distiller kept for distilling Brandy and Strong Waters; nor in the House of any Shopkeeper whose principal Dealings shall be more in other Goods and Merchandise than in Brandy and Strong Waters, so as such Distillers and Shopkeepers do not permit Tippling in such Houses; nor in the House or Residence in any Part of the United Kingdom of any Foreign Consul duly accredited as such.

97. This Act shall be in force within Great Britain from the Twenty-fifth Day of April One thousand eight hundred and sixty-eight until the Twenty-fifth Day of April One thousand eight hundred and sixty-nine inclusive; and within Ireland, and in Jersey, Guernsey, Alderney, Sark, and the Isle of Man, and the Islands thereto belonging, from the First Day of May One

thousand eight hundred and sixty-eight until the First Day of May One thousand eight hundred and sixty-nine inclusive; and within the Garrison of Gibraltar, and within the Mediterranean, and in Spain and Portugal, from the First Day of August One thousand eight hundred and sixty-eight until the First Day of August One thousand eight hundred and sixty-nine inclusive; and in all other Parts of Europe where Royal Marine Forces may be serving, and the West Indies and North America, and Cape of Good Hope, from the First Day of September One thousand eight hundred and sixty-eight

until the First Day of September One thousand eight hundred and sixty-nine inclusive; and in all other Places from the First Day of February One thousand eight hundred and sixty-nine until the First Day of February One thousand eight hundred and seventy inclusive: Provided always, that this Act shall, from and after the Receipt and Promulgation thereof in General Orders in any Part of Her Majesty's Dominions or elsewhere beyond the Seas, become and be in full Force, anything herein contained to the contrary notwithstanding.

—o-o-o-o—

SCHEDULE referred to by this Act.

FORM of OATHS to be taken by MEMBERS
of COURTS-MARTIAL.

You shall well and truly try and determine according to the Evidence in the Matter now before you.
So help you GOD.

You shall duly administer Justice, according to the Rules and Articles for the better Government of Her Majesty's Royal Marine Forces, and according to an Act now in force for the Regulation of the said Forces while on shore, without Partiality, Favour, or Affection, and if any Doubt shall arise which is not explained by the said Articles or Act, according to your Conscience, the best of your Understanding, and the Custom of War in the like Cases: And you shall not divulge the Sentence of the Court until it shall be duly approved; neither shall you, upon any Account, at any Time whatsoever, disclose or discover the Vote or Opinion of any particular Member of the Court-martial, unless required to give Evidence thereof as a Witness by a Court of Justice or a Court-martial in a due Course of Law.
So help you GOD.

FORM of OATH of JUDGE ADVOCATE.

I do swear, That I will not, upon any Account whatsoever, disclose or discover the Vote or Opinion of any particular Member of the Court-martial, unless required to give Evidence thereof as a Witness by a Court of Justice or a Court-martial in a due Course of Law; and that I will not, unless it be necessary for the due Discharge of my official Duties, disclose the Sentence of the Court until it shall be duly approved.
So help me GOD.

NOTICE to be given to a RECRUIT at the
Time of his ENLISTMENT.

Date 186 .

A.B.

Take Notice, That you enlisted with
at o'Clock* on
the Day of for the Royal
Marines, and if you do not come forward to
[here name some Place] on or before o'Clock*
on the Day of for
the Purpose of being taken before a Justice,
either to be attested or to release yourself from
your Engagement by repaying the Enlisting
Shilling and any Pay you may have received as
a Recruit, and by paying Twenty Shillings as
Smart Money, you will be liable to be punished
as a Rogue and Vagabond.

You are hereby also warned that you will be liable to the same Punishment if you make any wilfully false Representations at the Time of Attestation.

Signature of the Non-commis-
sioned Officer serving the Notice. }

* At A.M. or P.M., as the Case may be.

DECLARATION to be made by RECRUIT on
ATTESTATION.

I now residing in the Parish of
in the County of , do
solemnly and sincerely declare, That to the best
of my Knowledge and Belief I was born in the
Parish of (a) in or near the Town
of (b) in the County of (c) ,
and am Years of Age; that I am of the
Trade or Calling of [or of no Trade or
Calling, as the Case may be]; that I am not an
Apprentice; that I am married (that I am not a

Widower; that I am a Widower, and that I have (or have not) Children) [or not married, as the Case may be]; that I do not belong to the Militia, or to the Naval Coast Volunteers, or Royal Naval Volunteers, or to any Portion of Her Majesty's Land or Sea Forces; that I have never served Her Majesty by Land or Sea in any Military, Marine, or Naval Employment whatsoever, except ; that I have never been marked with the letter D; that I have never been rejected as unfit for Her Majesty's Service on any previous Enlistment; that I was enlisted at _____ on the _____ Day of _____ 186 , at _____ o'Clock _____ M. by _____

_____ , and that I have read [or had read to me] the Notice then given to me and understood its Meaning; that I enlisted for a Bounty of _____ and a free Kit [as the Case may be], and have no Objection to make to the Manner of my Enlistment; that I am willing to be attested to serve in the Royal Marines for the Term of [the Blank after the Words "Term of" to be filled up with Twelve Years, if the Person enlisted is of the Age of Eighteen Years or upwards; but if under that Age, then the Difference between his Age and Eighteen is to be added to such Twelve Years], provided Her Majesty should so long require my Services, and also for such further Term, not exceeding Two Years, as shall be directed by the Commanding Officer on any Foreign Station.

Signature of Recruit.

Signature of Witness.

Note (a), (b), (c).—These Blanks need not be filled up if the Recruit is unable to give the requisite Information.

OATH to be taken by a RECRUIT on ATTESTATION.

I do make Oath, That I will be faithful and bear true Allegiance to Her Majesty, Her Heirs and Successors; and that I will, as in Duty bound, honestly and faithfully defend Her Majesty, Her Heirs and Successors, in Person, Crown, and Dignity, against all Enemies, and will observe and obey all Orders of Her Majesty, Her Heirs and Successors, and of the Generals and Officers set over me.

So help me GOD.

Witness my Hand,

Signature of the Recruit.

Witness present.

Declared and sworn before me }
at this _____ }
Day of _____ One thou- }
sand eight hundred and }
at _____ o'Clock. }

Signature of the Justice.

DECLARATION to be made by a MARINE renewing his Service.

I _____ do declare, That I am at present [or was, as the Case may be,] in the _____ Division of the Royal Marine Forces; that I enlisted on the _____ Day of _____ for a Term of _____ Years; that I am of the Age of _____ Years; and that I will serve Her Majesty, Her Heirs and Successors, as a Marine, for a further Term of _____ Years [to be filled up with such Number of Years as shall be required to complete a total Service of Twenty-one Years], provided my Services should so long be required, and also for such further Term, not exceeding Two Years, as shall be directed by the Commanding Officer on any Foreign Station.

Signature of Marine.

Signature of Witness.

Declared before me this }
Day of _____ }
186 . }

FORM of OATH to be taken by a MASTER whose Apprentice has absconded.

I _____ of _____ do make Oath, That I am by Trade a _____ , and that _____ was bound to serve as an Apprentice to me in the said Trade, by Indenture dated the _____ Day of _____ for the Term of _____ Years; and that the said _____ did on or about the _____ last abscond and quit my Service without my Consent, and that to the best of my Knowledge and Belief the said _____ is aged about _____ Years. Witness my Hand at _____ the _____ Day of _____ One thousand eight hundred _____ and _____

Sworn before me at }
this _____ Day of _____ }
One thousand _____ }
eight hundred and _____ }

FORM of JUSTICE'S CERTIFICATE to be given to the MASTER of an Apprentice.

I _____ One of Her Majesty's }
to wit. } Justices of the Peace of _____ }
certify, That _____ of _____ came }
before me at _____ the _____ Day }
of _____ One thousand eight hundred }
and _____ , and made Oath that he was by }
Trade a _____ , and that _____ was }
bound to serve as an Apprentice to him in the _____ }

said Trade, by Indenture dated the Day
of , for the Term of Years;
and that the said Apprentice did on or about the Service of the said without his Con-
 Day of abscond and quit the Belief the said Apprentice is aged about
 Years.

DESCRIPTION RETURN of who was apprehended [or surrendered himself,
as the Case may be] on the Day of and was committed to
Confinement at on the Day of as
Deserter from the Royal Marines.

Age	-	-	-	-	-	-	
Height	-	-	-	-	-	-	Feet. Inches.
Complexion	-	-	-	-	-	-	
Hair	-	-	-	-	-	-	
Eyes	-	-	-	-	-	-	
Marks	-	-	-	-	-	-	
Probable Date of Enlistment, and where	-	-	-	-	-	-	
Probable Date of Desertion, and from what Place	-	-	-	-	-	-	
Name and Occupation and Address of the Per- son by whom or through whose Means the Deserter was apprehended and secured.							
Particulars of the Evidence on which the Prisoner is committed; and showing whether he surrendered or was apprehended, and in what Manner, and upon what Grounds.							

* It is important for the Public Service, and for the Interest of the Deserter, that this Part of the Return should be accurately filled up, and the Details should be inserted by the Magistrate in his own Handwriting, or, under his Direction, by his Clerk.

I do hereby certify, that the Prisoner has been duly examined before me as to the Circumstance herein stated, and has declared in my Presence that he† a Deserter from the above-mentioned Corps.

Signature and Address
of Magistrate.

Signature of Prisoner.

Signature of Informant.

† Insert "is" or "is not," as the Case may be.

I certify that I have inspected the Prisoner, and consider him† for Military Service.

Signature of Military
Medical Officer, or of Private
Medical Practitioner.

† Insert "fit" or "unfit," as the Case may be, and, if unfit, state the Cause of Unfitness.

CAP. XVI.

Consolidated Fund (£17,000,000.)

ABSTRACT OF THE ENACTMENTS.

1. *There shall be applied for the Service of the Year ending 31st March 1869 the Sum of 17,000,000l. out of the Consolidated Fund.*
2. *Bank of England may advance 17,000,000l. on the Credit of this Act.*
3. *Interest on Advances.*

An Act to apply the Sum of Seventeen million Pounds out of the Consolidated Fund to the Service of the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.
(29th May 1868.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal Subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the Supply which we have cheerfully granted to Your Majesty in this Session of Parliament, have resolved to grant unto Your Majesty the Sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. There shall and may be issued and applied, for or towards making good the Supply granted to Her Majesty for the Service of the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine, the Sum of Seventeen million Pounds out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and the Commissioners of Her Majesty's Treasury for the Time being are hereby autho-

rized and empowered to issue and apply the same accordingly.

2. The Governor and Company of the Bank of England may make Advances to Her Majesty, upon the Credit of the Sum granted by this Act out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, to an Amount not exceeding in the whole the Sum of Seventeen million Pounds, and such Advances shall be made on the Application of the Commissioners of Her Majesty's Treasury, from Time to Time, in such Sums as may be required for the Public Service, and shall be placed to the Credit of the Account of Her Majesty's Exchequer at the Bank of England, and be available to satisfy the Orders for Credits granted or to be granted on the said Account, under the Provisions of the "Exchequer and Audit Departments Act, 1866," in respect of any Services voted by the Commons of the United Kingdom of Great Britain and Ireland in this present Session of Parliament.

3. The Advances made by the Bank of England, from Time to Time, under the Authority of this Act, shall bear Interest not exceeding the Rate of Threepence Halfpenny per Centum per Diem, and the Principal and Interest of all such Advances shall be paid out of the growing Produce of the Consolidated Fund at any Period not later than the next succeeding Quarter to that in which the said Advances shall have been made.

CAP. XVII.

The London Coal and Wine Duties Continuance Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Continuance of Duties and Acts (24 & 25 Vict. c. 42., 26 & 27 Vict. c. 46.) for a further Period of Seven Years.*
2. *Coal Duty of Fourpence to be applied by Corporation of London for Improvements.*
3. *Compensation or Pensions to Officers in certain Cases to be regulated by 22 & 23 Vict. c. 26.*
4. *Compensations or Pensions to be charged on Duties.*
5. *Application of Duties.*
6. *Short Title.*

An Act to further continue and appropriate the London Coal and Wine Duties.
(29th May 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. All Duties by the London Coal and Wine Duties Continuance Act, 1861, continued until the Fifth Day of July One thousand eight hundred and seventy-two, and by The London Coal and Wine Duties Continuance Act, 1863, further continued until the Fifth Day of July One thousand eight hundred and eighty-two, and all Acts relating thereto, shall be and the same are hereby further continued until the Fifth Day of July One thousand eight hundred and eighty-nine; and the London Coal and Wine Duties Continuance Act, 1861, shall be read as if the Fifth Day of July One thousand eight hundred and eighty-nine had been substituted throughout that Act for the Fifth Day of July One thousand eight hundred and seventy-two.

2. The net Proceeds of the Duty of Fourpence, Part of the Duty of Twelvepence, on Coal, Culm, and Cinders, continued by this Act, shall, during the Continuance thereof, be applied by the Mayor, Aldermen, and Commons of the City of London as follows, so far as the same are not already appropriated by Act of Parliament, in the first instance in completing the Holborn Valley Viaduct, new Streets, and Improvements under The Holborn Valley Improvement Act, 1864, and The Holborn Valley Improvement (Additional Works) Act, 1867, and other Improvements connected therewith, and afterwards the said Duty of Fourpence shall be applied by the said Corporation of London towards or in aid of such public Improvement or Improvements in or adjacent to the City of London as Parliament may hereafter sanction.

3. Whenever any Clerk or other Officer appointed by the Court of Common Council under the Authority of the Acts First and Second William Fourth, Chapter Seventy-six, First and Second Victoria, Chapter One hundred and one, Eighth and Ninth Victoria, Chapter One hundred and one, Fourteenth and Fifteenth Victoria, Chapter One hundred and forty-six, and Twenty-fourth and Twenty-fifth Victoria, Chapter Forty-two, for the Purpose of carrying out the Provisions of the said Acts relating to the Collection of the Duties on Coal and the Allowance of Drawback on the same when exported beyond the Limits of the Port and District of London, or any Officer appointed to collect or control the Wine Duties, shall from Age, Illness, Length of Service, or any other Cause become incapable of performing the Duties of his Office, or when any such Office shall be abolished, it shall be lawful for the Mayor, Aldermen, and Commons of the City of London in Common Council assembled, with the Consent of the Lords Commissioners of Her Majesty's Treasury, to grant to such Clerk or other Officer such Compensation or Pension as they shall deem right in respect of the Salary, Allowances, or Emoluments which such Clerk or Officer may be in receipt of, but such Compensation or Pension shall not exceed the Compensation or Pension that can be granted to a public Servant under an Act to alter, amend, and consolidate the Laws for regulating the Pensions, Compensations, and Allowances to be made to Persons in respect of their having held Civil Offices in Her Majesty's Service, and passed in the Session of Parliament holden in the Twenty-second of Victoria, Chapter Twenty-six.

4. The Amount of such Compensation or Pension shall be charged rateably on the several Duties collected under the Authority of the above-recited Acts relating to the Coal and Wine Duties and this Act, but no such Pension shall extend beyond the Time to which such Duties are continued.

5. The several Coal and Wine Duties by this Act continued for the Year ending the Fifth Day of July One thousand eight hundred and eighty-nine shall be applied in the first instance in freeing from Toll the following Bridges on the Thames; viz., Kew, Kingston-upon-Thames, Hampton Court, Walton-upon-Thames, and Staines:

And next in making free from Toll Chingford

Bridge and Tottenham Mills Bridges upon the River Lee:

And should there be any Surplus remaining, the same shall be applied as Parliament may hereafter direct.

6. This Act may be cited as "The London Coal and Wine Duties Continuance Act, 1868."

CAP. XVIII.

The Railways (Extension of Time) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
 2. *Interpretation of Terms.*
 3. *Power for Company to apply to Board of Trade for Extension of Time.*
 4. *Application only with Assent of Shareholders.*
 5. *Circular to Shareholders.*
 6. *Mode of Signification of Assent or Dissent.*
 7. *Meeting to elect Scrutineers.*
 8. *Ascertainment of Assents or Dissents.*
 9. *What Shares only to be reckoned.*
 10. *Adjournment on Application of Scrutineers.*
 11. *Decision of Scrutineers final.*
 12. *Notice of Application in Gazette, &c.*
 13. *Extension of Time by Warrant of Board of Trade.*
 14. *Notice of Warrant in Gazette.*
 15. *Compensation for Extension of Time.*
 16. *Saving for Contracts and Notices before Act.*
- Schedule.*

An Act to give further Time for making certain Railways. (29th May 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited as The Railways (Extension of Time) Act, 1868.

2. In this Act—

The Term "Company" means a Railway Company; that is to say, a Company constituted by Act of Parliament, or by Certificate under Act of Parliament, for the Purpose of constructing, maintaining, or working a Railway (either alone or in conjunction with any other Purpose):

The Term "Railway" includes "Tramway:"

The Term "Share" includes "Stock:"

The Term "Gazette" means with respect to a Railway or Works or Lands in England the *London Gazette*, with respect to a Railway or Works or Lands in Scotland the *Edinburgh Gazette*, and with respect to a Railway or Works or Lands in Ireland the *Dublin Gazette*.

3. Where it is desired that the Time limited for the Completion by a Company of a Railway, or Part of a Railway, or of a Work, or for the Purchase by them of Lands for the Purpose thereof, be extended, then, subject and according to the Provisions of this Act, within One Year after the passing of this Act, an Application for that Purpose may be made to the Board of Trade by or on behalf of the Company.

4. An Application under this Act shall not be entertained by the Board of Trade unless it is made with the Assent of Three Fifths in Value of the Votes of the Holders of the Shares

in the subscribed Capital of the Company, recorded at an Extraordinary Meeting of the Company convened for the Purpose.

5. Where a Meeting is called for the Purposes of this Act the Secretary of the Company shall, Seven clear Days at least before the Day appointed for the Meeting, send by Post to each registered Shareholder, to his registered or known Address, a Circular, which shall be in the Form given in the Schedule to this Act, with such Variations as Circumstances require, and with such Modifications (if any) as the Board of Trade approve.

6. Each Shareholder may signify his Assent to or Dissent from the proposed Application in the Manner indicated in the Circular sent.

7. At the Meeting the Shareholders personally present shall elect Three Shareholders to be Scrutineers.

8. The Scrutineers shall ascertain and record the Proportion of Capital held by Shareholders assenting, and shall report it to the Chairman, who shall announce it to the Meeting, and state whether the proposed Application is assented to by the requisite Proportion or not.

9. In the Computation of Assents a Share shall not be reckoned unless the Holder thereof is duly registered, and has paid on all Shares held by him all Calls due by him made Three Months or upwards before the Day of the Meeting or of the Presentation to the Directors of the Requisition (if any) on which the Meeting is held.

10. For the Purpose of receiving the Report of the Scrutineers, the Chairman may, if he thinks fit, on the Application of any one of the Scrutineers, and shall, if required by more than One of them, adjourn the Meeting to a Day appointed by him, being not less than One or more than Seven clear Days from the Day of the Meeting.

11. The Decision of the Scrutineers, or any Two of them, on any Matter to be decided by them under this Act, shall be final.

12. When an Application has been made to the Board of Trade in accordance with this Act, then, if it appears to them that there are sufficient Grounds for entertaining the Application, they shall direct Notice of the Fact that the Application has been made to be given, by or on behalf of the Company, by Advertisement (in a Form approved by the Board of Trade) once in the

Gazette and once in each of Three successive Weeks in a Newspaper published or circulating in each of the Counties in which any Portion of the Railway, Part of a Railway, Works or Lands to which the Application relates is situate, and by Bills affixed, on Three successive Sundays, on the principal outer Door of the Church or Churches in every Parish in which any Portion of the Railway, Part of a Railway, Works or Lands is situate; and every such Notice shall state when and how any Person, Company, or Corporation objecting to the Application may bring his Objection before the Board of Trade.

13. The Board of Trade, on Proof to their Satisfaction that Notice has been duly given, and on the Expiration of the Time allowed for Objections, and after considering the Objections (if any), may, if they think fit, by Warrant (signed by their Secretary or One of their Assistant Secretaries), according to the Nature of the Application made to them, and on such Terms and Conditions (if any) as they think fit, extend the Time limited for the Completion of the Railway or of any Part thereof, or of any Works, or may (with or without Extension of the Time aforesaid) extend the Time limited for the Purchase of any Lands for the Purpose of the Railway or of any Part thereof, or of any Works, for such Time in each Case as they think fit, not exceeding in any Case Two Years from the Expiration of the respective Time limited; and every such Warrant shall have Effect as if the Provisions thereof had been enacted by Parliament; provided that no such Warrant shall be granted unless the Board of Trade, having ascertained the State and Condition of the Company in the Manner provided in the Fourteenth Section of the Abandonment of Railways Act, 1850, see Reason to believe that the Company will be able to complete the Railway, Part of a Railway, or Works within the extended Time named in the Warrant, for which Purpose the Board of Trade shall have all the Powers of that Section, and the Provisions of that Section shall extend and apply to the Case of Proceedings under this Act.

14. Within One Month after the Warrant is issued by the Board of Trade they shall give Notice thereof in the Gazette.

15. Justices, Arbitrators, Umpires, and Juries, in estimating the Compensation to be made by the Company to the Owners or Occupiers of or Persons interested in Lands, shall have regard to and make Compensation for the additional Damage (if any) sustained by those Owners, Occupiers, or Persons by reason of any Extension of Time under this Act.

16. Where, before the passing of this Act, a Contract has been entered into by a Company for the taking of Lands for their Railway or Works, this Act shall not authorize, as regards

those Lands, any Extension of the Time limited for the Purchase of Lands; and every such Contract shall continue to have Effect as if this Act had not been passed.

—o-o-o—
THE SCHEDULE.

Form of Circular and of Assent or Dissent.

The Railways (Extension of Time) Act, 1868.

The Company.

An Extraordinary Meeting of the Shareholders of this Company will be held at _____ on the _____ Day of _____ at _____ o'Clock, for the Purpose of determining whether or not an Application shall be made to the Board of Trade, under the above-mentioned Act, for an Extension of the Time limited by [*state the Act or Acts limiting the Time proposed to be extended*]

for [*state the Matter to which the Limitation relates*].

You are requested to signify your Assent to or Dissent from the proposed Application by writing in the Fourth Column of the following Table the Word *assenting* or *dissenting*, as the Case may be, and signing your Name thereunder, and by returning this Circular, so filled up and signed, to me, so that I shall receive the same on or before the Day next preceding the Day of the Meeting, but if your Assent or Dissent is not received at latest on the Day next preceding the Day of the Meeting it will not be computed.

Name of Railway.	Name of Shareholder.	Amount of Share Capital held by him.	Whether assenting or dissenting.
*	*	*	†
			(Signed) _____

* The Secretary will insert these Particulars.

† In this Column the Shareholder will write the Word *assenting* or *dissenting*, as the Case may be, and sign his Name thereunder.

(Signed)

Secretary.

CAP. XIX.

Ecclesiastical Commissioners Orders in Council.

ABSTRACT OF THE ENACTMENTS.

1. Orders in Council specified in the Schedule to be valid. Schedule.

An Act for declaring valid certain Orders of Her Majesty in Council relating to the Ecclesiastical Commissioners for England and to the Deans and Chapters of certain Churches.

(29th May 1868.)

WHEREAS by certain Orders made by Her Majesty in Council, and specified in the Schedule annexed to this Act, certain Schemes prepared by the Ecclesiastical Commissioners for England, and laid before Her Majesty in Council, have been ratified, which Schemes purported to have been so prepared and laid before Her Majesty in pursuance of the Act of the Third and Fourth Years of Her Majesty's Reign, Chapter One hundred and thirteen, and of the Act of the

Fourth and Fifth Years of Her Majesty's Reign, Chapter Thirty-nine, and of the Act of the Fifth and Sixth Years of Her Majesty's Reign, Chapter Twenty-six, or some or one of them :

And whereas Doubts are entertained as to the Validity of the said Orders of Her Majesty in Council, and it is expedient that such Doubts should be removed :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. That the Orders of Her Majesty in Council specified in the Schedule annexed to this Act shall be and be deemed to have been good, valid, and effectual in Law.

SCHEDULE.

Ecclesiastical Corporation.	Date of Order in Council.	Date of London Gazette.
The Dean and Chapter of the Cathedral and Metropolitan Church of Saint Peter at York.	18 August 1852	10 September 1852.
The Dean and Chapter of the Cathedral Church of Carlisle.	10 November 1852	17 December 1852.
The Dean and Chapter of the Cathedral Church of Peterborough.	29 March 1854	2 May 1854.
The Dean and Chapter of the Cathedral Church of Chester.	3 July 1854	4 July 1854.
The Dean and Chapter of the Cathedral Church of Gloucester.	26 June 1855	17 July 1855.
The Dean and Chapter of the Cathedral Church of Saint Asaph.	24 June 1856	1 July 1856.
The Dean and Chapter of the Cathedral Church of Worcester.	29 November 1859	16 December 1859.
The Dean and Chapter of the Cathedral Church of Chichester.	10 May 1860	16 May 1860.
The Dean and Chapter of the Cathedral Church of Winchester.	16 April 1861	16 April 1861.
The Dean and Chapter of the Cathedral Church of Salisbury.	11 October 1861	15 October 1861.
The Dean and Chapter of the Cathedral Church of Bristol.	7 June 1862	10 June 1862.
The Dean and Chapter of the Cathedral and Metropolitan Church of Christ, Canterbury.	6 August 1862	8 August 1862.
The Dean and Chapter of the Cathedral Church of Exeter.	30 August 1862	5 September 1862.
The Dean and Chapter of the Cathedral Church of Wells.	26 July 1866	27 July 1866.
The Dean and Chapter of the Cathedral Church of Rochester.	9 August 1866	10 August 1866.
The Dean and Chapter of the Cathedral Church of Saint David's.	14 September 1866	18 September 1866.
The Dean and Chapter of the Cathedral Church of Llandaff.	26 June 1867	28 June 1867.
The Dean and Canons of Her Majesty's Free Chapel of Saint George within Her Majesty's Castle of Windsor.	26 June 1867	28 June 1867.

CAP. XX.

The Legitimacy Declaration Act (Ireland), 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Application to Probate Court in Ireland for Declaration of Legitimacy.*
2. *Application to Court for Declaration of Right to be deemed a Natural-born Subject.*
3. *Petition to be accompanied by Affidavit as Court directs.*
4. *20 & 21 Vict. c. 79. and 22 & 23 Vict. c. 31. to apply to Proceedings under this Act.*
5. *Power to award and enforce Payment of Costs.*
6. *Attorney General to have a Copy of Petition One Month before filed, and to be a Respondent.*
7. *Court may require Persons to be cited.*
8. *Saving of Rights of Persons not cited.*
9. *Proceedings not to affect Judgments, &c. already pronounced.*
10. *Interpretation Clause.*
11. *20 & 21 Vict. c. 79., 22 & 23 Vict. c. 31., and this Act to be read together.*

An Act to enable Persons in Ireland to establish Legitimacy and the Validity of Marriages, and the Right to be deemed Natural-born Subjects.

(29th May 1868.)

WHEREAS it is expedient to extend to Ireland the Provisions of "The Legitimacy Declaration Act, 1868," which enables Persons to establish their Legitimacy, and the Marriage of their Parents and others from whom they may be descended, and which also enables Persons to establish their Right to be deemed Natural-born Subjects by Application to the Court for Divorce and Matrimonial Causes in England :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. Any Natural-born Subject of the Queen, or any Person whose Right to be deemed a Natural-born Subject depends wholly or in part on his Legitimacy, being domiciled in England or Ireland, or claiming any Real or Personal Estate situate in Ireland, may apply by Petition to the Court of Probate in Ireland, praying for a Decree that the Petitioner is the legitimate Child of his Parents, and that the Marriage of his Father and Mother, or of his Grandfather and Grandmother, was a valid Marriage, or for a Decree declaring either of the Matters aforesaid ; and any such Subject or Person being so domiciled or claiming as aforesaid may in like Manner apply to such Court for a Decree declaring that his Marriage was or is a valid Marriage ; and such Court shall have Jurisdiction to hear and determine such Application, and to make such Decree declaratory of the Legitimacy or Illegiti-

macy of such Person, or of the Validity or Invalidity of such Marriage, as to the Court may seem just ; and such Decree, except as hereinafter mentioned, shall be binding to all Intents and Purposes on Her Majesty and on all Persons whomsoever.

2. Any Person being so domiciled or claiming as aforesaid may apply by Petition to the said Court for a Decree declaratory of his Right to be deemed a Natural-born Subject of Her Majesty, and the said Court shall have Jurisdiction to hear and determine such Application, and to make such Decree thereon as to the Court may seem just ; and where such Application as last aforesaid is made by the Person making such Application as herein mentioned for a Decree declaring his Legitimacy or the Validity of a Marriage, both Applications may be included in the same Petition ; and every Decree made by the said Court shall, except as herein-after mentioned, be valid and binding, to all Intents and Purposes, upon Her Majesty and all Persons whomsoever.

3. Every Petition under this Act shall be accompanied by such Affidavit verifying the same, and of the Absence of Collusion, as the Court may by any General Rule direct.

4. All the Provisions of the Acts "The Probates and Letters of Administration Act (Ireland), 1867," and "The Court of Probate Act (Ireland), 1859," so far as the same may be requisite and applicable, and the Powers and Provisions therein contained, as to Practice, Procedure, and Right of Appeal, and the making and ratifying Rules and Regulations for the same, and fixing the Fees payable upon Proceedings before the Court, and in respect of the summoning and enforcing the Attendance of Juries, shall respectively ex-

tend to Applications and Proceedings under this Act, as if the same had been originally authorized by the said Acts respectively.

5. In all Proceedings under this Act the said Court shall have full Power to award and enforce Payment of Costs to any Person cited, whether such Person shall or shall not oppose the Declaration applied for, in case such Court shall deem it reasonable that such Costs shall be paid.

6. A Copy of every Petition under this Act, and of the Affidavit accompanying the same, shall One Month at least previously to the Presentation or filing of such Petition be delivered to Her Majesty's Attorney General for Ireland, who shall be a Respondent upon the Hearing of such Petition, and upon every subsequent Proceeding relating thereto.

7. Where any Application is made under this Act to the said Court, such Person or Persons (if any) besides the said Attorney General as the Court shall think fit shall, subject to the Rules made under this Act or applicable thereto, be cited to see Proceedings or otherwise summoned in such Manner as the Court shall direct, and may be permitted to become Parties to the Proceedings, and oppose the Application.

8. The Decree of the said Court shall not in

any Case prejudice any Person, unless such Person has been cited or made a Party to the Proceedings, or is the Heir-at-Law or Next of Kin, or other Real or Personal Representative of, or derives Title under or through, a Person so cited or made a Party; nor shall such Decree of the Court prejudice any Person, if the same be subsequently proved to have been obtained by Fraud or Collusion.

9. No Proceeding to be had under this Act shall affect any final Judgment or Decree already pronounced or made by any Court of competent Jurisdiction.

10. In the Construction of this Act the Words "Person" and "Subject" shall include Parties cited as Respondents as well as Petitioners, and shall comprise all of a Class claiming or deriving in the same Right, who would as Children or Grandchildren or in their own Persons be comprehended within the Term "Issue."

11. The said Two Acts of One thousand eight hundred and fifty-seven and One thousand eight hundred and fifty-nine, so regulating the Court of Probate in Ireland, and this Act, shall be construed together as One Act, and this Act may be cited for all Purposes as "The Legitimacy Declaration Act (Ireland), 1868."

CAP. XXI.

The Prison Officers Compensation Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Construction of Act.*
3. *Compensation to Officers of all discontinued Prisons.*
4. *As to Expression "Justices in Sessions assembled."*

An Act to provide Compensation to Officers of certain discontinued Prisons.
(29th May 1868.)

WHEREAS by "The Prison Act, 1865," certain Prisons mentioned in the Second Schedule to the said Act are directed to be discontinued: And whereas by the Seventy-second Section of the said Act the Justices in Sessions assembled are empowered to award Compensation to any Person deprived of any Salary or Emolument by the Discontinuance of any of the said Prisons: And whereas it is expedient to extend the Power

of awarding Compensation to all Cases in which Prisons are discontinued:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as The Prison Officers Compensation Act, 1868.

2. This Act shall be construed as one with The Prisons Act, 1865.

3. The Justices in Sessions assembled having Jurisdiction over any such discontinued Prison as is herein-after mentioned may allow such Compensation or Superannuation Allowance as they think fit to any Person who, by reason of the Discontinuance of such Prison, is deprived of any Salary or Emolument, so that no such Compensation or Superannuation Allowance exceed the Proportion of the Salary or Emolument which might be granted under similar Circumstances to a Person in the Civil Service under the Acts for regulating such Compensations or Superannuation Allowances for the Time being in force; and any Compensation or Superannuation Allowance so allowed shall be paid out of any Rates or Property applicable to the Payment of the Salaries of the Officers of such Prison before the Discontinuance thereof, subject to this Proviso, that when the Power to levy such Rates or such Property is vested in a different Body from the Justices, the Consent of such last-mentioned Body shall be obtained to the Amount of Compensation or Superannuation Allowance allowed.

"Discontinued Prison" shall for the Purposes of this Section mean any Prison other than the Prisons specified in the Second Schedule to the said Prisons Act which has ceased to be used as a Prison since the Date of the passing of the said Prisons Act, 1865, or which may hereafter cease to be used as a Prison.

4. The Expression "Justices in Sessions assembled" shall in this Act mean as follows; that is to say,

1. As respects any Prison belonging to any County, except as herein-after mentioned, or to any Riding, Division, Hundred, or Liberty of a County, having a separate Court of Quarter Sessions, the Justices in Quarter Sessions assembled:
2. As respects any Prison belonging to any County divided into Ridings or Divisions, and maintained at the common Expense of such Ridings or Divisions, the Justices of the County assembled at Gaol Sessions:
3. As respects any Prison belonging to the City of London, or the Liberties thereof, the Court of the Lord Mayor and Aldermen:
4. As respects any Prison belonging to any Municipal Borough, the Justices of the Borough assembled at Sessions to be held by them at the usual Time of holding Quarterly Sessions of the Peace, or at such other Time as they may appoint:
5. As respects any Prison belonging to any City, District, Borough, or Town having a separate Prison Jurisdiction, and not herein-before mentioned, the Justices or other Persons having Power at Law to make Rules for the Government of such Prison.

CAP. XXII.

The Petty Sessions and Lock-up House Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. Short Title.
2. Application of Act.
3. Interpretation of Terms.
4. Power to Two or more Authorities to agree for common Sessions House.
5. Power to Local Authorities to contract for Sessions House.
6. Power to Local Authorities to contract for Lock-up Houses.
7. Contracts may include Cost of Conveyance.
8. Petty Sessions Houses and Lock-ups to be deemed to be within the Jurisdiction of contracting Local Authorities.
9. Expenses how to be provided.
10. Effect of Approval of Secretary of State and Evidence of Transactions.
11. Power to Local Authority to form Committee of its own Members and others.
12. Powers under this Act to be in addition to Powers under other Acts.

An Act to amend the Law relating to Places for holding Petty Sessions and to Lock-up Houses for the temporary Confinement of Persons taken into Custody and not yet committed for Trial.
(29th May 1868.)

WHEREAS it is expedient to amend the Law relating to Places for holding Petty Sessions and to Lock-up Houses for the temporary Confinement of Persons taken into Custody and not yet committed for Trial:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as "The Petty Sessions and Lock-up House Act, 1868."

2. This Act shall not apply to Scotland or Ireland.

3. For the Purposes of this Act,—

"Petty Sessions" shall include "Special Sessions," and "Quarter Sessions" shall include "General Sessions:"

"Borough" shall mean any Place for the Time being subject to an Act passed in the Session holden in the Fifth and Sixth Years of the Reign of King William the Fourth, Chapter Seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales:"

"Local Authority" shall mean,—

In any County, Parts, Liberty, or Division of a County having a separate Commission of the Peace,—the Justices in Quarter Sessions assembled;

In any Borough having a separate Commission of the Peace,—the Council of the Borough.

4. Two or more Local Authorities may, with the Approval of One of Her Majesty's Principal Secretaries of State, contract that a Place for the holding of Petty Sessions by each of such Authorities shall be provided at the joint Expense of such Authorities in such Manner and Proportions as in the said Contract mentioned.

5. Where any Local Authority is in possession of a convenient Building for holding Petty Sessions or for transacting Business authorised by any Act of Parliament to be performed by Justices out of Petty Sessions, any neighbouring

Local Authority may contract with such former Authority for the Use, by themselves, of such Building for such Purposes or any of them, and may use the same accordingly.

6. Any Local Authority may, with the Approval of One of Her Majesty's Principal Secretaries of State, contract with any neighbouring Local Authority for the Reception by such Authority into their Lock-up House, and the Custody and Maintenance therein, of any Persons who would otherwise be liable to be placed in a Lock-up House situate within the Jurisdiction of the former Authority.

7. Any Contract entered into between any Local Authorities for the Reception into and Custody in the Lock-up House of one Authority of Persons belonging to the Jurisdiction of the other Authority may include the Costs of conveying such Persons to and from such Lock-up Houses previously to their Committal for Trial, and also the Costs of conveying them to Prison when committed for Trial.

8. Where any Contract has been made by any Two or more Local Authorities in pursuance of this Act in relation to any Place for holding Petty Sessions, or for transacting Business to be performed by Justices out of Petty Sessions, such Place, for all Purposes of and incidental to the holding of Petty Sessions and of the Orders to be made and the other Business to be transacted thereat, shall be deemed to be within the Jurisdiction of each of such Authorities respectively, and where any Contract has been made by any Two or more Local Authorities in pursuance of this Act in relation to any Lock-up House such Lock-up House for all Purposes of and incidental to the Power to detain therein and remand thereto, and to convey thereto and therefrom, Persons taken into Custody, and for all other Purposes of a Lock-up House, shall be deemed to be within the Jurisdiction of each of such Authorities respectively.

9. All Expenses payable by one Local Authority to another in pursuance of any Contract made in pursuance of this Act shall be raised and defrayed in the same Manner as such Expenses would have been raised and defrayed if they had been incurred for the Purposes of and in relation to the Subject Matter of such Contract by and within the Jurisdiction of the Authority that has contracted to pay the same.

10. The Approval of One of Her Majesty's Principal Secretaries of State, when given to any Contract made in pursuance of this Act, shall be conclusive Evidence that such Contract is within, and has been duly made in pursuance of, the

Provisions of this Act; and a Copy of the *London Gazette* purporting to contain an Announcement of any of the following Facts:—

1. That a common Lock-up House has been established for the Reception of Persons taken into Custody within any Two or more Jurisdictions, and not yet committed for Trial:
2. That a Place has in pursuance of this Act been constituted a Place for holding the Petty Sessions of particular Petty Sessional Divisions, or for transacting Business to be performed by Justices out of Petty Sessions:
3. That a Lock-up House situate in any particular Place has been partly appropriated for the Reception of Persons who would otherwise be liable to be placed in a Lock-up House situate within some other Jurisdiction:

Shall be Evidence of the Facts stated in such Announcement.

11. Any Local Authority may form a Committee consisting of Two or more of its Members, and may delegate to such Committee all or any

Powers conferred on them by this Act, and may from Time to Time revoke or alter any Power so given to such Committee.

A Committee may elect a Chairman of their Meetings. If no such Chairman is elected, or if he is not present at the Time appointed for holding the same, the Members present shall choose One of their Number to be Chairman of such Meeting. A Committee may meet and adjourn as they think proper. Every Question at a Meeting shall be determined by a Majority of Votes of the Members present, and voting on that Question; and in case of an equal Division of Votes the Chairman shall have a Second or Casting Vote.

The Proceedings of a Committee shall not be invalidated by any Vacancy or Vacancies amongst its Members, or, in case of a County, by the Termination of the Sessions by which they were appointed.

12. All Powers conferred by this Act shall be deemed to be in addition to and not in derogation of any other Powers conferred by any other Act of Parliament, and any such other Powers may be exercised as if this Act had not passed.

CAP. XXIII.

The Frampton Mansel Marriage Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Validity of Marriages heretofore solemnized in Chapel of Frampton Mansel.*
3. *Minister officiating not liable to Censure.*
4. *Register of such Marriages to be Evidence.*

An Act to render valid Marriages heretofore solemnized in the Chapel of Ease of Frampton Mansel in the Parish of Sapperton in the County of Gloucester. (29th May 1868.)

WHEREAS a Chapel was some Time since built in the Hamlet of Frampton Mansel in the Parish of Sapperton in the County of Gloucester as a Chapel of Ease to the Parish Church of Sapperton aforesaid, and was on the Twenty-fifth Day of October One thousand eight hundred and forty-four duly consecrated for the Performance of Divine Service, but no Authority has ever been given by the Bishop of the Diocese in which the said Chapel is situate, or otherwise, for the Publication of Banns and the Solemnization of Mar-

riages therein: And whereas divers Marriages have been solemnized in the said Chapel under an erroneous Impression on the Part of the Minister thereof that by virtue of the Consecration of the said Chapel or otherwise Marriages might be lawfully solemnized therein, and Entries of the said Marriages so solemnized have from Time to Time been made in the Register Books kept at the said Parish Church of Sapperton aforesaid: And whereas it is expedient under the Circumstances aforesaid to remove all Doubts touching the Validity of the Marriages so solemnized in the said Chapel: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as "The Frampton Mansel Marriage Act, 1868."

2. All Marriages solemnized before the passing of this Act in the said Chapel by the Officiating Minister thereof or by any other Clergyman being a duly ordained Minister of the Church of England, and the Publication of Banns in such Chapel by such Minister or Clergyman previous to any such Marriages, shall be and be deemed to have been as valid and effectual in the Law to all Intents as if such Marriages had been solemnized and such Publication of Banns had taken place in the Parish Church of Sapperton aforesaid.

3. No Minister who has solemnized any of the said Marriages shall be liable to any Ecclesiastical Censures or to any other Proceedings or Penalties whatsoever by reason of his having so solemnized the same respectively.

4. The Registers of the Marriages so solemnized, or Copies of such Registers, shall be received in all Courts of Law and Equity as Evidence of such Marriages respectively in the same Manner as Registers of Marriages in Parish Churches or Copies thereof are by Law receivable in Evidence.

CAP. XXIV.

The Capital Punishment Amendment Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. Short Title.
 2. Judgment of Death to be executed within Walls of Prison.
 3. Sheriff, &c. to be present.
 4. Surgeon to certify Death; and Declaration to be signed by Sheriff, &c.
 5. Coroner's Inquest on Body.
 6. Burial of Body.
 7. Power to Secretary of State to make Rules, &c. to be observed on Execution of Judgment of Death.
 8. Such Rules to be laid before Parliament.
 9. Penalty for signing false Certificate, &c.
 10. Certificate, &c. to be sent to Secretary of State, and exhibited on or near Entrance to Prison.
 11. Provisions as to Duties and Powers of Sheriff, &c. extended.
 12. Forms in Schedule.
 13. Modifications of Act in Scotland.
 14. Application of Act to Ireland.
 15. Saving Clause as to Legality of Execution.
 16. General Saving.
- Schedule.

An Act to provide for carrying out of Capital Punishment within Prisons. (29th May 1868.)

WHEREAS it is expedient that Capital Punishments should be carried into effect within Prisons: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as "The Capital Punishment Amendment Act, 1868."

2. Judgment of Death to be executed on any Prisoner sentenced after the passing of this Act

on any Indictment or Inquisition for Murder shall be carried into effect within the Walls of the Prison in which the Offender is confined at the Time of Execution.

3. The Sheriff charged with the Execution, and the Gaoler, Chaplain, and Surgeon of the Prison, and such other Officers of the Prison as the Sheriff requires, shall be present at the Execution.

Any Justice of the Peace for the County, Borough, or other Jurisdiction to which the Prison belongs, and such Relatives of the Prisoner or other Persons as it seems to the Sheriff or the Visiting Justices of the Prison proper to admit within the Prison for the Purpose, may also be present at the Execution.

4. As soon as may be after Judgment of Death has been executed on the Offender the

Surgeon of the Prison shall examine the Body of the Offender, and shall ascertain the Fact of Death, and shall sign a Certificate thereof, and deliver the same to the Sheriff.

The Sheriff and the Gaoler and Chaplain of the Prison, and such Justices and other Persons present (if any) as the Sheriff requires or allows, shall also sign a Declaration to the Effect that Judgment of Death has been executed on the Offender.

5. The Coroner of the Jurisdiction to which the Prison belongs wherein Judgment of Death is executed on any Offender shall within Twenty-four Hours after the Execution hold an Inquest on the Body of the Offender, and the Jury at the Inquest shall inquire into and ascertain the Identity of the Body, and whether Judgment of Death was duly executed on the Offender; and the Inquisition shall be in duplicate, and One of the Originals shall be delivered to the Sheriff.

No Officer of the Prison or Prisoner confined therein shall in any Case be a Juror on the Inquest.

6. The Body of every Offender executed shall be buried within the Walls of the Prison within which Judgment of Death is executed on him; provided that if One of Her Majesty's Principal Secretaries of State is satisfied, on the Representation of the Visiting Justices of a Prison, that there is not convenient Space within the Walls thereof for the Burial of Offenders executed therein, he may, by Writing under his Hand, appoint some other fit Place for that Purpose, and the same shall be used accordingly.

7. One of Her Majesty's Principal Secretaries of State shall from Time to Time make such Rules and Regulations to be observed on the Execution of Judgment of Death in every Prison as he may from Time to Time deem expedient, for the Purpose as well of guarding against any Abuse in such Execution as also of giving greater Solemnity to the same, and of making known without the Prison Walls the Fact that such Execution is taking place.

8. All such Rules and Regulations shall be laid upon the Tables of both Houses of Parliament within Six Weeks after the making thereof, or if Parliament be not then sitting within Fourteen Days after the next Meeting thereof.

9. If any Person knowingly and wilfully signs any false Certificate or Declaration required by this Act, he shall be guilty of a Misdemeanor, and on Conviction thereof shall be liable, at the Discretion of the Court, to Imprisonment for any Term not exceeding Two Years, with or without Hard Labour, and with or without Solitary Confinement.

10. Every Certificate and Declaration and the Duplicate of the Inquisition required by this Act shall in each Case be sent with all convenient Speed by the Sheriff to One of Her Majesty's Principal Secretaries of State, and printed Copies of the same several Instruments shall as soon as possible be exhibited and shall for Twenty-four Hours at least be kept exhibited on or near the principal Entrance of the Prison within which Judgment of Death is executed.

11. The Duties and Powers by this Act imposed on or vested in the Sheriff may be performed by and shall be vested in the Under Sheriff or other lawful Deputy acting in his Absence and with his Authority, and any other Officer charged in any Case with the Execution of Judgment of Death.

The Duties and Powers by this Act imposed on or vested in the Gaoler of the Prison may be performed by and shall be vested in the Deputy Gaoler (if any) acting in his Absence and with his Authority, and (if there is no Officer of the Prison called the Gaoler) by the Governor, Keeper, or other Chief Officer of the Prison and his Deputy (if any) acting as aforesaid.

The Duties and Powers by this Act imposed on or vested in the Surgeon may be performed by and shall be vested in the chief Medical Officer of the Prison (if there is no Officer of the Prison called the Surgeon).

The Duties by this Act imposed on the Chaplain may, in the event of the Absence of the Chaplain, be performed by the Assistant Chaplain or other Person acting in place of the Chaplain.

12. The Forms given in the Schedule to this Act, with such Variations or Additions as Circumstances require, shall be used for the respective Purposes in that Schedule indicated, and according to the Directions therein contained.

13. This Act shall apply to Scotland, with the Modifications following; viz.,

The Expression, "Judgment of Death" shall mean "Sentence of Death" pronounced by any competent Court.

"Indictment" shall include "Criminal Letters."

Any Duty appointed to be performed to or by, or any Power given to, a Sheriff in England, shall in Scotland be performed to or by, or be exercised by, the Lord Provost, or Provost and other Magistrates charged with seeing the Sentence of Death carried into effect, or by any one of their Number specially named by the others for that Purpose.

The Expression "the Visiting Justices of the Prison" shall in Scotland mean the Members of the County Prison Board, acting under the Provisions of the Act Twenty-

third and Twenty-fourth Victoria, Chapter One hundred and five.

In lieu of the Provisions contained in the Sixth Section hereof, the Procurator Fiscal of the Jurisdiction within which the Prison is situated wherein Sentence of Death is executed on any Offender shall within Twenty-four Hours after the Execution hold a public Inquiry before the Sheriff or Sheriff Substitute of the County on the Body of the Offender, and in particular shall inquire into and ascertain the Identity of the Body, and whether Sentence of Death was duly executed on the Offender; and the Report or Deliverance of the Sheriff or Sheriff Substitute shall be in duplicate, and One of the Originals shall be delivered to the Lord Provost or Provost, or Magistrates or Magistrate, charged with seeing the Sentence of Death carried into effect.

The Expression "a Misdemeanor" shall mean "a Crime and Offence."

The Expression "the Duplicate of the Inquisition" in the Tenth Section hereof shall mean "the Duplicate of the Report or Deliverance of the Sheriff or Sheriff Substitute."

14. In the Application of this Act to Ireland the Expressions "Chief Secretary to the Lord Lieutenant," and "Board of Superintendence," shall be substituted for the Expressions "One of Her Majesty's Principal Secretaries of State," and "Visiting Justices," respectively.

15. The Omission to comply with any Provision of this Act shall not make the Execution of Judgment of Death illegal in any Case where such Execution would otherwise have been legal.

16. Except in so far as is hereby otherwise provided, Judgment of Death shall be carried into effect in the same Manner as if this Act had not passed.

THE SCHEDULE.

Certificate of Surgeon.

I, A.B., the Surgeon [or as the Case may be] of the [describe Prison], hereby certify that I this Day examined the Body of C.D., on whom Judgment of Death was this Day executed in the [describe same Prison]; and that on that Examination I found that the said C.D. was dead.

Dated this Day of
(Signed) A.B.

Declaration of Sheriff and others.

We, the undersigned, hereby declare that Judgment of Death was this Day executed on C.D. in the [describe Prison] in our Presence.

Dated this Day of
(Signed) E.F., Sheriff of
 L.M., Justice of the Peace for
 G.H., Gaoler of
 J.K., Chaplain of
 &c. &c.

CAP. XXV.

The Industrial Schools Act (Ireland), 1868.

ABSTRACT OF THE ENACTMENTS.

1. Short Title.
2. Application of Act.
3. Interpretation of Terms.
4. Inspector of Industrial Schools.
5. Description of Industrial Schools and Managers.
6. Mode of certifying Industrial School.
7. School not to be certified as Industrial and Reformatory.
8. Notices of Certificate to be gazetted. Copy of Gazette to be Evidence.
9. Grand Jury or Council may contract with the Managers for Reception of Children in Schools.
10. Monies granted under this Act how to be raised.
11. As to Children under Fourteen Years of Age found begging, &c.

12. *Temporary Detention in Workhouse, &c.*
13. *As to Children under 12 Years of Age charged with Offences.*
14. *Form and Contents of Order sending Child to School.*
15. *Power to Parent, &c. to apply to remove Child to a School conducted in accordance with Child's Religious Persuasion.*
16. *Order to be Warrant for Conveyance and Detention.*
17. *Expenses of Conveyance to School.*
18. *Evidence of Order of Detention.*
19. *Religious Instruction in School.*
20. *Lodging Child out of School.*
21. *Power to grant Licences for permitting Children to live out of School.*
22. *Power to apprentice Child.*
23. *Rules of School to be approved by the Chief Secretary.*
24. *Evidence as to Reception in School, &c.*
25. *Penalty on Child for Refusal to conform to Rules.*
26. *Penalty on Child escaping from School.*
27. *Penalty on Persons inducing Offenders to escape from Certified Industrial Schools.*
28. *Power to Treasury to contribute towards Custody, &c. of Children detained.*
29. *Contribution by Parent, &c.*
30. *Order for Enforcement of Contribution by Parent, &c.*
31. *Detention to cease on Child attaining Sixteen.*
32. *Power to Chief Secretary to order Child to be transferred to another School.*
33. *Power to Chief Secretary to order Discharge of Child.*
34. *Power for Chief Secretary to withdraw Certificate.*
35. *Resignation of Certificate by Managers.*
36. *Withdrawal, &c. of Certificate to be inserted in the Gazette.*
37. *Cesser of Reception of Children on Notice, &c.*
38. *Discharge of Children detained, &c.*
39. *Use of Forms in Schedule.*
40. *Service of Notices on Managers.*
41. *Provisions of 14 & 15 Vict. c. 93. to apply.*
Schedule.

An Act to extend the Industrial Schools Act to Ireland. (29th May 1868.)

WHEREAS it is expedient to provide for the Establishment and Regulation of Industrial Schools in Ireland, and to extend to Ireland, with certain Modifications, "The Industrial Schools Act, 1866:"

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may cited as "The Industrial Schools Act (Ireland), 1868."

2. This Act shall extend to Ireland only.

3. In the Construction of this Act—

The Expression "the Chief Secretary" shall mean "the Chief Secretary of the Lord Lieutenant of Ireland for the Time being:"

The Expression "Two Justices" shall mean Two or more Justices in Petty Sessions, and the Expression "a Magistrate" shall

mean "a Police Magistrate" acting in any Police Court for the Dublin Metropolitan Police District.

4. The Inspector of Reformatory Schools in Ireland shall be also the Inspector of Industrial Schools, and every Certified Industrial School shall from Time to Time, and at least once in each Year, be inspected by the Inspector of Industrial Schools.

5. A School in which industrial Training is provided, and in which Children are lodged, clothed, and fed, as well as taught, shall exclusively be deemed an Industrial School within the Meaning of this Act.

The Persons for the Time being having the Management or Control of such a School shall be deemed the Managers thereof for the Purposes of this Act.

6. The Chief Secretary may, on the Application of the Managers of an Industrial School, direct the Inspector of Industrial Schools to examine into the Condition of the School and its Fitness for the Reception of Children to be sent there under this Act, and to report to him there-



on, and the Inspector shall examine and report accordingly.

If satisfied with the Report of the Inspector, the Chief Secretary may, by Writing under his Hand, certify that the School is fit for the Reception of Children to be sent there under this Act, and thereupon the School shall be deemed a Certified Industrial School.

7. A School shall not be at the same Time a Certified Industrial School under this Act and a Certified Reformatory School under any other Act.

8. A Notice of the Grant of each Certificate shall within one Month be inserted by Order of the Chief Secretary in the *Dublin Gazette*.

A Copy of the Gazette containing the Notice shall be conclusive Evidence of the Grant, which may also be proved by the Certificate itself, or by an Instrument purporting to be a Copy of the Certificate, and to be attested as such by the Inspector of Industrial Schools.

9. It shall and may be lawful for the Grand Jury of any County, County of a City, or County of a Town, at any Assizes, and for the Town Councils of the Boroughs of Dublin, Cork, and Limerick, at a Special Meeting of such Council called for the Purpose, to appoint and empower a Committee of such Grand Jury or Council to enter into an Agreement with the Managers of any Industrial School certified as aforesaid for the Reception, Maintenance, and keeping in such Industrial School from Time to Time of such Children as are ordered by Justices or a Magistrate to be sent there from such County or Borough, in consideration of such periodical Payments as may be agreed upon with such Managers; and such Grand Jury or Council shall present the Payments of the Money which may from Time to Time become payable under such Agreement.

10. All Monies presented to be raised and paid for the Reception, Maintenance, and keeping of such Children in such Industrial School shall be presented and raised in the same Manner in all respects and subject to the same Conditions as Money to be presented and raised by the Grand Jury of any such County, or by the Council of such Borough as aforesaid respectively, for defraying the ordinary current Expenditure of their several Gaols.

11. Any Person may bring before Two Justices or a Magistrate any Child apparently under the Age of Fourteen Years that comes within any of the following Descriptions; namely,
That is found begging or receiving Alms (whether actually or under the Pretext of

selling or offering for Sale anything), or being in any Street or public Place for the Purpose of so begging or receiving Alms; That is found wandering and not having any Home or settled Place of Abode, or proper Guardianship, or visible Means of Subsistence

That is found destitute, either being an Orphan or having a surviving Parent who is undergoing Penal Servitude or Imprisonment; That frequents the Company of reputed Thieves.

The Justices or Magistrate before whom a Child is brought as coming within One of those Descriptions, if satisfied on Inquiry of that Fact, and that it is expedient to deal with him under this Act, may order him to be sent to a Certified Industrial School.

12. Two Justices or a Magistrate, while Inquiry is being made respecting a Child or respecting a School to which he may be sent, may, by Order signed by them or him, order the Child to be taken to the Workhouse or Poorhouse of the Union, Parish, or Combination in which he is found or resident, and to be detained therein at the Cost of the Union, Parish, or Combination for any Time not exceeding Seven Days, or until an Order is sooner made for his Discharge or for his being sent to a Certified Industrial School; and the Guardians of the Poor for the Union or Parish, or the Keeper of the Poorhouse, or other Person to whom the Order is addressed, are and is hereby empowered and required to detain him accordingly.

13. Where a Child, apparently under the Age of Twelve Years, is charged before Two or more Justices in Petty Sessions, or a Police Magistrate acting in any Police Court for the Dublin Metropolitan Police District, with an Offence punishable by Imprisonment or a less Punishment, but has not been convicted of Felony, and the Child ought, in the Opinion of the said Justices or Magistrate, (regard being had to his Age and to the Circumstances of the Case,) to be dealt with under this Act, the said Justices or Magistrate may order him to be sent to a Certified Industrial School.

14. The Order of Justices or a Magistrate sending a Child to a School (in this Act referred to as the Order of Detention in a School) shall be in Writing, signed by the Justices or Magistrate, and shall specify the Name of the School.

The School shall be some Certified Industrial School (whether situate within the Jurisdiction of the Justices or Magistrate making the Order or not) the Managers of which are willing to receive the Child, and the Reception of the Child by the Managers of the School shall be deemed to be an

Undertaking by them to teach, train, clothe, lodge, and feed him during the whole Period for which he is liable to be detained in the School, or until the Withdrawal or Resignation of the Certificate of the School takes effect, or until the Contribution out of Money provided by Parliament towards the Custody and Maintenance of the Children detained in the School is discontinued, whichever shall first happen.

The School named in the Order shall be presumed to be a Certified Industrial School until the contrary is shown.

The Order shall specify the Time for which the Child is to be detained in the School, being such Time as to the Justices or Magistrate seems proper for the teaching and training of the Child, but not in any Case extending beyond the Time when the Child will attain the Age of Sixteen Years: Provided always, that no Child shall be sent to any such Industrial School except to some One Industrial School under the exclusive Management of Persons of the same Religious Persuasion as that professed by the Parents, or, should that be unknown, by the Guardians of such Child, and in all Cases in which the Religion of the Parents and Guardians of such Child is unknown the said Child shall be considered as belonging to that Religious Persuasion in which he shall appear to have been baptized, or, that not appearing, to which he shall profess to belong.

15. If the Parent, Step-parent, or Guardian, or if there be no Parent, Step-parent, or Guardian, then the God-parent or nearest adult Relative of a Child sent or about to be sent to a Certified Industrial School which is not conducted in accordance with the Religious Persuasion to which the Child belongs, states to the Justices or Magistrate by whom the Order of Detention has been or is about to be made (or to Two Justices or a Magistrate having like Jurisdiction) that he objects to the Child being sent to or detained in the School specified or about to be specified in the Order, and names another Certified Industrial School in Ireland which is conducted in accordance with the Religious Persuasion to which the Child belongs, and signifies his Desire that the Child be sent thereto, then and in every such Case the Justices or Magistrate shall, upon Proof of such Child's Religious Persuasion, comply with the Request of the Applicant; provided—

First, that the Application be made before the Child has been sent to a Certified Industrial School, or within Thirty Days after his Arrival at such School; and,

Secondly, that the Applicant show, to the Satisfaction of the Justices or Magistrate, that the Managers of the School named by him are willing to receive the Child.

16. The Order of Detention in a School shall be forwarded to the Managers of the School with the Child, and shall be a sufficient Warrant for the Conveyance of the Child thither, and his Detention there.

17. The Expense of conveying to a Certified Industrial School a Child ordered to be sent there shall be defrayed by the Police Authorities by whom he is conveyed, and shall be deemed Part of the current Expenses of those Police Authorities.

18. An Instrument purporting to be an Order of Detention in a School, and to be signed by Two Justices or a Magistrate, or purporting to be a Copy of such an Order, and to be certified as such a Copy by the Clerk to the Justices or Magistrate by whom the Order was made, shall be Evidence of the Order.

19. A Minister of the Religious Persuasion specified in the Order of Detention as that to which the Child appears to the Justices or Magistrate to belong may visit the Child at the School on such Days and at such Times as are from Time to Time fixed by Regulations made by the Chief Secretary, for the Purpose of instructing him in Religion.

20. The Managers of a School may permit a Child sent there under this Act to lodge at the Dwelling of his Parent or of any trustworthy and respectable Person, so that the Managers teach, train, clothe, and feed the Child in the School as if he were lodging in the School itself, and so that they report to the Chief Secretary, in such Manner as he thinks fit to require, every Instance in which they exercise a Discretion under this Section.

21. The Managers of a School may, at any Time after the Expiration of Eighteen Months of the Period of Detention allotted to a Child, by Licence under their Hands, permit him to live with any trustworthy and respectable Person named in the Licence, and willing to receive and take charge of him.

Any Licence so granted shall not be in force for more than Three Months, but may at any Time before the Expiration of those Three Months be renewed for a further Period not exceeding Three Months, to commence from the Expiration of the previous Period of Three Months, and so from Time to Time until the Period of the Child's Detention is expired.

Any such Licence may also be revoked at any Time by the Managers of the School by Writing under their Hands, and thereupon the Child to whom the Licence related may be required by

them, by Writing under their Hands, to return to the School.

The Time during which a Child is absent from a School in pursuance of a Licence shall, except where such Licence has been forfeited by his Misconduct, be deemed to be Part of the Time of his Detention in the School, and at the Expiration of the Time allowed by the Licence he shall be taken back to the School.

A Child escaping from the Person with whom he is placed under a Licence, or refusing to return to the School on the Revocation of his Licence, or at the Expiration of the Time allowed thereby, shall be deemed to have escaped from the School.

22. The Managers of a School may, at any Time after a Child has been placed out on Licence as aforesaid, if he conducted himself well during his Absence from the School, bind him, with his own Consent, Apprentice to any Trade, Calling, or Service, notwithstanding that his Period of Detention has not expired, and every such Binding shall be valid and effectual to all Intents.

23. The Managers of a Certified Industrial School may from Time to Time make Rules for the Management and Discipline of the School, not being inconsistent with the Provisions of this Act; but those Rules shall not be enforced until they have been approved in Writing by the Chief Secretary; and Rules so approved shall not be altered without the like Approval.

A printed Copy of Rules purporting to be the Rules of a School so approved, and to be signed by the Inspector of Industrial Schools, shall be Evidence of the Rules of the School.

24. A Certificate purporting to be signed by One of the Managers of a Certified Industrial School or their Secretary, or by the Superintendent or other Person in charge of the School, to the Effect that the Child therein named was duly received into and is at the signing thereof detained in the School, or has been duly discharged or removed therefrom, or otherwise disposed of according to Law, shall be Evidence of the Matters therein stated.

25. If a Child sent to a Certified Industrial School, and while liable to be detained there, being apparently above Ten Years of Age, and whether lodging in the School itself or not, wilfully neglects or wilfully refuses to conform to the Rules of the School, he shall be guilty of an Offence against this Act, and on summary Conviction thereof before Two Justices in Petty Sessions, or a Police Magistrate acting in any Police Court for the Dublin Metropolitan Police District, shall be liable to be imprisoned, with or

without Hard Labour, for any Term not less than Fourteen Days and not exceeding Three Months; and the said Justices or said Police Magistrate before whom he is convicted may direct him to be sent, at the Expiration of the Term of his Imprisonment, to a Certified Reformatory School, and to be there detained, subject and according to the Provisions of a Statute passed in the Twenty-first and Twenty-second Years of Her Majesty, entitled "An Act to promote and regulate late Reformatory Schools in Ireland."

26. If a Child sent to a Certified Industrial School and while liable to be detained there, and whether lodging in the School itself or not, escapes from the School, or neglects to attend thereat, he shall be guilty of an Offence against this Act, and may at any Time before the Expiration of his Period of Detention be apprehended without Warrant, and may (any other Act to the contrary notwithstanding) be then brought before a Justice or a Police Magistrate having Jurisdiction in the Place or District where he is found, or in the Place or District where the School from which he escaped is situate, and he shall thereupon be liable, on summary Conviction before such a Justice or Police Magistrate, to be, by and at the Expense of the Managers of the School, brought back to the same School, there to be detained during a Period equal to so much of his Period of Detention as remained unexpired at the Time of his committing the Offence.

If the Child charged with such an Offence is apparently above Ten Years of Age, then, on his summary Conviction of the Offence before Two such Justices or such a Police Magistrate, he shall be liable, at the Discretion of the Justice or Police Magistrate, instead of being sent back to the same School, to be imprisoned, with or without Hard Labour, for any Term not less than Fourteen Days, and not exceeding Three Months; and the Justice or Police Magistrate before whom he is convicted may direct him to be sent at the Expiration of the Term of his Imprisonment to a Certified Reformatory School, and to be there detained subject and according to the Provisions of a Statute passed in the Twenty-first and Twenty-second Years of Her Majesty, entitled "An Act to promote and regulate Reformatory Schools in Ireland"

27. If any Person does any of the following Things, (that is to say,)

First, knowingly assists, directly or indirectly, a Child liable to be detained in a Certified Industrial School to escape from the School;

Second, directly or indirectly induces such a Child so to escape;

Third, knowingly harbours or conceals a Child who has so escaped, or prevents him from

returning to School, or knowingly assists in so doing;

Every such Person shall be guilty of an Offence against this Act, and shall, on summary Conviction thereof before Two Justices or a Magistrate, be liable to a Penalty not exceeding Twenty Pounds, or, at the Discretion of the Justices, to be imprisoned for any Term not exceeding Two Months, with or without Hard Labour.

28. The Commissioners of Her Majesty's Treasury may from Time to Time contribute, out of Money provided by Parliament for the Purpose, such Sums as the Secretary of State from Time to Time thinks fit to recommend, towards the Custody and Maintenance of Children detained in Certified Industrial Schools.

29. The Parent, Step-parent, or other Person for the Time being legally liable to maintain a Child detained in a Certified Industrial School shall, if of sufficient Ability, contribute to his Maintenance and Training therein a Sum not exceeding Five Shillings per Week.

30. On the Complaint of the Inspector of Industrial Schools, or of any Agent of the Inspector, or of any Constable under the Directions of the Inspector (with which Directions every Constable is hereby required to comply), at any Time during the Detention of a Child in a Certified Industrial School, Two Justices or a Magistrate having Jurisdiction at the Place where the Parent, Step-parent, or other Person liable as aforesaid resides may, on Summons to the Parent, Step-parent, or other Person liable as aforesaid, examine into his Ability to maintain the Child, and may, if they or he think fit, make an Order or Decree on him for the Payment to the Inspector or his Agent of such weekly Sum, not exceeding Five Shillings per Week, as to them or him seems reasonable, during the whole or any Part of the Time for which the Child is liable to be detained in the School.

Every such Order or Decree may specify the Time during which the Payment is to be made, or may direct the Payment to be made until further Order.

Every such Payment or a proper proportionate Part thereof shall go in relief of the Charges on Her Majesty's Treasury, and the same shall be accounted for as the Commissioners of Her Majesty's Treasury direct, and where the Amount of the Payment ordered in respect of any Child exceeds the Amount contributed by the Commissioners of Her Majesty's Treasury in respect of that Child, the Balance shall be accounted for and paid to the Managers of the School.

The Chief Secretary may, in his Discretion, remit wholly or partially any Payment so ordered.

Two Justices or a Magistrate having Jurisdiction to make such an Order or Decree may from Time to Time vary any such Order or Decree as Circumstances require, on the Application either of the Person on whom such Order or Decree is made, or of the Inspector of Industrial Schools or his Agent, on Fourteen Days Notice being first given of such Application to the Inspector or Agent, or to such Person respectively.

31. A Person who has attained the Age of Sixteen Years shall not be detained in a Certified Industrial School, except with his own Consent in Writing.

32. It shall and may be lawful for the Chief Secretary to order a Child to be transferred from one Certified Industrial School to another: Provided that such Removal shall not increase the whole Period of such Child's Detention in an Industrial School, and that the Removal shall only be to some Industrial School under the Management of Persons of the same Religious Persuasion as that to which he might have been originally committed.

The Commissioners of Her Majesty's Treasury may pay, out of Money provided by Parliament for the Purpose, such Sums as the Chief Secretary thinks fit to recommend in discharge of the Expenses of the Removal of any Child transferred under the Provisions of this Act.

33. The Chief Secretary may at any Time order any Child to be discharged from a Certified Industrial School or from any Industrial School established under any other Act of Parliament, the general Rules for the Government whereof have been approved by the said Chief Secretary, either absolutely or on such Condition as the said Chief Secretary approves, and the Child shall be discharged accordingly.

34. The Chief Secretary, if dissatisfied with the Condition of a Certified Industrial School, may at any Time, by Notice under his Hand addressed to and served on the Managers thereof, declare that the Certificate of the School is withdrawn as from a Time specified in the Notice, not being less than Six Months after the Date thereof; and at that Time the Certificate shall be deemed to be withdrawn accordingly, and the School shall thereupon cease to be a Certified Industrial School.

35. The Managers or the Executors or Administrators of a deceased Manager (if only One) of a Certified Industrial School may give Notice in Writing to the Chief Secretary of their Intention to resign the Certificate of that School, and

at the Expiration in the Case of Managers of Six Months, and in the Case of Executors or Administrators of One Month, from the Receipt of that Notice by the said Chief Secretary, (unless before that Time the Notice is withdrawn,) the Certificate shall be deemed to be resigned accordingly, and the School shall thereupon cease to be a Certified Industrial School.

36. A Notice of the Withdrawal or Resignation of the Certificate of a Certified Industrial School shall within One Month be inserted by Order of the Chief Secretary in the "*Dublin Gazette*."

A Copy of the "*Dublin Gazette*" containing such Notice shall be conclusive Evidence of such Withdrawal or Resignation.

A Certificate shall be presumed to be in force until the Withdrawal or Resignation thereof is proved.

37. Where Notice is given of the Withdrawal or Resignation of the Certificate of a Certified Industrial School, no Child shall be received into the School for Detention under this Act after the Receipt by the Managers of the School of the Notice of Withdrawal, or after the Date of the Notice of Resignation, as the Case may be; but the Obligation of the Managers to teach, train, clothe, lodge, and feed any Children detained in the School at the Time of such Receipt or at the Date of such Notice shall, except as far as the Chief Secretary otherwise directs, be deemed to continue until the Withdrawal or Resignation of the Certificate takes effect, or until the Contribution out of Money provided by Parliament

towards the Custody and Maintenance of the Children detained in the School is discontinued, whichever shall first happen.

38. Where a School ceases to be a Certified Industrial School the Children detained therein shall be either discharged or transferred to some other Certified Industrial School by Order of the Chief Secretary.

39. No Summons, Notice, or Order made for the Purpose of carrying into effect the Provisions of this Act shall be invalidated for Want of Form only; and the Forms in the Schedule to this Act annexed, or Forms to the like Effect, may be used in the Cases to which they refer, with such Variations as Circumstances require, and when used shall be deemed sufficient.

40. Any Notice may be served on the Managers of a Certified Industrial School by being delivered to any One of them personally, or by being sent by Post or otherwise in a Letter addressed to them or any of them at the School, or at the usual or last known Place of Abode of any of the Managers, or of their Secretary.

41. The Petty Sessions (Ireland) Act, 1851, shall apply to all Offences, Payments, and Orders in respect of which Jurisdiction is given to Justices or a Police Magistrate by this Act, or which are by this Act directed to be prosecuted, enforced, or made in a summary Manner or on summary Conviction.

The SCHEDULE.

FORMS.

(A.)

Order sending Child to Industrial School.

BE it remembered, That on the _____ Day of _____, in pursuance of The Industrial Schools Act (Ireland), 1868, we, Two of Her Majesty's Justices of the Peace† for the said [County] of _____, do order that A.B. of _____ (whose Religious Persuasion, as ascertained by Provision in Section 15 of the said Act, is _____), being a Child subject to the Provisions of Section _____ of the said Act, be sent to the _____ Certified Indus-

trial School at _____, and that he be detained there during _____

(Signed) L.M.
N.O.

(C.)

Complaint for enforcing Contribution from Parent, &c.

The Complaint of the Inspector of Industrial Schools [or as the Case may be] made to us,† the undersigned, Two of Her Majesty's Justices of the Peace for the said County of _____, this _____ Day

† Or in Dublin, "I, Police Magistrate of the Dublin Metropolitan Police District."

† Or in Dublin, "to me, a Police Magistrate of the Dublin Metropolitan Police District."

of at in the same County,
 who says, that one A.B. of (*) the Age of
 Years or thereabouts is now detained in the
 Industrial School at
 in the County of , under The
 Industrial Schools (Ireland) Act, 1868, and has
 been duly ordered and directed to be detained
 therein until the Day of :
 That one C.B., dwelling in the Parish of
 in the County of is the Parent [or
 Step-parent, &c.] of the said A.B., and is of
 sufficient Ability to contribute to the Support
 and Maintenance of the said A.B., his Son: (*)
 The said Complainant therefore prays that the
 said C.B. may be summoned to show Cause why
 an Order should not be made on him so to con-
 tribute.

C.D.

Exhibited before us,
 (Signed)

J.S.
 L.M.

(D.)

Summons to the Parent.

To C.B. of [Labourer].

WHEREAS Information hath this Day been
 laid [or Complaint hath this Day been made]
 before the undersigned [One, or as the Case may
 be] of Her Majesty's Justices of the Peace in and
 for the said [County] of for that you
 [here state shortly the Matter of the Information
 or Complaint]: These are therefore to command
 you in Her Majesty's Name to be and appear on
 at o'Clock in the Fore-
 noon at before such Justices of the
 Peace for the said County [or as the Case may be]
 as may then be there, to answer the said Informa-
 tion [or Complaint], and to be further dealt with
 according to Law.

Given under my [or our] Hand and Seal,
 this Day of in the Year of
 our Lord at in the [County]
 aforesaid.

(E.)

Order on Parent, &c. to contribute a Weekly Sum.

Be it remembered, That on this
 to wit. } Day of at in the said
 [County] of a certain Complaint of
 the Inspector of Industrial Schools [or as the
 Case may be], for that one A.B. of, &c. [stating
 the Cause of Complaint as in the Form (C.) between
 the Asterisks (*) (*)] was duly heard by and
 before us, the undersigned, Two of† Her Majesty's

Justices of the Peace in and for the said [County]
 of (in the Presence and Hearing of the
 said C.B., if so, or the said C.B. not appearing
 to the Summons duly issued and served in this
 Behalf); and we, having duly examined into the
 Ability of the said C.B., and on consideration of
 all the Circumstances of the Case, do order the
 said C.B. to pay to the said Inspector [or to an
 Agent of the said Inspector] the Sum of
 Shillings per Week from the Date of this Order
 until Day of the same to
 be paid at the Expiration of each [Fourteen, or as
 the Case may be, Days].

Given under our Hands and Seals, the Day
 and Year first above mentioned, at in
 the [County] aforesaid.

J.S. (L.S.)
 L.M. (L.S.)

(F.)

Distress Warrant for Amount in arrear.

To the Head or other Constable of
 to wit. } , and to all other Peace Officers in
 the said [County] of

WHEREAS on the Hearing of a Complaint
 made by the Inspector of Industrial Schools [or
 as the Case may be], that A.B.] of, &c. [stating
 the Cause of Complaint as in the Form (C.) between
 the Asterisks (*) (*)], an Order was made on the
 Day of by us, the under-
 signed [or by L.M. and J.H.], Two † of Her Ma-
 jesty's Justices of the Peace in and for the said
 [County] of against the said C.B., to
 pay to the said Inspector [or as the Case may be]
 the Sum of per Week from the Date of
 the said Order until the Day of
 the same to be paid at the Expiration of each
 [Twenty-eight] Days [or as the Case may be] (*):
 And whereas there is due upon the said Order
 the Sum of being for [Three] Periods
 of [Fourteen] Days each, and Default has been
 made therein for the Space of Fourteen Days:

These are therefore to command you, in Her Ma-
 jesty's Name, forthwith to make Distress of the
 Goods and Chattels of the said C.B., and if within
 the Space of [Five] Days next after the making
 of such Distress the said last-mentioned Sum, to-
 gether with the reasonable Charges of taking and
 keeping the said Distress, is not paid, that then
 you do sell the said Goods and Chattels so by you
 distrained, and do pay the Money arising from
 such Sale to the Clerk of the Justices of
 the Peace for the of that he may
 pay and apply the same as by Law directed, and
 may render the Overplus (if any), on Demand,

†Or in Dublin, "One of the Police Magistrates of the
 Dublin Metropolitan Police District."

†Or in Dublin, "One of the Police Magistrates of the
 Dublin Metropolitan Police District."

to the said C.B.; and if no such Distress can be found, then that you certify the same to us, to the end that such Proceedings may be had therein as the Law requires.

Given under our Hands and Seals, this
Day of at in the [County]
aforesaid.

J.S. (L.S.)
L.M. (L.S.)

(G.)

Commitment in default of Distress.

To the Head or other Constable of
and to the Keeper of the [Prison], at
in the said [County] of

WHEREAS [&c., as in the Form (F.) to the
single Asterisk (*) and then thus]: And whereas
afterwards on the Day of
as I, the undersigned, together with L.M.,
Esquire, [or J.S. and L.M., Esquires,] Two† of
Her Majesty's Justices of the Peace in and for the
said [County] of , issued a Warrant
to the Constable of aforesaid, com-

†Or in Dublin, "One of the Police Magistrates of the
Dublin Metropolitan Police District."

manding him to levy the Sum of due
upon the said recited Order, being for [Three]
Periods of [Fourteen] Days, by Distress and Sale
of the Goods and Chattels of the said C.B.: And
whereas a Return has this Day been made to me
the said Justice [or the undersigned, One of Her
Majesty's Justices of the Peace in and for the said
[County] of] that no sufficient Goods of
the said C.B. can be found:

These are therefore to command you the said
Head Constable of to take the said
C.B., and him safely to convey to the [Prison] at
aforesaid, and there deliver him to the
Keeper thereof, together with this Precept: And
I do hereby command you the said Keeper of the
said [Prison] to receive the said C.D. into your
Custody in the said [Prison], there to imprison
him for the Term of , unless the
said Sum, and all Costs and Charges of the said
Distress, and of the Commitment and con-
veying of the said C.D. to the said [Prison],
amounting to the further Sum of ,
shall be sooner paid unto you the said Keeper,
and for your so doing this shall be your suffi-
cient Warrant.

Given under my Hand and Seal, this
Day of in the Year of our Lord
at in the [County] aforesaid.
J.S. (L.S.)

CAP. XXVI.

Indian Railway Companies.

ABSTRACT OF THE ENACTMENTS.

1. Power to each Company to create and issue Debenture Stock, with the Sanction of the Secretary of State in Council of India.
2. The following Provisions to apply to Debenture Stock. Debenture Stock to be a prior Charge. Interest on Debenture Stock to be a primary Charge. Debenture Stock to be registered. Company to declare Certificate to Holders of Debenture Stock. Mortgagees not to be affected by this Act. Holders of Debenture Stock not to vote. Application of Money raised. Separate Accounts to be kept of Debenture Stock. Borrowing Powers extinguished.

An Act to enable certain guaranteed
Indian Railway Companies to raise
Money on Debenture Stock.

(29th May 1868.)

WHEREAS the Railway Companies severally
known as the Great Indian Peninsula Railway
Company, the East Indian Railway Company,
the Madras Railway Company, the Bombay,
Baroda, and Central India Railway Company,
the Scinde Railway Company, the Eastern Bengal

Railway Company, and the Oude and Rohilcund
Railway Company, Limited, were constituted and
incorporated by Acts of Parliament, or by Cer-
tificate under Act of Parliament, for the Purpose
of constructing, maintaining, and working Rail-
ways in India; and the said Companies have,
under Powers vested in them by their Acts, or
otherwise vested in them, entered into terminable
Contracts and Arrangements with the East India
Company, or with the Secretary of State in Council
of India, with respect to their Undertakings, and
they have in exercise of such Powers, with the

Sanction of the East India Company, or the Secretary of State in Council of India, raised Capital by the Issue of Shares or Stock, and have borrowed Money for their Undertakings on the Security of Mortgages or Bonds :

And whereas it is expedient that each of the said Companies should be empowered to create, with the Sanction of the Secretary of State in Council of India, Debenture Stock in lieu of borrowing or in substitution for, or for the Discharge of, Mortgages or Bonds :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. Each of the said Companies may from Time to Time, with the Sanction of the Secretary of State in Council of India, and of Three Fifths of the Votes of its Shareholders and Stockholders entitled to vote in that Behalf at Meetings of the Company, present in Person or by Proxy at any Extraordinary Meeting convened with Notice of this Purpose, raise all or any Part of the Money which for the Time being the Company has raised or is authorized to raise on Mortgage or Bond by the Creation and Issue at such Times, in such Amounts and Manner, on such Terms, at such Price, subject to such Conditions, and with such Rights and Privileges, as the Secretary of State in Council of India shall think fit, of Stock to be called Debenture Stock, instead of and to the same Amount as the whole or any Part of the Money which may for the Time being be owing by the Company on Mortgage or Bond, or which the Company may from Time to Time have Power to raise on Mortgage or Bond, and may, with such Sanction of its Shareholders and Stockholders as aforesaid, attach to the Stock so created such fixed and perpetual irredeemable, redeemable, variable, or other Interest at such Rate, payable half-yearly or otherwise, and commencing at once or at any future Time or Times, when and as the Debenture Stock shall be issued or otherwise, as the Secretary of State in Council of India shall think fit.

2. All the Provisions following shall apply to every Case of One of the said Companies exercising the Power herein-before given for raising Money by the Creation and Issue of Debenture Stock ; (that is to say,)

1. The Debenture Stock, with the Interest thereon, shall be a Charge upon the Undertaking of the Company prior to all other Stock or Shares of the Company, and shall be transmissible and transferable in the same Manner and according to the same Regulations and

Provisions as other Stock of the Company, and shall in all other respects have the Incidents of Personal Estate.

2. The Interest on Debenture Stock shall have Priority of Payment over all Dividends or Interest on any other Stock or Shares of the Company, and shall rank next to the Interest payable on the Mortgages or Bonds for the Time being of the Company legally granted before the Creation of such Stock, but the Holders of Debenture Stock shall not as among themselves be entitled to any Preference or Priority.

3. The Company shall cause Entries of the Debenture Stock from Time to Time created to be made in a Register to be kept for that Purpose, wherein they shall enter the Names and Addresses of the several Persons and Corporations from Time to Time entitled to the Debenture Stock, with the respective Amounts of the Stock to which they are respectively entitled, and any Instalments by which the Price or Subscription for any Debenture Stock may be made payable shall be recoverable as Calls are recoverable under "The Companies Clauses Consolidation Act, 1845."

4. The Company shall deliver to every Holder of Debenture Stock a Certificate stating the Amount of Debenture held by him, and all Regulations or Provisions for the Time being applicable to Certificates of Shares in the Capital of the Company shall apply, *mutatis mutandis*, to Certificates of Debenture Stock.

5. Nothing herein contained shall in any way affect any Mortgage or Bond at any Time legally granted by the Company before the Creation of such Stock, or any Power of the Company to raise Money on Mortgage or Bond, so far as such Power is not by this Act expressly extinguished ; but the Holders of all such Mortgages and Bonds shall, during the Continuance thereof, respectively be entitled to the same Priorities, Rights, and Privileges in all respects as they would have been entitled to if this Act had not been passed.

6. The Debenture Stock shall not entitle the Holders thereof to be present or vote at any Meeting of the Company, or confer any Qualification with reference to the Government thereof, but shall in all respects, not otherwise by this Act provided for, be considered as entitling the Holders to the Rights and Powers of Mortgagees of the Undertaking other than the Right to require Repayment of

the Principal Money paid up in respect of the Debenture Stock: Provided always, that if on the Issue of any such Stock the Company shall have agreed to repay the Principal Money at a fixed Time, the Holders thereof shall be entitled to be repaid their Principal Money at such fixed Time.

7. The Money raised by Debenture Stock shall be applied exclusively either in paying off Money due by the Company on Mortgage or Bond, or else for the Purposes to which the same Money would be applicable if it were raised on Mortgage or Bond instead of on Debenture Stock; provided always, that the Receipt, Disposal, and Application of all Monies raised by the Debenture Stock shall be at all Times and in all respects subject to

the Supervision, Direction, and Control of the Secretary of State in Council of India.

8. Separate and distinct Accounts shall be kept by the Company showing how much Money has been received for or on account of Debenture Stock, and how much Money borrowed or owing on Mortgage or Bond for which they have Power so to borrow has been paid off by Debenture Stock or raised thereby instead of being borrowed on Mortgage or Bond.
9. The Powers of borrowing and reborrowing by the Company shall, to the Extent of the nominal Amount of the Debenture Stock for the Time being issued, be extinguished.

CAP. XXVII.

Exchequer Bonds (£1,600,000).

ABSTRACT OF THE ENACTMENTS.

1. *Treasury may raise 1,600,000*l.* by Exchequer Bonds.*
2. *Interest on Bonds, and Repayment of Principal Money.*
3. *Treasury may cause Exchequer Bonds to be prepared and issued according to Provisions of 29 & 30 Vict. c. 25.*
4. *Persons forging Exchequer Bonds, &c. guilty of Felony.*
5. *Money raised to be paid to the Consolidated Fund.*
6. *Bank of England may advance 1,600,000*l.* on the Credit of Bonds, and National Debt Commissioners may purchase Bonds with Savings Banks Money.*

An Act for raising the Sum of One million six hundred thousand Pounds by Exchequer Bonds for the Service of the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

(29th May 1868.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal Subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary Supplies which we have cheerfully granted to Your Majesty in this Session of Parliament, have resolved to give and grant unto Your Majesty the Sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent

Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. Towards making good the Supply granted to Her Majesty for the Service of the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine, it shall be lawful for the Commissioners of Her Majesty's Treasury at any Time or Times, but not later than the Thirty-first Day of March One thousand eight hundred and sixty-nine, to cause any Number of Exchequer Bonds to be made out at the Bank of England for any Sum or Sums of Money not exceeding in the whole the Sum of One million six hundred thousand Pounds, and such Bonds shall bear such Interest as shall be determined by the said Commissioners, not exceeding Four Pounds per Centum per Annum, and shall be paid off at Par at the Expiration of

any Period or Periods not exceeding Five Years in respect of Six hundred thousand Pounds, Part of the said Sum of One million six hundred thousand Pounds, and Twelve Months in respect of the Sum of One million Pounds, from the Date of such Bonds respectively.

2. The Interest on such Bonds shall be paid half-yearly on such Days as shall be appointed by the said Commissioners, and shall be charged upon and issued out of the Consolidated Fund of the United Kingdom, or out of the growing Produce thereof; and the Principal Monies secured by such Bonds shall be repaid out of such Money as shall be provided by Parliament in that Behalf.

3. The Commissioners of Her Majesty's Treasury may from Time to Time, by Warrant under their Hands, cause or direct the Exchequer Bonds to be issued under the Authority of this Act to be prepared for such Principal Sums, not less in any Case than One hundred Pounds, together with Coupons for the Interest becoming due from Time to Time thereon, in such Form and under such Regulations as the said Commissioners may think most safe and convenient, and according to the Provisions, so far as they relate to Exchequer Bonds, of an Act of the Twenty-ninth Year of Her Majesty, Chapter Twenty-five, intituled "An Act to consolidate and amend the several Laws

" regulating the Preparation, Issue, and Payment " of Exchequer Bills and Bonds."

4. If any Person shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any Exchequer Bond issued under this Act, or any Coupon for Interest accruing thereon, such Person shall be guilty of Felony, and upon being lawfully convicted thereof shall suffer accordingly.

5. All such Sums of Money as shall be raised by Exchequer Bonds to be made out in pursuance of this Act shall be paid to the Account of Her Majesty's Exchequer at the Bank of England, and shall be carried to and form Part of the Consolidated Fund of the United Kingdom.

6. The Governor and Company of the Bank of England may advance or lend to Her Majesty, upon the Credit of the Exchequer Bonds to be made out in pursuance of this Act, any Sum or Sums of Money not exceeding in the whole the Sum of One million six hundred thousand Pounds (anything in any Act to the contrary notwithstanding); and the Commissioners for the Reduction of the National Debt may invest, in the Purchase of Exchequer Bonds issued under the Authority of this Act, any Money in their Hands on account of Savings Banks, or Post Office Savings Banks.

CAP. XXVIII.

Customs and Income Tax.

ABSTRACT OF THE ENACTMENTS.

1. *Grant of Duties specified in Schedules annexed.*
 2. *Provisions of former Acts to apply to this Act.*
 3. *The Sums assessed to the Income Tax under Schedules (A.) and (B.) for the Year 1867 to be taken as the annual Value for Assessment under this Act.*
 4. *Assessors not to be appointed for Duties under Schedules (A.) and (B.)*
 5. *The Provision made for assessing the Income Tax on the Interest and Dividends payable in the United Kingdom arising out of Foreign Companies extended to Annuities, Pensions, &c. payable out of Funds in India.*
- Schedules.*

An Act to grant certain Duties of Customs and Income Tax.

(29th May 1868.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal Subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament as-

sembled, towards raising the necessary Supplies to defray Your Majesty's Public Expenses, and making an Addition to the Public Revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several Duties herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the

Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. There shall be charged, collected, and paid for the Use of Her Majesty, Her Heirs and Successors, the Duties of Customs and Income Tax specified in the Schedules marked respectively (A.) and (B.) to this Act annexed; and the said Duties shall be charged, collected, and paid for and during the Periods specified in that Behalf in the said Schedules respectively, and the said Schedules shall be deemed to be Part of this Act.

2. All the Powers, Provisions, Allowances, Exemptions, Forfeitures, and Penalties contained in or imposed by any Act or Acts, or any Schedule thereto, relating to Customs Duties, and in force at the Time of the passing of this Act, and relating to the Duties of Income Tax, and in force on the Fifth Day of April One thousand eight hundred and sixty-eight, shall respectively be in full Force and Effect with respect to the said Duties granted by this Act, so far as the same are applicable, and shall be observed, applied, allowed, enforced, and put in execution for, and in the raising, levying, collecting, and securing of the said Duties, and otherwise in relation thereto, so far as the same shall not be superseded by and shall be consistent with the Provisions of this Act, as fully and effectually to all Intents and Purposes as if the same had been herein expressly enacted with reference to the said Duties respectively; and for the Purposes of this Act the Year One thousand eight hundred and sixty-two mentioned in the Forty-third Section of the Act passed in the Twenty-fifth Year of Her Majesty's Reign, Chapter Twenty-two, shall be read as and deemed to mean the Year One thousand eight hundred and sixty-eight.

3. The Sum charged as the annual Value or Amount of any Property, Profits, or Gains in the several and respective Assessments of Income Tax made in pursuance of the Act passed in the Thirtieth Year of Her Majesty's Reign, Chapter Twenty-three, under Schedules (A.) and (B.) respectively of the Act passed in the Sixteenth and Seventeenth Years of Her Majesty's Reign, Chapter Thirty-four, for the Year ended on the Fifth Day of April One thousand eight hundred and sixty-eight, shall (except in Cases for which other Provision is made by the Acts relating to Income Tax) be taken as the annual value or Amount of such Property, Profits, or Gains respectively for the Year commencing on the Sixth Day of April One thousand eight hundred and sixty-eight, and the Duties of Income Tax granted by this Act, and chargeable under the said Schedules respectively, shall be computed, assessed, and charged according to such annual Value or Amount, and

the Commissioners executing the Income Tax Acts shall, for each Place within their several and respective Districts, cause Duplicates of the Assessments of the said Duties so computed, assessed, and charged, under the said Schedules (A.) and (B.) for the said last-mentioned Year to be made out and delivered together with Warrants for collecting the same; and in England the said Commissioners shall appoint such Persons, being Inhabitants of the Place to which the Duplicate shall relate, as they the said Commissioners shall think fit, to be Collectors of the Duties thereby charged, in like Manner as if such Persons had been presented to them by Assessors under the Acts now in force: Provided always, that the said Assessments shall be subject to be increased in like Manner as the Assessments made for the Year ended on the Fifth Day of April One thousand eight hundred and sixty-eight, and subject also to be abated or discharged at the End of the Year commencing on the Sixth Day of April One thousand eight hundred and sixty-eight for any Cause allowed by the said Acts; provided that whenever it shall appear that any Property, Profits, or Gains chargeable under the said Schedules (A.) and (B.) respectively have not been charged by the Assessments made for the Year ended on the Fifth Day of April One thousand eight hundred and sixty-eight, such Property, Profits, and Gains shall be assessed to the Duties of Income Tax granted by this Act under the Provisions of the said several Acts applicable thereto.

4. No Assessors shall be appointed for the Duties payable under the said Schedules (A.) and (B.), but the Inspectors or Surveyors of Taxes shall act as Assessors in respect of such Duties whenever it shall be necessary; and in lieu of the Poundage granted by the One hundred and eighty-third Section of the Act of the Fifth and Sixth Years of Her Majesty, Chapter Thirty-five, to be divided between the Assessors and Collectors in regard to the Duties which shall be collected under the said Schedules (A.) and (B.), there shall be paid a Poundage of Three Halfpence to the Collectors of the said Duties.

5. The Provisions contained in Section Ten of the said Act of the Sixteenth and Seventeenth Years of Her Majesty's Reign, Chapter Thirty-four, with reference to the assessing and charging the Income Tax on Interest, Dividends, or other annual Payments payable out of or in respect of the Stocks, Funds, or Shares of any Foreign Company, Society, Adventure, or Concern, shall be and the same are hereby extended and shall be applied to the assessing and charging of the Income Tax on all Annuities, Pensions, or other annual Sums payable out of the Funds of any Institution in India, which said Annuities, Pen-

sions, or annual Sums have been or shall be intrusted to any Person in the United Kingdom for Payment to any Persons resident in the United Kingdom.

SCHEDULES.

SCHEDULE (A.)

CONTAINING THE DUTIES OF CUSTOMS
GRANTED BY THIS ACT.

The Duties of Customs now charged on Tea shall continue to be levied and charged,
On and after the First Day of August One thousand eight hundred and sixty-eight until the First Day of August One thousand eight hundred and sixty-nine, on the Importation thereof into Great Britain and Ireland; that is to say,

	£	s.	d.
Tea - - the lb.	0	0	6

SCHEDULE (B.)

CONTAINING THE DUTIES OF INCOME TAX
GRANTED BY THIS ACT.

For One Year commencing on the Sixth Day of April One thousand eight hundred and sixty-eight, for and in respect of all Property, Profits, and Gains mentioned or described as chargeable

in the Act passed in the Sixteenth and Seventeenth Years of Her Majesty's Reign, Chapter Thirty-four, for granting to Her Majesty Duties on Profits arising from Property, Professions, Trades, and Offices, the following Duties shall be charged; (that is to say,)

For every Twenty Shillings of the annual Value or Amount of all such Property, Profits, and Gains (except those chargeable under Schedule (B.) of the said Act), the Duty of Sixpence.
And for and in respect of the Occupation of Lands, Tenements, Hereditaments, and Heritages chargeable under Schedule (B.) of the said Act, for every Twenty Shillings of the annual Value thereof:

In England, the Duty of Threepence.

And in Scotland and Ireland respectively, the Duty of Twopence Farthing.

Subject to the Provisions contained in Section Three of the Act Twenty-sixth Victoria, Chapter Twenty-two, for the Exemption of Persons whose whole Income from every Source is under One hundred Pounds a Year, and Relief of those whose Income is under Two hundred Pounds a Year.

CAP. XXIX.

The Medical Act Amendment Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Interpretation of Act.*
3. *Power to Colonial Legislatures to enforce Registration of Persons registered under "The Medical Act."*

An Act to amend the Law relating to Medical Practitioners in the Colonies.
(29th May 1868.)

WHEREAS by the Thirty-first Section of "The Medical Act," passed in the Session holden in the Twenty-first and Twenty-second Years of Her Majesty, Chapter Ninety, it is enacted as follows: "Every Person registered under this Act shall "be entitled, according to his Qualification or "Qualifications, to practise Medicine or Surgery, "or Medicine and Surgery, as the Case may be,

"in any Part of Her Majesty's Dominions, and "to demand and recover in any Court of Law, "with full Costs of Suit, reasonable Charges for "professional Aid, Advice, and Visits, and the "Cost of any Medicines or other medical or "surgical Appliances rendered or supplied by "him to his Patients:" And whereas it is expedient; to amend the said Enactment: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited as "The Medical Act Amendment Act, 1868."

2. The Term "Colony" shall in this Act include all of Her Majesty's Possessions abroad in which there shall exist a Legislature as hereinafter defined, except the Channel Islands and the Isle of Man.

The Term "Colonial Legislature" shall signify the Authority other than the Imperial Parliament or Her Majesty in Council competent to make Laws for any Colony.

3. Every Colonial Legislature shall have full Power from Time to Time to make Laws for the Purpose of enforcing the Registration within its Jurisdiction of Persons who have been registered under "The Medical Act," anything in the said Act to the contrary notwithstanding: Provided, however, that any Person who has been duly registered under "The Medical Act" shall be entitled to be registered in any Colony, upon Payment of the Fees (if any) required for such Registration, and upon Proof, in such Manner as the said Colonial Legislature shall direct, of his Registration under the said Act.

CAP. XXX.

United Parishes (Scotland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

7 & 8 Vict. c. 44. and 29 & 30 Vict. c. 77. recited.

1. 29 & 30 Vict. c. 77. repealed.

2. In a United Parish containing several Parish Churches, Persons undertaking to endow One of them may apply for Disjunction, and Erection of a Parish quoad sacra, without erecting a Church.

3. Court, in pronouncing Decree of Disjunction and Erection, may declare One of several Churches of a United Parish to be the Church of new Parish quoad sacra.

4. Church not to be subject to Trust.

5. Not to increase Liabilities of Heritors.

6. This Act and first-recited Act incorporated.

7. Short Title.

An Act to amend the Act of the Seventh and Eighth Years of the Reign of Victoria, Chapter Forty-four, relating to the Formation of quoad sacra Parishes in Scotland, and to repeal the Act of the Twenty-ninth and Thirtieth Years of the Reign of Victoria, Chapter Seventy-seven. (29th May 1868.)

WHEREAS by the Act of the Seventh and Eighth Victoria, Chapter Forty-four, intituled "An Act to facilitate the disjoining or dividing of extensive or populous Parishes, and the erecting of new Parishes, in that Part of the United Kingdom called Scotland," Provision is made (by Section Eight), in the Case of a Church built or acquired, or undertaken to be built or acquired and endowed, or undertaken to be endowed, by any Person or Persons, at his, her, or their Expense, for the Erection of such Church and a District to be attached thereto quoad sacra into a Church and Parish in connexion with the Church of Scotland:

And whereas there are in Scotland United Parishes in which there are already Two or more Parish Churches maintained:

And whereas in such United Parishes an Increase of Population or other Change of Circumstances may take place, rendering it expedient, under the Provisions of the said Act, to apply for Disjunction from such United Parishes, and Erection into a Parish quoad sacra, of a District thereof:

And whereas by the Act of the Twenty-ninth and Thirtieth Victoria, Chapter Seventy-seven, Power was conferred upon the Heritors of such United Parishes to convey or make over any One of the Parish Churches of such United Parish to the Party or Parties who shall have endowed or undertaken to endow such Parish quoad sacra, but it has been found that the said last-mentioned Act has not sufficiently accomplished the Objects for which it was designed; and it is expedient that the said Act should be repealed, and other Provisions should be made in lieu thereof:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows; viz.

1. The Act Twenty-ninth and Thirtieth Victoria, Chapter Seventy-seven, is hereby repealed.

2. Whenever, in the Case of any United Parish containing Two or more Parish Churches, any Persons have undertaken to endow One of the said Churches along with a District, being Part of such United Parish, to be attached thereto, it shall be competent for them to apply for the Disjunction of such District, and for the Erection of it into a Parish quoad sacra, in Terms of the Eighth Section of the said first-recited Act, and for the Court to entertain and dispose of such Application in the same Manner and to the same Effect as if the Persons applying for such Disjunction and Erection had, at his, her, or their Expense, built or acquired or undertaken to build or acquire a Church, in order to its being erected into a Parish Church in connexion with the Church of Scotland: Provided also, that it shall not be necessary for the Persons applying for such Disjunction and Erection to make any Provision for the Maintenance of the Fabric of the Church which they shall have undertaken to endow as aforesaid.

3. It shall be competent for the Court, in pronouncing Decree of Disjunction and Erection in an Application presented under the preceding Section, to declare that the Church undertaken to be endowed shall, from and after the Date of

the Decree, be the Parish Church of the newly erected Parish, and the said Church shall thereafter be the Parish Church of the said newly erected Parish; and the Minister and Kirk Session of the newly erected Parish quoad sacra shall be invested with all those Rights in relation to the Church of the newly erected Parish which were formerly vested in the Minister and Kirk Session of the said United Parish.

4. The Church which shall be declared as aforesaid to be the Church of the newly erected Parish quoad sacra shall not be subject to the Provisions of any Trust constituted in Terms of the first-recited Act, or to any Trust applicable to a Church erected by voluntary Contributions as the Church of a Parish quoad sacra.

5. Nothing in this Act shall increase or affect the existing Liabilities of the Heritors in any Parish.

6. This Act shall be deemed to be incorporated with the first-recited Act, and the said first-recited Act shall be read and have Effect accordingly.

7. This Act may for all Purposes be cited as the "United Parishes (Scotland) Act, 1868."

CAP. XXXI.

The Stockbrokers (Ireland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *No Bond to be registered or redocketed until Breach of Condition.*
2. *Short Title.*

An Act to amend the Act passed in the Session of Parliament held in Ireland in the Thirty-ninth Year of the Reign of His Majesty King George the Third, intituled "An Act for the better Regulation of Stockbrokers."

(25th June 1868.)

WHEREAS by an Act passed in the Session of Parliament held in Ireland in the Thirty-ninth Year of the Reign of His Majesty King George the Third, Chapter Sixty, intituled "An Act for the better Regulation of Stockbrokers," it is amongst other things enacted, that "no Person shall act in the Capacity of Stockbroker in the selling or buying of any Government Stock, or Government Securities on Commission, without having

"taken out a Licence for that Purpose under the Hands of Two or more of the Commissioners of His Majesty's Treasury;" and further, "that every such Person shall, before such Licence be granted, enter into a Bond to His Majesty in the Penalty of Two thousand Pounds for himself, and Two Securities of Five hundred Pounds each," conditioned as in the said Act is provided:

And whereas in pursuance of the Provisions of the said recited Act Licences have been from Time to Time taken out by Stockbrokers, and the said Stockbrokers have respectively before obtaining such Licences duly entered into Bonds in the Amount, with the Securities, in the Manner, and subject to the Condition in the said recited Act provided, but none of the said Bonds have been put in force:

And whereas it is expedient to make Provision that the Bonds heretofore given to Her Majesty or any of Her Predecessors, or hereafter to be given to Her Majesty or any of Her Successors, in pursuance of the Provisions of the recited Act, shall not be registered or redocketed under the Provisions of the Statutes in that Behalf until Breach of any of the Conditions of the same respectively :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament as-

sembled, and by the Authority of the same, as follows :

1. No Bond heretofore given to Her Majesty or any of Her Predecessors, or to be hereafter given to Her Majesty or any of Her Successors, by any Person or Persons in pursuance of the Provisions of the recited Act, shall be registered or redocketed under the Provisions of the Statutes in that Behalf until Breach of any of the Conditions of the same.

2. This Act may be cited for all Purposes as "The Stockbrokers (Ireland) Act, 1868."

CAP. XXXII.

The Endowed Schools Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Persons appointed after passing of Act to take Office subject to future Legislation.*
3. *Definition of "Governing Body."*
4. *Definition of "Office or Emolument."*
5. *Not to affect Tenure of any Scholarship, &c. as herein specified.*
6. *Duration of Act.*

An Act for annexing Conditions to the Appointment of Persons to Offices in certain Schools. (25th June 1868.)

WHEREAS the Commissioners appointed to inquire into the Education given in Schools not comprised within the Scope of certain Letters Patent of Her Majesty, bearing Date respectively the Thirtieth Day of June One thousand eight hundred and fifty-eight and the Eighteenth Day of July One thousand eight hundred and sixty-one, made their Report dated the Second Day of December One thousand eight hundred and sixty-seven :

And whereas by such Report it appears that Legislation will be necessary with a view to carry into effect the Recommendations therein contained with respect to such of the aforesaid Schools as are endowed :

And whereas it is expedient that no Impediment should be created to the free Action of the Legislature in carrying into effect such Recommendations by the Acquisition of vested Interests by Persons appointed to Offices or other Emoluments after the passing of this Act :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited for all Purposes as "The Endowed Schools Act, 1868."

2. Every Person appointed after the passing of this Act to any Office or Emolument in or in the Gift of the Governing Body of any of the said Schools shall take and hold such Office or Emolument subject to such Provisions and Regulations as may hereafter be enacted respecting the same.

3. For the Purposes of this Act the Term "Governing Body" shall include Patrons, Trustees, Governors, or other Persons in whom is vested the Right of appointing new Masters in the said Schools on Vacancies occurring, and of holding and managing the Property of the said Schools, or either of such Rights.

4. "Office or Emolument" shall include any Mastership, also any Office to which the Duty of teaching Grammar is attached, also any Employment in or about the Estates or Property of the Governing Body, also any Pension or Compensation Allowance.

5. This Act shall not affect the Tenure of any Scholarship, Exhibition, or other like Emolument, or any Pension or Compensation Allowance to

which any Person is entitled by reason of a certain Number of Years Service, and the Amount of which is not in the Discretion of the Governing Body.

6. This Act shall continue in force until the First Day of August One thousand eight hundred and sixty-nine, and to the End of the then next Session of Parliament.

CAP. XXXIII.

The Cotton Statistics Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Interpretation of Terms.*
3. *Forwarders of Cotton to make Monthly Returns to the Board of Trade.*
4. *Publication of Information.*
5. *Penalty.*
6. *Orders in Council for Execution of Act, &c.*

An Act for the Collection and Publication of Cotton Statistics.

(25th June 1868.)

WHEREAS it would be of great public Advantage if Statistical Information respecting the Quantity of Cotton imported into the United Kingdom, and the Quantity removed (either by Sea or Land) from and to, and held in Stock at, the several Ports, were periodically obtained and published by Authority: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as the Cotton Statistics Act, 1868.

2. In this Act—

The Term "Forwarder" shall mean and include every Owner or Lessee of any Railway, Canal, or Inland Navigation who carries or conveys Cotton for Toll or other Consideration from or to any Port in the United Kingdom.

3. Every Forwarder shall on the Fourth Day of July One thousand eight hundred and sixty-eight, and on the Fourth Day of every subsequent

Month, make a Return in Writing to the Board of Trade, in such convenient Form as the Board of Trade may order, showing the Quantity of Cotton forwarded or received by him or them from or to any Port in the United Kingdom within the then last preceding Month.

4. The several Returns made to the Board of Trade under this Act shall be published in the same Manner as other Statistical Information is published by that Board.

5. If any such Forwarder be summoned by the Board of Trade to comply with the Requirements of this Act, and fail to do so, he or they shall for every Offence be liable on summary Conviction to a Penalty not exceeding Twenty Pounds.

6. It shall be lawful for Her Majesty in Council from Time to Time to make by Order in Council such Provisions as seem fit for the better Execution of this Act, and for otherwise procuring and publishing Statistical Information respecting the Stock of and the Importation of Cotton into, and the Exportation thereof from, and the Transport and Warehousing thereof within, the United Kingdom, and for the Publication from Time to Time of such Information. All such Orders in Council shall be published in the *London, Edinburgh, and Dublin Gazettes*, and shall be laid before both Houses of Parliament.

CAP. XXXIV.

Registration of Writs (Scotland).

ABSTRACT OF THE ENACTMENTS.

1. *Writs given in to be registered in the Books of Council and Session not to be given out.*
2. *Writs registered as Probative Writs not to be given back. Extracts of Indentures of Apprenticeship may be received in Evidence.*
3. *Extracts to bear Certificate of Stamp Duty.*

An Act to alter some Provisions in the existing Acts as to Registration of Writs in certain Registers in Scotland.
(25th June 1868.)

WHEREAS by an Act of the First Parliament of His Majesty King James the Seventh, held at Edinburgh in the Year One thousand six hundred and eighty-five, intituled "Act concerning the Registration of Writs in the Books of Session," certain Provisions were made as to the registering and extracting of Writs registered in the Books of Council and Session, and for the better securing of the Leiges and Preservation of Principal Writs, and it was by the said Act statute and ordained, inter alia, "that there shall be Two Minute Books kept in every Office, in the one whereof there shall be set down the Title of Writs given in to be registrate, the Name of the Giver-in, and the Date of the ingiving, which is to be subscribed by the Clerk or his Substitute foressaid; and all Writs so given in shall be booked within the Space of One Year after the ingiving; and if any Party, or one employed by him, shall desire up a Writ given in within the Space of Six Months after its ingiving, then the Title of the Writ, the Name of the Party, and the Date of both ingiving and outgiving of the said Writ, shall be insert in the other Minute Book, and be subscribed by the Receiver thereof, that as the one Minute Book doth charge, so the other Minute Book may discharge, the Clerk of such Writs, and that no Writ given in shall be taken out after the same is booked;"

And whereas the giving up of Writs to the Parties or others employed by them after the same have been given in to be registered in the Books of Council and Session has caused Inconvenience, and has been found to interfere with the due and regular booking of the Writs; and it is expedient, and will tend to greater Regularity and Security, that Writs, after having been given in to be registered in the Books of Council and Session, should not be given up, but should

remain in the Custody of the Keepers of the Registers, subject to the Authority and Control of the Lords of Council and Session, before being booked, in like Manner as after being booked:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. From and after the passing of this Act no Writ that shall have been given in to be registered in the Books of Council and Session shall be taken out by the Party or any one employed by him, nor shall any such Writ be given up by the Keepers of the Register for any Purpose at any Time, either before or after the same has been booked, excepting only when Authority of the Lords of Council and Session has been expressly given thereto, and then only under such Conditions and Limitations as may be expressed in such Authority, anything in the said recited Act or in any other Act or any Law or Custom to the contrary notwithstanding.

2. And whereas by an Act of the First Parliament of His Majesty King William, held at Edinburgh in the Year One thousand six hundred and ninety-eight, intituled "Act concerning Registration of Probative Writs," on the Preamble that "it will be of great Ease and Advantage to the Leiges that Probative Writs be allowed to be registrate, albeit they want a Clause of Registration," it was statute and ordained, "that it shall be lawful and liesome to registrate for Conservation all Charters granted by Subjects, Dispositions, Bonds, Contracts, Tacks, Reversions, and all other Probative Writs in any public authentic Register that is competent, albeit the said Writs want a Clause of Registration, and the Principal to be given back to the Party, and the Extract to make entire Faith in all Cases, in the same Manner as if the said Writs had been registrate by virtue of a Clause of Registration, except in the Case of Improbabilities:" And whereas the giving back of the

Principal Writs impairs the Utility of the Registers of Probative Writs as Registers for Conservation, and has been found to be of evil Consequence, affording Facility for Fraud and for obstructing the Course of Justice: Be it therefore enacted, That no Probative Writ given in to be registered in any Register under Authority of the said last-recited Act shall be given back to the Party, but all such Writs shall remain in the Custody of the Keepers of the Registers in like Manner and subject to the like Control as any Writ given in to be registered in virtue of a Clause of Registration therein contained, anything in the said last-recited Act or any other Act or any Law or Custom to the contrary notwithstanding. And where it is by any Act, or by the Rules of any Corporation or Trade, provided that an Indenture of Apprenticeship, with a Certificate of

Service endorsed thereon, may be received as Evidence of such Apprenticeship having been duly served, an Extract of such Indenture duly recorded in the Register of Probative Writs, with a Certificate of Service endorsed on such Extract, may be received as Evidence of such Apprenticeship having been duly served.

3. All Extracts issued after the Date of the passing of this Act from the Books of Council and Session, or of any Sheriff Court, or of any Register of Probative Writs, shall have upon them, in such Form as may from Time to Time be prescribed by the Lord Clerk Register, a Certificate or Marking indicating the cumulo Amount of Stamp Duty paid on the Principal Writ recorded and retained for Preservation.

CAP. XXXV.

Duchy of Cornwall Amendment.

ABSTRACT OF THE ENACTMENTS.

1. *Part of Sect. 8 of 26 & 27 Vict. c. 49. repealed.*
2. *Capital Funds of Duchy may be applied in Improvement of House Property, &c.*
3. *Act to be read with 26 & 27 Vict. c. 49.*

An Act to extend the Provision in "The "Duchy of Cornwall Management Act, "1863," relating to permanent Improvements. (25th June 1868.)

WHEREAS by "The Duchy of Cornwall Management Act, 1863," Section Eight, Advances are authorized to be made out of the Capital Funds of the Duchy of Cornwall, for the Purpose of permanently improving the Possessions thereof, by Inclosure or by erecting Buildings or executing Drainage or other Works thereon, such Advances to be repaid to the Capital from the Revenues of the said Duchy by annual Instalments of not less than One Thirtieth Part thereof in every Year, but subject to a Proviso that the Amount so to be advanced and not repaid shall not at any One Time exceed the Sum of Thirty thousand Pounds: And whereas the Limitation of such Advances to the Sum of Thirty thousand Pounds mentioned in the said Act prevents the Execution of necessary Works which are essential to the permanent Improvement of the Possessions of the said Duchy, and it is expedient that the same Limitation be rescinded:

And whereas amongst the Possessions of the Duchy of Cornwall there is a large Extent of House Property at present of an inferior Class, in bad Repair, and on which a large Outlay is required, and it is expedient that Power should be given for Advances of Monies out of the Capital Funds of the said Duchy in and towards the Improvement of the same, and it is reasonable that for the Repayment to Capital from the Revenues of the said Duchy of Advances made for the Improvement of such House Property a longer Term than Thirty Years should be allowed:

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. So much of Section Eight in "The Duchy of Cornwall Management Act, 1863," as provides that the Amount advanced out of the Capital Funds of the Duchy for the Purpose of permanently improving the Possessions thereof and not repaid shall not at any One Time exceed the Sum of Thirty thousand Pounds shall be and the same is hereby repealed.

2. So much of the Capital Funds of the said Duchy as the Lord High Treasurer or the Lords Commissioners of the Treasury for the Time being shall approve of may, with such Sanction and Approval as is by the said Act required for Advances thereby authorized to be made from Capital Monies for the Purpose of Improvements, be from Time to Time advanced and applied in such Manner as the Duke of Cornwall shall think fit for the Improvement of the House Property of the said Duchy and Purposes connected therewith, including the laying out and forming of new Roads, Streets, Sewers, or Drains, and, where required for the Purpose of effecting any such Improvements, the Purchase of any Lease or Leases of any Part or Parts of the Property intended to be so improved which may for the Time being be in existence, and the Advances made under the Authority of this Section shall be

a Charge upon and be repaid from the Revenues of the said Duchy to the Account of the Duchy of Cornwall at the Bank of England, by annual Instalments of such Amount, not being less than One Sixtieth Part thereof in every Year, as the said High Treasurer or Lords Commissioners may direct; and it shall be the Duty of the Receiver General of the Duchy of Cornwall and he is hereby required to see that such annual Instalments are paid accordingly; provided that nothing in this Section shall apply to any Farm-house or other House or Building occupied or used in connexion with or for the Purposes of any agricultural Land.

3. This Act and the recited Act shall be read and construed as One Act, and the same together may be cited and referred to as "The Duchy of Cornwall Management Acts, 1863-1868."

CAP. XXXVI.

The Alkali Act, 1863, Perpetuation.

ABSTRACT OF THE ENACTMENTS.

26 & 27 Vict. c. 124. recited.

1. Sect. 19. of recited Act repealed.

An Act to make perpetual the Alkali Act, 1863. (25th June 1868.)

WHEREAS by the Alkali Act, 1863, Twenty-six and Twenty-seven Victoria, Chapter One hundred and twenty-four, Section Nineteen, it was provided that the same should continue in force to the First Day of July One thousand eight hundred and sixty-eight, and no longer:

And whereas it is expedient to make perpetual the said Act:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. The Nineteenth Section of the said Act is hereby repealed, and the said Act continued without any such Limitation.

CAP. XXXVII.

The Documentary Evidence Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*

2. *Mode of proving certain Documents.*

3. *Act to be in force in Colonies.*

4. *Punishment of Forgery.*

5. *Definition of Terms.*

6. *Act to be cumulative.*

Schedule.

An Act to amend the Law relating to Documentary Evidence in certain Cases.
(25th June 1868.)

WHEREAS it is expedient to amend the Law relating to Evidence: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as "The Documentary Evidence Act, 1868."

2. *Prima facie* Evidence of any Proclamation, Order, or Regulation issued before or after the passing of this Act by Her Majesty, or by the Privy Council, also of any Proclamation, Order, or Regulation issued before or after the passing of this Act by or under the Authority of any such Department of the Government or Officer as is mentioned in the First Column of the Schedule hereto, may be given in all Courts of Justice, and in all legal Proceedings whatsoever, in all or any of the Modes herein-after mentioned; that is to say:

- (1.) By the Production of a Copy of the Gazette purporting to contain such Proclamation, Order, or Regulation.
- (2.) By the Production of a Copy of such Proclamation, Order, or Regulation purporting to be printed by the Government Printer, or, where the Question arises in a Court in any British Colony or Possession, of a Copy purporting to be printed under the Authority of the Legislature of such British Colony or Possession.
- (3.) By the Production, in the Case of any Proclamation, Order, or Regulation issued by Her Majesty or by the Privy Council, of a Copy or Extract purporting to be certified to be true by the Clerk of the Privy Council or by any One of the Lords or others of the Privy Council, and, in the Case of any Proclamation, Order, or Regulation issued by or under the Authority of any of the said Departments or Officers, by the Production of a Copy or Extract purporting to be certified to be true by the Person or Persons specified in the Second Column of the said Schedule in connexion with such Department or Officer.

Any Copy or Extract made in pursuance of this Act may be in Print or in Writing, or partly in Print and partly in Writing.

No Proof shall be required of the Handwriting or official Position of any Person certifying, in pursuance of this Act, to the Truth of any Copy or Extract from any Proclamation, Order, or Regulation.

3. Subject to any Law that may be from Time to Time made by the Legislature of any British Colony or Possession, this Act shall be in force in every such Colony and Possession.

4. If any Person commits any of the Offences following, that is to say,—

- (1.) Prints any Copy of any Proclamation, Order, or Regulation which falsely purports to have been printed by the Government Printer, or to be printed under the Authority of the Legislature of any British Colony or Possession, or tenders in Evidence any Copy of any Proclamation, Order, or Regulation which falsely purports to have been printed as aforesaid, knowing that the same was not so printed; or,
- (2.) Forges or tenders in Evidence, knowing the same to have been forged, any Certificate by this Act authorized to be annexed to a Copy of or Extract from any Proclamation, Order, or Regulation;

he shall be guilty of Felony, and shall on Conviction be liable to be sentenced to Penal Servitude for such Term as is prescribed by the Penal Servitude Act, 1864, as the least Term to which an Offender can be sentenced to Penal Servitude, or to be imprisoned for any Term not exceeding Two Years, with or without Hard Labour.

5. The following Words shall in this Act have the Meaning herein-after assigned to them, unless there is something in the Context repugnant to such Construction; (that is to say,)

"British Colony and Possession" shall for the Purposes of this Act include the Channel Islands, the Isle of Man, and such Territories as may for the Time being be vested in Her Majesty by virtue of any Act of Parliament for the Government of India and all other Her Majesty's Dominions.

"Legislature" shall signify any Authority other than the Imperial Parliament or Her Majesty in Council competent to make Laws for any Colony or Possession.

"Privy Council" shall include Her Majesty in Council and the Lords and others of Her Majesty's Privy Council, or any of them, and any Committee of the Privy Council that is not specially named in the Schedule hereto.

"Government Printer" shall mean and include the Printer to Her Majesty and any Printer purporting to be the Printer authorized to print the Statutes, Ordinances, Acts of State, or other Public Acts of the Legislature of any British Colony or Possession,

or otherwise to be the Government Printer of such Colony or Possession.
 "Gazette" shall include the *London Gazette*, the *Edinburgh Gazette*, and the *Dublin Gazette*, or any of such Gazettes.

6. The Provisions of this Act shall be deemed to be in addition to, and not in derogation of, any Powers of proving Documents given by any existing Statute or existing at Common Law.

SCHEDULE.

Column 1. Name of Department or Officer.	Column 2. Names of Certifying Officers.
The Commissioners of the Treasury.	Any Commissioner, Secretary, or Assistant Secretary of the Treasury.
The Commissioners for executing the Office of Lord High Admiral.	Any of the Commissioners for executing the Office of Lord High Admiral or either of the Secretaries to the said Commissioners.
Secretaries of State.	Any Secretary or Under-Secretary of State.
Committee of Privy Council for Trade.	Any Member of the Committee of Privy Council for Trade or any Secretary or Assistant Secretary of the said Committee.
The Poor Law Board.	Any Commissioner of the Poor Law Board or any Secretary or Assistant Secretary of the said Board.

CAP. XXXVIII.

Unclaimed Prize Money (India).

ABSTRACT OF THE ENACTMENTS.

1. *Prize Money to be paid and placed to the Credit of the Revenues of India ; subject to be refunded without Interest.*
2. *Times within which Payments are to be made.*
3. *Power to the Secretary of State in Council to recover Monies as herein directed. Persons required to pay over Prize Money to be liable to account.*
4. *Nothing in the Act contained to prevent trying Rights to Prize Money.*
5. *Nothing to prejudice any Rights or Powers the Secretary of State in Council already has to the Prize Money.*

An Act for the Appropriation of certain unclaimed Shares of Prize Money acquired by Soldiers and Seamen in India.
(25th June 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows; (that is to any,)

1. All and every Shares and Share of Booty, Prize Money, Head Money, Bounty Money, and Salvage Money, and of Money arisen or which shall hereafter arise from, or which is now or shall hereafter be distributable in respect of, any Capture or other warlike Service whatsoever which has heretofore been or shall hereafter be made or performed, and to which Shares or Share any Officer, Soldier, Sailor, or other Person at any Time in or belonging or having belonged to the Forces of the East India Company, to Her Majesty's Indian Staff Corps, or to Her Majesty's Local Indian Forces, European or Native, is now or shall hereafter be entitled, in whatsoever Service the same may have been acquired, and which Shares or Share have come into and are now remaining in the Hands, or shall hereafter come into the Hands, of any Prize Agent or Agents, or any other Person whomsoever, shall be paid, according to the Residence of the Party or Parties paying the same, either in London into the Bank of England to the Account of the Secretary of State in Council of India, or in India into such Places and in such Manner as the Government in India shall direct; and all Sums of Money when so paid shall be placed to the Credit of the Revenues of India, and shall for all Purposes form Part of such Revenues, and be applicable in all respects as such Revenues are or shall be applicable, subject, nevertheless, to be refunded, without Interest, to any Person or Persons entitled to the same, and establishing his, her, or their Claim or Claims thereto to the Satisfaction of the Secretary of State in Council of India.

2. All Money now remaining in the Hands of any Prize Agent or Agents or any other Person or Persons whomsoever, and which is hereby directed to be paid and be placed to the Credit of the Revenues of India, and which shall be to be paid in England, shall be paid within Two Calendar Months next after the passing of this Act, and all such Money which shall be to be paid in India shall be paid within Six Calendar Months next after the passing of this Act; and all Money which shall hereafter come into the Hands of any Prize Agent or Prize Agents, or any other Person or Persons whomsoever, and which is hereby directed to be paid and be placed to the Credit of

the Revenues of India, whether the same shall be to be paid in England or in India, shall be paid within Two Calendar Months next after the Receipt thereof by such Prize Agent or Agents or other Person or Persons.

3. The Secretary of State in Council of India shall have and may exercise the same or the like Powers, Rights, and Remedies, so far as the same shall be applicable for Discovery and Recovery of and otherwise in relation to or in respect of the Monies hereby directed to be paid and to be placed to the Credit of the Revenues of India, as the Commissioners or the Treasurer for the Time being of Chelsea Hospital, or the Lord High Admiral of the United Kingdom or the Commissioners for executing the Office of Lord High Admiral, or any other Persons or Person, or any Corporation entitled to or interested in any Prize Money acquired by or due to any Officers, Soldiers, or Seamen in or belonging to Her Majesty's European Military or Naval Forces, have or can exercise by virtue of any Act or Acts now in force for the Discovery or Recovery of or otherwise in relation to or in respect of such last-mentioned Prize Money, and all Courts of Law and Equity and of Admiralty Jurisdiction in the United Kingdom and in India shall have and may exercise the same or the like Jurisdiction, Powers, and Authorities for compelling every Person to account for and pay over the Monies hereby directed to be paid and be placed to the Credit of the Revenues of India as any Court of Law or Equity or of Admiralty Jurisdiction may now exercise with respect to any Prize Money acquired by or belonging to any such Officers, Soldiers, or Seamen as last aforesaid; and every Person who is required by this Act to pay over any Shares or Shares shall be subject to the like Liability to account for the same, and to the like Fines and Penalties for Neglect or Default in not accounting for the same, and otherwise, as Agents or other Persons are by any Act or Acts now in force subject to in respect of any Shares or Balances of Prize Money acquired by or belonging to any such Officers, Soldiers, or Seamen as last aforesaid.

4. Nothing in this Act contained shall prevent any Person or Persons from resorting to any Remedy at Law or in Equity against the Secretary of State in Council of India for the Recovery of Principal without Interest of any Money to which he or they may be entitled, and which shall be paid in manner herein-before directed, and placed to the Credit of the Revenues of India, provided such Person or Persons shall prefer his or their Claim thereto to the Secretary of State in Council of India within Six Years from the respective Times at which the same Money shall be so paid as aforesaid.

5. Nothing herein contained shall take away or affect any Right which the Secretary of State in Council of India now has, or if this Act had not been passed would at any Time have had, to or in respect of any Monies hereby directed to be paid, nor shall diminish, abridge, or prejudice

any Rights, Powers, or Remedies which the Secretary of State in Council of India has, or if this Act had not been passed would have had, or could at any Time have enforced, for the Discovery or Recovery of the same Monies, or any of them.

CAP. XXXIX.

The Jurors Affirmation (Scotland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

- 1. Jurors conscientiously objecting to be sworn may be permitted to make Affirmation.
- 2. Legal Allegation may be that Jurors have been sworn or affirmed.
- 3. Short Title.

An Act to give Relief to Jurors who may refuse or be unwilling from alleged conscientious Motives to be sworn in Civil or Criminal Proceedings in Scotland. (25th June 1868.)

WHEREAS Relief has been given by the Statute Twenty-eighth Victoria, Chapter Nine, to Persons refusing or being unwilling from alleged conscientious Motives to be sworn as Witnesses in any Court of Civil or Criminal Jurisdiction in Scotland, and it is expedient to extend that Relief to Persons required to serve as Jurors :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. If any Person summoned or required to serve as a Juror in any Court of Civil or Criminal Jurisdiction in Scotland shall refuse or be unwilling from alleged conscientious Motives to be sworn, it shall be lawful for the Court or Judge, or other presiding Officer or Person qualified to

administer an Oath to a Juror, upon being satisfied of the Sincerity of such Objection, to permit such Person, instead of being sworn, to make his or her solemn Affirmation or Declaration in the Words following :

' I A.B. do solemnly, sincerely, and truly affirm
' and declare, that the taking of any Oath is,
' according to my Religious Belief, unlawful ;
' and I do also solemnly, sincerely, and truly
' affirm and declare,' &c.

Which solemn Affirmation and Declaration shall be of the same Force and Effect, and if untrue shall entail all the same Consequences, as if such Person had taken an Oath in the usual Form.

2. Whenever in any legal Proceedings it is necessary or usual to state or allege that Jurors have been sworn, it shall not be necessary to specify that any particular Juror has made Affirmation or Declaration instead of Oath, but it shall be sufficient to state or allege that the Jurors have been " sworn or affirmed."

3. This Act may be cited for all Purposes as " The Jurors Affirmation (Scotland) Act, 1868."

CAP. XL.

The Partition Act, 1868.

ABSTRACT OF THE ENACTMENTS.

- 1. Short Title.
- 2. As to the Term " the Court."
- 3. Power to Court to order Sale instead of Division.
- 4. Sale on Application of certain Proportion of Parties interested.
- 5. As to Purchase of Share of Party desiring Sale.

6. *Authority for Parties interested to bid.*
7. *Application of Trustee Act.* (13 & 14 Vict. c. 60.)
8. *Application of Proceeds of Sale.* (19 & 20 Vict. c. 120.)
9. *Parties to Partition Suits.*
10. *Costs in Partition Suits.*
11. *As to General Orders under this Act.* (21 & 22 Vict. c. 27.)
12. *Jurisdiction of County Courts in Partition.* (28 & 29 Vict. c. 99.)

An Act to amend the Law relating to Partition.
(25th June 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited as The Partition Act, 1868.

2. In this Act the Term "the Court" means the Court of Chancery in England, the Court of Chancery in Ireland, the Landed Estates Court in Ireland, and the Court of Chancery of the County Palatine of Lancaster, within their respective Jurisdictions.

3. In a Suit for Partition, where, if this Act had not been passed, a Decree for Partition might have been made, then if it appears to the Court that, by reason of the Nature of the Property to which the Suit relates, or of the Number of the Parties interested or presumptively interested therein, or of the Absence or Disability of some of those Parties, or of any other Circumstance, a Sale of the Property and a Distribution of the Proceeds would be more beneficial for the Parties interested than a Division of the Property between or among them, the Court may, if it thinks fit, on the Request of any of the Parties interested, and notwithstanding the Dissent or Disability of any others of them, direct a Sale of the Property accordingly, and may give all necessary or proper consequential Directions.

4. In a Suit for Partition, where, if this Act had not been passed, a Decree for Partition might have been made, then if the Party or Parties interested, individually or collectively, to the Extent of One Moiety or upwards in the Property to which the Suit relates, request the Court to direct a Sale of the Property and a Distribution of the Proceeds instead of a Division of the Property between or among the Parties interested, the Court shall, unless it sees good Reason to the contrary, direct a Sale of the Property accordingly, and give all necessary or proper consequential Directions.

5. In a Suit for Partition, where, if this Act had not been passed, a Decree for Partition might

have been made, then if any Party interested in the Property to which the Suit relates requests the Court to direct a Sale of the Property and a Distribution of the Proceeds instead of a Division of the Property between or among the Parties interested, the Court may, if it thinks fit, unless the other Parties interested in the Property, or some of them, undertake to purchase the Share of the Party requesting a Sale, direct a Sale of the Property, and give all necessary or proper consequential Directions, and in case of such Undertaking being given the Court may order a Valuation of the Share of the Party requesting a Sale in such Manner as the Court thinks fit, and may give all necessary or proper consequential Directions.

6. On any Sale under this Act the Court may, if it thinks fit, allow any of the Parties interested in the Property to bid at the Sale, on such Terms as to Nonpayment of Deposit, or as to setting off or accounting for the Purchase Money or any Part thereof instead of paying the same, or as to any other Matters, as to the Court seem reasonable.

7. Section Thirty of The Trustee Act, 1850, shall extend and apply to Cases where, in Suits for Partition, the Court directs a Sale instead of a Division of the Property.

8. Sections Twenty-three to Twenty-five (both inclusive) of the Act of the Session of the Nineteenth and Twentieth Years of Her Majesty's Reign (Chapter One hundred and twenty), "to facilitate Leases and Sales of Settled Estates," shall extend and apply to Money to be received on any Sale effected under the Authority of this Act.

9. Any Person who, if this Act had not been passed, might have maintained a Suit for Partition may maintain such Suit against any One or more of the Parties interested, without serving the other or others (if any) of those Parties; and it shall not be competent to any Defendant in the Suit to object for Want of Parties; and at the Hearing of the Cause the Court may direct such Inquiries as to the Nature of the Property, and the Persons interested therein, and other Matters, as it thinks necessary or proper with a view to an Order for Partition or Sale being

made on further Consideration; but all Persons who, if this Act had not been passed, would have been necessary Parties to the Suit, shall be served with Notice of the Decree or Order on the Hearing, and after such Notice shall be bound by the Proceedings as if they had been originally Parties to the Suit, and shall be deemed Parties to the Suit; and all such Persons may have Liberty to attend the Proceedings; and any such Person may, within a Time limited by General Orders, apply to the Court to add to the Decree or Order.

10. In a Suit for Partition the Court may make such Order as it thinks just respecting Costs up to the Time of the Hearing,

11. Sections Nine, Ten, and Eleven of The Chancery Amendment Act, 1858, relative to the making of General Orders, shall have Effect as if they were repeated in this Act, and in Terms made applicable to the Purposes thereof.

12. In England the County Courts shall have and exercise the like Power and Authority as the Court of Chancery in Suits for Partition (including the Power and Authority conferred by this Act) in any Case where the Property to which the Suit relates does not exceed in Value the Sum of Five hundred Pounds, and the same shall be had and exercised in like Manner and subject to the like Provisions as the Power and Authority conferred by Section One of The County Courts Act, 1865.

CAP. XLI.

The Borough Electors Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*

2. *Interpretation of Terms.*

3. *On Parliamentary Electors ceasing to return Members in pursuance of 30 & 31 Vict. c. 102., Municipal Burgesses substituted.*

An Act to make Provision in the Case of Boroughs ceasing to return Members to serve in Parliament respecting Rights of Election which have been vested in Persons entitled to vote for such Members. (13th July 1868.)

WHEREAS in certain Boroughs in England the Persons entitled to vote for Members to serve in Parliament for such Boroughs are Electors for other Purposes, and it is expedient to make Provision respecting Electors for those Purposes in the Case of Boroughs which will cease to return Members after the next Dissolution of Parliament:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows.

1. This Act may be cited as "The Borough Electors Act, 1868."

2. In this Act--

The Terms "Parliamentary Borough" and "Parliamentary Electors" mean respectively a Borough which, prior to the passing of "The Representation of the People Act, 1867,"

returned a Member or Members to serve in Parliament, and the Persons for the Time being entitled to vote for such Members or Member:

The Term "Municipal Borough" means a Place subject to the Provisions of the Act of the Session of the Fifth and Sixth Years of the Reign of His Majesty William the Fourth, Chapter Seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales:"

The Term "Burgesses" means the Persons on the Burgess Roll for the Time being in force in a Municipal Borough.

3. Wherever the Parliamentary Electors in any Place in England, where there is both a Municipal and Parliamentary Borough, are by Law Electors for any other Purpose, and the Parliamentary Borough in pursuance of "The Representation of the People Act, 1867," or of any Act passed in the present Session, will cease after the next Dissolution of Parliament to return a Member to serve in Parliament, the Burgesses of the Municipal Borough shall be Electors for such Purpose, and shall in all respects, so far as regards such Purpose, be substituted for the Parliamentary Electors.

CAP XLII.

The Municipal Rate (Edinburgh) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Interpretation Clause.*
3. *Assessment not to be levied beyond the Ancient and Extended Royalty. Assessment to expire in Eighteen hundred and seventy-two.*
4. *Security given to the Creditors of the City regulated.*
5. *Laws, &c. inconsistent with this Act repealed.*

An Act to amend the Act of the Twenty-third and Twenty-fourth Years of the Reign of Her Majesty, Chapter Fifty, by abolishing the Rate imposed by the said Act on all Occupiers of Premises within the extended Municipal Boundaries of the City of Edinburgh.
(13th July 1868.)

WHEREAS it is expedient that so much of the Rate imposed by the Act of the Twenty-third and Twenty-fourth Years of the Reign of Her Majesty, Chapter Fifty, as amounts to One Penny per Pound, and which is made payable in lieu of the Revenue from Seat Rents formerly derived and held by the Creditors of the City in Security, should be abolished, and other Provisions made in lieu thereof :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited for all Purposes as "The Municipal Rate (Edinburgh) Act, 1868."

2. The following Words and Expressions in this Act shall have the several Meanings hereby assigned to them :

The Expression "Magistrates and Council" shall mean the Lord Provost, Magistrates, and Town Council of the City of Edinburgh for the Time being :

The Word "City" shall mean the City of Edinburgh.

3. So much of the recited Act as provides that the Magistrates and Council shall annually, on or before the Twenty-fifth Day of January, transfer and pay over, from the Produce of the Assessments levied under the Powers of the "Edinburgh Police Act, 1848," and the "Edinburgh Municipality Extension Act, 1856," into the Account kept in relation to the Funds, Revenues, and

Property made over to the Creditors of the City in Security of the Annuities payable to them, such proportional Sum as shall correspond with a Rate of One Penny in every Pound of Four Fifths of the gross annual Value of the Property in respect of the Occupation of which the said Assessments are levied, shall be repealed; and from and after Whitsunday One thousand eight hundred and sixty-eight the said proportional Sum shall be computed as if the said Assessment were leviable only within the Ancient and Extended Royalties of the City within which the Annuity Tax was formerly leviable, and the said proportional Rate of One Penny per Pound shall from and after that Date be levied only within the foresaid restricted Limits, and not within any Part of the City in which the Annuity Tax was not formerly leviable; and from and after the Term of Whitsunday One thousand eight hundred and seventy-two, at which Period the Magistrates and Council will come into possession of the whole Revenues accruing from the City Cornmarket Customs and Dues under the Provisions of the Act Tenth and Eleventh Victoria, Chapter Forty-eight, the foresaid Tax of One Penny per Pound shall cease and determine, and shall not thereafter be imposed or levied within any Part of the Municipal Boundaries of the City.

4. And whereas the Produce of the foresaid Assessment of One Penny per Pound levied over the extended Municipal Boundaries of the City, during the Year in which it was first imposed, amounted to Two thousand four hundred and one Pounds Fourteen Shillings and Ninepence, over which Sum the Creditors of the City obtained by the recited Act a preferable Security: And whereas the Produce of the said Assessment within the restricted Limits in which it is hereafter to be levied will amount to a smaller Sum; and in order to provide that the Security given to the City Creditors shall not be diminished to less than the foresaid Amount, the Magistrates and Council shall, from and after the Twenty-fifth Day of January One thousand eight hundred and sixty-nine, out of the Customs and Market

Dues of the City, transfer and pay over annually into the Account kept in relation to the Funds, Revenues, and Property made over to the said Creditors in Security of the Annuities on the Bonds of Annuity granted under the Provisions of the Act First and Second Victoria, Chapter Fifty-five, such annual Payments as, together with the Produce of the Assessment of One Penny per Pound levied over the Ancient and Extended Royalties of the City, will make up the foresaid Sum of Two thousand four hundred and one Pounds Fourteen Shillings and Ninepence yearly, until the Term of Whitsunday One thousand eight hundred and seventy-two; and after that Date the whole of the last-mentioned Sum shall be transferred and paid over annually by them out of the said Customs and Market Dues, including the said Cornmarket Customs and Dues: Provided that in case, under the Provisions of the last-mentioned Act, the said Creditors shall have adjudged, or shall adjudge, the Funds, Revenues, and Property made over to them in Se-

curity as set forth in Schedule (A.) to the said Act annexed, such Adjudication shall extend to and include the Payments from the said Assessment so long as it is leviable, and the additional annual Payments from the Customs or Market Dues of the City, and, after the Term of Whitsunday One thousand eight hundred and seventy-two, when the Assessment shall cease to be leviable, from the Cornmarket Customs and Dues; and the said annual Payments shall be preferable to all other Debts, Obligations, and Securities affecting the said Customs or Market Dues, or Cornmarket Customs and Dues, and shall be enforced in the same Way and Manner as the Security which the Creditors already enjoy for One thousand Pounds annually may be enforced under the said last-mentioned Act.

5. All Laws, Statutes, and Usages inconsistent with the Provisions of this Act are hereby repealed.

CAP. XLIII.

The Thames Embankment and Metropolis Improvement (Loans) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *London Coal and Wine Duties levied for any extended Period to be carried to Improvement Fund.*
2. *Extension of Guarantee by Treasury to further Monies.*
3. *Power to the Metropolitan Board to give their general Fund as collateral Security.*
4. *Power to charge Lands as collateral Security.*
5. *Limiting the Amount to be borrowed. Application of Amount borrowed.*
6. *Application of Fund.*
7. *Expression "Embankment and Improvement Acts."*
8. *Short Title.*
Schedule.

An Act for extending the Provisions of The Thames Embankment and Metropolis Improvement (Loans) Act, 1864, and for amending the Powers of the Metropolitan Board of Works in relation to Loans under that Act.

(13th July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. The Thames Embankment and Metropolis Improvement Fund created by the London Coal and Wine Duties Continuance Act, 1861, shall

comprise the Extension of the London Coal and Wine Duties authorized by The London Coal and Wine Duties Continuance Act, 1868, except the Duty of Fourpence Part of the Duty of Twelpence on Coal, Culm, and Cinders, and except the Duties arising in the Year ending the Fifth Day of July One thousand eight hundred and eighty-nine, appropriated by Section Five of the last-mentioned Act.

2. Any Act passed in the present Session for the Construction of the Works mentioned in the Schedule to this Act, or any of them, and directing the Cost of such Works to be paid out of or charged upon the Thames Embankment and Metropolis Improvement Fund, shall be deemed to be comprised in the Term the Embankment and Improvement Acts used in The Thames Em-

bankment and Metropolis Improvement (Loans) Act, 1864, (in this Act called the Act of 1864,) as if such Act had been described in the Schedule to the Act of 1864, and the Provisions of the Act of 1864 authorizing the Commissioners of Her Majesty's Treasury to guarantee Money borrowed, and the other Provisions of that Act, shall extend and apply to the additional Sum of One million eight hundred and fifty thousand Pounds authorized to be borrowed under this Act; and nothing in this Act contained shall in any Manner prejudice or affect the Guarantee given by the Commissioners of Her Majesty's Treasury for Payment of Interest from Time to Time due, and Repayment of the Principal Monies advanced on the Securities issued before the passing of this Act.

3. The Metropolitan Board of Works (in this Act called the Board) may charge as collateral Security for Money borrowed upon the Thames Embankment and Metropolis Improvement Fund the Rates and Sums of Money which the Board are authorized to raise under the Provisions of The Metropolis Management Act, 1855, and The Metropolis Management Amendment Act, 1862; and if and when it shall be necessary to pay out of those Rates and Sums any Monies in respect of such Security, the same shall be deemed Part of the Expenses of the Board to be defrayed, assessed, and raised as in the last-mentioned Act provided, and may be defrayed, assessed, and raised accordingly. Any Money paid by the Board under this Section out of the Rates and Sums of Money aforesaid shall be repaid to the Board out of the Thames Embankment and Metropolis Improvement Fund when and as that Fund will allow of such Repayment, subject and without Prejudice to the prior Charges on that Fund, and so far as the same is not so repaid the same shall be recouped to the Board out of Money arising from the Rents and Profits and Sale or other Disposition of Lands acquired by them under the Acts to the Purposes of which that Fund is or may be applicable.

4. The Board may charge as Security for any Money borrowed under the Embankment and Improvement Acts all the Lands, Rents, and Property belonging to the Board under those Acts without dividing the Security or specifying any Lands, Rents, or Property, and so as to make the whole of such Lands, Rents, and Property a Security for all or any Money borrowed under those Acts or any of them; and the Board shall, so soon as any Monies are received from the Sale of any Surplus or other Property under those Acts or any of them, apply the same in the first instance in or towards Discharge and Payment of the Principal and Interest of Money so borrowed to which the Guarantee given by the Commis-

sioners of Her Majesty's Treasury shall extend, and, subject thereto, to or towards the Payment of any other Charges on the Thames Embankment and Metropolis Improvement Fund.

5. For the Purposes of the Embankment and Improvement Acts the Board may borrow not exceeding the Sum of One million eight hundred and fifty thousand Pounds in addition to the Sums authorized by the Acts specified in the Schedule to the Act of 1864.

The Board shall apply Three hundred and fifty thousand Pounds (Part of the Sum of One million eight hundred and fifty thousand Pounds) in Repayment of certain Monies advanced to the Board on temporary Loan for the Purposes of the Embankment and Improvement Acts, and Three hundred thousand Pounds (further Part of such Sum of One million eight hundred and fifty thousand Pounds), or so much thereof as may be needed, for the Purposes authorized by "The Metropolis Improvement Act, 1863," and for no other Purpose.

6. Out of the Thames Embankment and Metropolis Improvement Fund there shall be applied by the Commissioners of Her Majesty's Treasury in each Year after the passing of this Act the Sum of One hundred and eighty-five thousand Pounds for Payment of Interest from Time to Time due, and Repayment of the Principal Monies advanced on the Securities issued before the passing of this Act with the Guarantee of the said Commissioners under the Act of 1864, or such other yearly Sum as the Board and the respective Holders of such Securities from Time to Time mutually agree upon, so that such Principal Monies, and all Interest thereon, may, unless otherwise agreed between such Holders and the Board, be paid off and discharged on or before the Fifth Day of July One thousand eight hundred and eighty-two, and all further Monies from Time to Time becoming Part of such Fund in each Year until the Fifth Day of July One thousand eight hundred and eighty-eight shall be applied—

In paying the Interest for the Time being due on Securities issued after the passing of this Act under or for the Purposes of the Embankment and Improvement Acts, and in repaying the Principal Monies advanced on such Securities;

Then in paying any other Expenses incurred in respect of the several Works authorized by the Embankment and Improvement Acts, or in carrying those Acts into execution; and,

Lastly, in the Improvement of the Metropolis in such Manner as may by any Act or Acts

to be passed in the present or any future Session be determined by Parliament.

the Acts comprised in the Schedule to the Act of 1864.

7. The Expression in this Act "the Embankment and Improvement Acts" shall include any Act for constructing the Works mentioned in the Schedule to this Act, or any of those Works, and

8. This Act may be cited as The Thames Embankment and Metropolis Improvement (Loans) Act, 1868.

The SCHEDULE.

Works.	Intended Short Title of Act when passed.
The Alteration of Streets in Communication with the Embankment on the North Side of the Thames, and the Formation of new Streets, Improvements, and Works in connexion therewith.	Thames Embankment (North and South) Act, 1868.

CAP. XLIV.

Religious, &c. Buildings (Sites).

ABSTRACT OF THE ENACTMENTS.

1. Grants of Land for Buildings for Religious and certain other Purposes to be exempt from 9 G. 2. c. 36. and Sect. 2. of 24 & 25 Vict. c. 9.
2. Trustees may cause Deeds to be enrolled in Chancery.
3. Deed need not be acknowledged in order to Enrolment.

An Act for facilitating the Acquisition and Enjoyment of Sites for Buildings for Religious, Educational, Literary, Scientific, and other Charitable Purposes.
(13th July 1868.)

of this Act, to a Trustee or Trustees, on behalf of any Society or Body of Persons associated together for Religious Purposes, or for the Promotion of Education, Arts, Literature, Science, or other like Purposes, of Land, for the Erection thereon of a Building for such Purposes or any of them, or whereon a Building used or intended to be used for such Purposes or any of them shall have been erected, shall be exempt from the Provisions of an Act passed in the Ninth Year of the Reign of King George the Second, and intitled "An Act to restrain the Disposition of "Lands whereby the same become unalienable," and also from the Provisions of the Second Section of an Act passed in the Twenty-fourth Year of the Reign of Her present Majesty, intitled "An "Act to amend the Law relating to the Convey-
"ance of Land for Charitable Uses:" Provided that such Alienation, Grant, Conveyance, Lease, Assurance, Surrender, or other Disposition shall have been really and bona fide made for a full and valuable Consideration actually paid upon or

WHEREAS it is expedient to afford greater Facilities for the Acquisition and Enjoyment by Societies or Bodies of Persons associated together for Religious, Educational, Literary, Scientific, or other like Charitable Purposes, of Buildings and Pieces of Land as Sites for Buildings for such Purposes:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. All Alienations, Grants, Conveyances, Leases, Assurances, Surrenders, or other Dispositions, except by Will, bona fide made after the passing

before the making of such Alienation, Grant, Conveyance, Lease, Assurance, Surrender, or other Disposition, or reserved by way of Rent, Rentcharge, or other annual Payment, or partly paid and partly reserved as aforesaid, without Fraud or Collusion, and provided that each such Piece of Land shall not exceed Two Acres in Extent or Area in each Case.

2. Provided always, that the Trustee or Trustees of any Deed or Instrument by which any

such Alienation, Grant, Conveyance, Lease, Assurance, Surrender, or Disposition shall have been made or the Trusts thereof declared, may, if he or they shall think fit, at any Time cause such Deed or Instrument to be enrolled in Her Majesty's High Court of Chancery.

3. From and after the passing of this Act it shall not be necessary to acknowledge any Deed or Instrument in order that the same may be enrolled in Her Majesty's High Court of Chancery.

CAP. XLV.

The Sea Fisheries Act, 1868.

ABSTRACT OF THE ENACTMENTS.

PART I.

Preliminary.

1. *Division of Act.*
2. *Short Title.*
3. *Commencement of Act.*
4. *Continuance of Act as herein stated.*
5. *Interpretation of Terms.*

PART II.

CONVENTION AND FISHERIES.

General Provisions.

6. *Confirmation of Convention.*
7. *Power to Her Majesty, by Orders in Council, to make, &c. Regulations for Execution of Act and Maintenance of Order.*
8. *Who are to be Sea-Fishery Officers.*
9. *Powers of Sea-Fishery Officers.*
10. *Protection of Fishery Officers.*

Fishery Regulations.

11. *Penalty on obstructing or disobeying Sea Fishery Officer.*
12. *As to Violation of Article 11 of Convention.*
13. *As to Violation of Articles 12, 15, 16, 17, 19, 20, and 21 of Convention.*
14. *Penalty for Offences.*
15. *Offender belonging to a French Boat to be sent back to France.*

Exclusive Fishery Limits.

16. *Penalties for Violation of exclusive Limits.*

Entry of Boats and Sale of Fish.

17. *As to Suspension of Article 31 of Convention.*
18. *Power to Commissioners of Customs to make Regulations respecting Report and Entry of Sea Fishing Boats.*
19. *As to the Sale of Fish.*

Lights.

20. *As to Violation of Articles 13 and 14 of Convention.*
 21. *Article 22 to be deemed included in Term "Wreck."*

Registry of Sea-Fishing Boats.

22. *As to Entry or Registry of British Sea-Fishing Boat.*
 23. *Power to Her Majesty in Council to provide for Registry of British Sea-Fishing Boats.*
 24. *As to Effect of Registry.*
 25. *Sect. 207 of 16 & 17 Vict. c. 107. not to apply to certain Boats.*
 26. *Sea-Fishing Boats within exclusive Limits to have Official Papers.*

PART III.

OYSTER FISHERIES.

Preliminary.

27. *Part III. not to apply to Places herein stated.*
 28. *Interpretation of certain Terms.*

Order for Fishery.

29. *Power to Board of Trade on Memorial to make Order for Oyster Fishery.*
 30. *Publication of Draft Order and Notice to Owners of adjoining Lands, &c.*
 31. *Objections and Representations respecting Order.*
 32. *Inquiry into proposed Order by public Sitings.*
 33. *Report of Inspector as to proposed Order.*
 34. *Settlement and making of Order.*
 35. *Publication of Order.*
 36. *Expenses connected with Order.*
 37. *Confirmation of Order by Act of Parliament.*
 38. *Power to refer Order to a Select Committee if opposed.*
 39. *As to Amendment of Order by Board of Trade.*
 40. *Effect of Grant of Several Oyster Fishery.*
 41. *Effect of Grant of Power of regulating Fishery.*
 42. *Proof of marking of Limits.*
 43. *Fishery to be within County for Purposes of Jurisdiction.*
 44. *Limitation on Term of Several Fishery.*
 45. *Condition for Cesser of Several Fishery, if no adequate Benefit.*
 46. *Consent with respect to Rights of the Crown or Duchies of Lancaster and Cornwall.*
 47. *Compensation to Land Owners, &c.*
 48. *Order of Board of Trade not to abridge Right of Several Fishery, &c.*
 49. *Copies of Orders and Acts printed by Queen's Printer to be kept for Sale.*
 50. *Annual Report of Board of Trade.*

Protection of Oyster Beds.

51. *Property in Oysters, &c. within Several Fishery.*
 52. *Property in Oysters, &c. removed from Several Fishery.*
 53. *Protection of Several Fishery.*
 54. *Limits of Fishery to be kept marked out.*
 55. *Contiguous Fisheries.*
 56. *Application of Act to Orders, &c. under 29 & 30 Vict. c. 85.*

PART IV.

LEGAL PROCEEDINGS.

57. *Mode of recovering Penalties.*
 58. *Appeal.*
 59. *Proceedings where Offender belongs to a French Boat.*
 60. *Jurisdiction of Courts.*

61. *Evidence taken in France.*
62. *Service to be good if made personally or on board Ship.*
63. *Masters of Boats liable to Penalties imposed.*
64. *Application of Penalties.*
65. *Saving of Rights as herein stated.*

PART V.

MISCELLANEOUS.

66. *Confirmation of Treaties for exempting from Dues Foreign Sea-Fishing Boats entering British Ports from Stress of Weather.*
67. *Regulations for Oyster Fisheries off the Irish Coast.*
68. *Regulation as to Seine-Fishing in Cornwall.*
69. *As to Publication and Evidence of Orders in Council.*
70. *Application of Act.*
71. *Repeal of Acts as in Second Schedule.*

An Act to carry into effect a Convention between Her Majesty and the Emperor of the French concerning the Fisheries in the Seas adjoining the British Islands and France, and to amend the Laws relating to British Sea Fisheries. (13th July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

PART I.

Preliminary.

1. This Act shall be divided into Parts as follows :

- Part I. Preliminary.
- Part II. Sea Fishery Convention.
- Part III. Oyster Fisheries.
- Part IV. Legal Proceedings.
- Part V. Miscellaneous.

2. This Act may be cited as The Sea Fisheries Act, 1868.

3. This Act shall (except as in this Act expressly otherwise provided) come into force on such Day as may be fixed by a Notice in that Behalf published in the *London Gazette*, which Day is in this Act referred to as the Commencement of this Act.

4. So much of this Act as relates to French Subjects or French Sea-Fishing Boats outside of the exclusive Fishery Limits of the British Islands, and as gives Powers to French Sea-

Fishery Officers, shall, on the Determination of the Convention set out in the First Schedule to this Act, cease to apply to French Subject Boats, and Officers; but, subject as aforesaid, this Act shall continue in force notwithstanding the Determination of that Convention.

5. In this Act—

The Term "Sea-Fish" does not include Salmon, as defined by any Act relating to Salmon, but, save as aforesaid, includes every Description both of Fish and of Shell Fish, which is found in the Seas to which this Act applies; and "Sea Fishing," "Sea-Fisherman," and other Expressions referring to Sea-Fish, shall in this Act be construed to refer only to Sea-Fish as before defined:

The Term "Sea-Fishing Boat" includes every Vessel of whatever Size, and in whatever Way propelled, which is used by any Person in Sea-Fishing, or in carrying on the Business of a Sea-Fisherman :

The Term "British Islands" includes the United Kingdom of Great Britain and Ireland, the Isle of Man, the Islands of Guernsey, Jersey, Alderney, and Sark, and their Dependencies; and the Terms "Great Britain and Ireland" and "United Kingdom," as used in the First Schedule to this Act, shall be construed to mean the "British Islands" as herein defined :

The Terms "exclusive Fishery Limits of the British Islands" and "exclusive Fishery Limits of France" mean the Limits within which the exclusive Right of Fishing is by Article One of the First Schedule to this Act reserved to British Subjects and French Subjects respectively :

The Term "Consular Officer" includes Consul General, Consul, and Vice-Consul, and any Person for the Time being discharging the Duties of Consul General, Consul, or Vice-

Consul; and the Term "Consular Agent" in the First Schedule to this Act shall be construed to mean Consular Officer:

The Term "Court" includes any Tribunal or Magistrate exercising Jurisdiction under this Act:

The Term "Person" includes a Body Corporate:

The Term "the Irish Fishery Commissioners" means the Commissioners acting in execution of the Act of the Session of the Fifth and Sixth Years of the Reign of Her present Majesty, Chapter One hundred and six, intituled "An Act to regulate the Irish Fisheries, and the Acts amending the same."

PART II.

CONVENTION AND FISHERIES.

General Provisions.

6. The Convention set out in the First Schedule to this Act (referred to in this Act as the Convention) is hereby confirmed, and the Articles thereof and the Declaration thereto annexed shall have the same Force as if they were enacted by the Body of this Act.

7. It shall be lawful for Her Majesty from Time to Time, by Order in Council, to make, alter, and revoke Regulations for carrying into execution this Act and the Intent and Object thereof, and for the Maintenance of good Order among Sea-Fishing Boats, and the Persons belonging thereto, and to impose Penalties not exceeding Ten Pounds for the Breach of such Regulations.

8. The following Persons shall have Authority to enforce the Provisions of this Act and of any Order in Council made thereunder; namely, every Officer of or appointed by the Board of Trade, every Commissioned Officer of any of Her Majesty's Ships on Full Pay, every British Consular Officer, every Collector and Principal Officer of Customs in any Place in the British Islands, every Inspecting Commander of the Coast Guard, every Principal Officer of a Coast Guard Station, and every Commander of any Vessel belonging to the French Government, and every Person appointed by the French Government to superintend the Fisheries referred to in the Convention; and such Persons are in this Act referred to as Sea-Fishery Officers.

9. A Sea-Fishery Officer, for the Purpose of enforcing the Provisions of this Act and of any Order in Council made thereunder, may, with respect to any Sea-Fishing Boat within the exclusive Fishery Limits of the British Islands, and with respect to any British or French Sea-

Fishing Boat outside of those Limits, in the Seas to which this Act applies, exercise the following Powers:

- (1.) He may go on board it:
- (2.) He may require the Owner, Master, and Crew, or any of them, to produce any Certificates of Registry, Licences, Official Logbooks, Official Papers, Articles of Agreement, Muster Rolls, and other Documents relating to the Boat or to the Crew, or to any Member thereof, or to any Person on board the Boat, which are in their respective Possession or Control on board the Boat, and may take Copies thereof or of any Part thereof:
- (3.) He may muster the Crew of the Boat:
- (4.) He may require the Master to appear and give any Explanation concerning his Boat and her Crew, and any Person on board his Boat, and the said Certificates of Registry, Licences, Official Logbooks, Official Papers, Articles of Agreement, Muster Rolls, and other Documents, or any of them:
- (5.) He may examine all Sails, Lights, Buoys, Barrels, Floats, Nets, and Implements of Fishing belonging to the Boat:
- (6.) He may make any Examination and Inquiry which he deems necessary to ascertain whether the Provisions of this Act, or of any Order in Council made thereunder, are complied with:
- (7.) He may, in the Case of any Person who has committed any of the Acts constituted Offences by this Part of this Act, or by any Order in Council made thereunder, without Summons, Warrant, or other Process, both take the Offender and the Boat to which he belongs, and the Crew thereof, to the nearest or most convenient Port, and bring him or them before a competent Court, and, subject to Article Twenty-seven of the Convention, detain him, it, and them in the Port until the alleged Offence has been adjudicated upon.

10. A Sea-Fishery Officer shall be entitled to the same Protection in respect of any Action or Suit brought against him for any Act done or omitted to be done in the Execution of his Duty under this Act as is given to any Officer of Customs by the Customs Consolidation Act, 1853, and (with reference to the Seizure or Detention of any Ship) by any Act relating to the Registry of British Ships.

Fishery Regulations.

11. If any Person obstructs any Sea-Fishery Officer in acting under the Powers conferred by

this Act, or refuses or neglects to comply with any Requisition or Direction lawfully made or given by, or to answer any Question lawfully asked by, any Sea-Fishery Officer in pursuance of this Act, such Person shall be deemed to have committed an Offence against the Fishery Regulations of this Act.

12. If any Person belonging to a Sea-Fishing Boat which is either British or French acts in contravention of Article Eleven of the First Schedule to this Act, such Person shall be deemed to have committed an Offence against the Fishery Regulations of this Act.

13. If within the exclusive Fishery Limits of the British Islands any Person, or if outside of those Limits any Person belonging to a Sea-Fishing Boat which is either British or French, acts in contravention of Articles Twelve, Fifteen, Sixteen, Seventeen, Nineteen, Twenty, and Twenty-one of the First Schedule to this Act, or any of them, or causes Injury to any Person in any One or more of the following Ways, namely, by assaulting any one belonging to another Sea-Fishing Boat, or by causing Damage to another Sea-Fishing Boat, or to any Property on board thereof or belonging thereto, such Person shall be deemed to have committed an Offence against the Fishery Regulations of this Act.

14. Every Person who has committed an Offence against the Fishery Regulations of this Act within the exclusive Fishery Limits of the British Islands, and every Person belonging to a British Sea-Fishing Boat who has committed an Offence against those Regulations outside of those Limits, shall be liable to a Penalty of not less than Eight Shillings and not more than Fifty Pounds, or, in the Discretion of the Court, to Imprisonment for not less than Two Days and not more than Three Months, with or without Hard Labour.

If the Offence is One by which some Injury has been caused in any of the Ways before mentioned the Court may order the Offender to pay in addition to any Penalty a reasonable Sum as Compensation to the Person injured, which Sum may be recovered in the same Manner as a Penalty under this Act.

15. Where a Person belonging to a French Sea-Fishing Boat has committed, outside of the exclusive Fishery Limits of the British Islands, an Offence against the Fishery Regulations of this Act, he shall, after the Evidence is taken as provided by this Act, be sent back to France for Trial.

Exclusive Fishery Limits.

16. If any Person belonging to a French Sea-Fishing Boat acts in contravention of Articles Thirty-two, Thirty-three, and Thirty-five of the First Schedule to this Act, or any of them, the Master or Person for the Time being in charge of such Boat shall be liable for the First Offence to a Penalty not exceeding Ten Pounds; for the Second or any subsequent Offence to a Penalty not exceeding Twenty Pounds.

And the Court may order that in default of Payment of any such Penalty the Boat to which the Offender belongs may be detained in some Port of the British Islands for a Period not exceeding Three Months from the Date of the Sentence inflicting the Penalty.

Entry of Boats and Sale of Fish.

17. Article Thirty-one of the Convention and the Declaration annexed to the Convention shall not come into force until such Day as may be fixed in that Behalf by a Notice published in the *London Gazette*.

18. The Commissioners of Her Majesty's Customs may from Time to Time make, alter, and revoke Regulations for carrying into effect Article Thirty-one of the Convention, and respecting the Report of British Sea-Fishing Boats which have visited Foreign Ports, and of Sea-Fishing Boats which are not British, and respecting the Entry and Landing of Fish taken by Sea-Fishing Boats which are not British, or respecting any of such Matters, and may for such Purpose alter and dispense with all or any of the Regulations and Enactments relating to the aforesaid Matters which are contained in this or any other Act, or are otherwise from Time to Time in force.

The Regulations so made shall be deemed to be Regulations within the Meaning of Section Two hundred of the Customs Consolidation Act, 1853.

19. After the Commencement of this Act all Restrictions whatever, in England, on the Sale of Sea-Fish as defined by this Act, which is not diseased, unsound, unwholesome, or unfit for the Food of Man, shall be abolished.

Lights.

20. Articles Thirteen and Fourteen of the First Schedule to this Act shall, as to all Sea-Fishing Boats within the exclusive Fishery Limits of the British Islands, and as to British Sea-Fishing Boats outside of these Limits, have the same Force as if they were Regulations respecting Lights within the Meaning of the Acts relating to Merchant Shipping, with this Addition, that any Sea-Fishery Officer shall have the same

Powers of enforcing such Regulations as are given to any Officer by such Acts, and any infringement of the Regulations contained in Articles Thirteen and Fourteen shall be deemed an Offence within the Meaning of the Portion of this Act which gives Power to Sea-Fishery Officers.

21. The Boats and Articles specified in Article Twenty-two of the First Schedule to this Act shall be deemed to be included in the Term "Wreck" as used in any Act relating to Merchant Shipping.

Registry of Sea-Fishing Boats.

22. Subject to any Exemptions allowed by or in pursuance of any Order in Council made as herein-after mentioned, every British Sea-Fishing Boat shall, as required by Articles Four, Five, Six, Seven, and Eight of the Convention, be lettered and numbered and have Official Papers, and shall for that Purpose be entered or registered in a Register for Sea-Fishing Boats.

A British Sea-Fishing Boat which is required to be entered or registered in pursuance of this Part of this Act, but is not so entered or registered, shall not be entitled to any of the Privileges or Advantages of a British Sea-Fishing Boat, but all Obligations, Liabilities, and Penalties with reference to such Boat, and the Punishment of Offences committed on board her, or by any Persons belonging to her, and the Jurisdiction of Officers and Courts, shall be the same as if such Boat were actually so entered or registered.

If any British Sea-Fishing Boat required to be entered or registered in pursuance of this Part of this Act, and not being so entered or registered, is used as a Sea-Fishing Boat in the Seas to which this Act applies, the Owner and the Master of such Boat shall each be liable to a Penalty not exceeding Twenty Pounds; and any Sea-Fishery Officer may seize and detain such Boat and prevent it from going to Sea and from Sea-Fishing until it is duly entered or registered, and may for that Purpose, if it is at Sea, take it back into the nearest or most convenient Port in the British Islands.

23. It shall be lawful for Her Majesty by Order in Council from Time to Time to do all or any of the following Things; namely,

- (a.) To make Regulations for carrying out, enforcing, and giving Effect to both the Entry and Registry of British Sea-Fishing Boats, and also Articles Four, Five, Six, Seven, and Eight of the First Schedule to this Act;
- (b.) To adopt in such Regulations any existing System of Registry or lettering and numbering of Boats, and to provide for bringing any such System into conformity with the Requirements of the

Convention and this Act, and with the said Regulations:

- (c.) To define the Boats or Classes of Boats to which such Regulations or any of them are to apply, and to provide for the Exemption of any Boats or Classes of Boats from such Regulations or any of them, and from the Provisions of this Part of this Act with respect to Entry or Registry and the Possession of a Certificate of Registry and Official Papers;
 - (d.) To apply to the Entry and Registry respectively of Sea-Fishing Boats so defined, and to all Matters incidental thereto, such (if any) of the Enactments contained in any Act relating to the Registry of British Ships, and with such Modifications and Alterations as may be found desirable;
 - (e.) To impose Penalties not exceeding Twenty Pounds for the Breach of any Regulations made by any Order in Council, for the Breach of which a Punishment cannot be provided by the Application of the Enactments contained in any Act relating to the Registry of British Ships;
 - (f.) To alter and revoke an Order so made;
- And every such Order shall be of the same Force as if it were enacted in this Act.

24. In all Proceedings against the Owner or Master of or any Person belonging to any Boat registered or entered in the Register for Sea-Fishing Boats for Offences against the Fishery Regulations or Regulations as to Lights in this Act, and in all Actions or Suits for the Recovery of Damages for Injury done by any such Boat, such Register, or the Register under any Act relating to the Registry of British Ships as to Boats registered therein, shall be conclusive Evidence that the Persons registered at any Date as Owners of such Boat were at that Date Owners thereof, and that the Boat is a British Sea-Fishing Boat: Provided that—

- (1.) This Provision shall not prevent any Proceedings, Action, or Suit being taken or instituted against any Person not registered who is beneficially interested in the Boat;
- (2.) This Provision shall not affect the Rights of the Owners among themselves, or the Rights of any registered Owner against any Person not registered who is beneficially interested in the Boat;
- (3.) Save as aforesaid, Entry or Registry in the Register for Sea-Fishing Boats shall not confer, take away, or affect any Title to or Interest in any Sea-Fishing Boat.

25. The Two hundred and seventh Section of the Customs Consolidation Act, 1853, shall not

apply to any British Sea-Fishing Boat entered or registered in pursuance of this Part of this Act.

26. Subject to any Exemptions allowed by or in pursuance of such Order in Council, the Master of every Sea-Fishing Boat within the exclusive Fishery Limits of the British Islands, and of every British Sea-Fishing Boat outside of those Limits, shall have on board his Boat, if it is a British Sea-Fishing Boat required by this Part of this Act to be entered or registered, the Certificate of Registry or Official Papers issued to the Boat in pursuance of any Act relating to the Registry of British Ships, or of this Part of this Act, and if it is not British, then Official Papers evidencing the Nationality of such Boat.

The Master of any such Boat who acts in contravention of this Section, unless there is a reasonable Cause for not having such Certificate or Official Papers (Proof whereof shall lie on him), shall be liable, together with his Boat and Crew, to be taken by any Sea-Fishery Officer, without Warrant, Summons, or other Process, into the nearest or most convenient Port, and there to be ordered by the Court, on any Proceeding in a summary Manner, to pay a Penalty not exceeding Twenty Pounds, and if such Penalty is not paid, and the Boat is not British, such Boat may be detained in Port for a Period not exceeding Three Months from the Date of the Sentence.

PART III.

(Note.—As to this Part see 29 & 30 Vict. c. 85. and 30 & 31 Vict. c. 18.)

OYSTER FISHERIES.

Preliminary.

27. This Part of this Act shall not interfere with the Jurisdiction or Powers now possessed by the Irish Fishery Commissioners with regard to Oyster Fisheries, and shall not apply to Ireland, the Isle of Man, or the Islands of Guernsey, Jersey, Alderney, or Sark, or their Dependencies, or to the Seas adjoining the same, within the exclusive Fishery Limits of the British Islands, or to any Seas outside of those exclusive Fishery Limits.

28. In this Part of this Act the Words "Oysters" and "Mussels" respectively include the Brood, Ware, Half-ware, Spat, and Spawn of Oysters and Mussels respectively.

In this Part of the Act the Expression "Oyster and Mussel Fishery" includes a Fishery for either Oysters or Mussels separately, and the Term "Oyster or Mussel Fishery" includes a Fishery for both Oysters and Mussels; and the Provisions of this Part of this Act shall be construed to apply in the Case of any Fishery to

Oysters and Oyster Ground and Beds alone, or to Mussels and Mussel Ground and Beds alone, or to both Oysters and Mussels and Oyster and Mussel Ground and Beds, according as the Right of Fishery is for Oysters alone, or for Mussels alone, or for both Oysters and Mussels.

Order for Fishery.

29. An Order for the Establishment or Improvement, and for the Maintenance and Regulation, of an Oyster and Mussel Fishery on the Shore and Bed of the Sea, or of an Estuary or tidal River, above or below, or partly above and partly below, Low-water Mark (which Shore and Bed are in this Part of this Act referred to as the Sea Shore), and including, if desirable, Provisions for the Constitution of a Board or Body Corporate for the Purpose of such Order, may be made under this Part of this Act, on an Application by a Memorial in that Behalf presented to the Board of Trade by any Persons desirous of obtaining such an Order (which Persons are in this Part of this Act referred to as the Promoters).

30. If on Consideration of the Memorial the Board of Trade think fit to proceed in the Case, the Promoters shall cause printed Copies of the Draft of the Order as proposed by them (with such Modifications, if any, as the Board of Trade require) to be published and circulated in such Manner as the Board of Trade think sufficient and proper for giving Information to all Parties interested, and shall give Notice of the Application, in such Manner as the Board of Trade direct or approve, to the Owners or reputed Owners, Lessees or reputed Lessees, and Occupiers (if any) of the Portion of the Sea Shore to which the proposed Order relates, and of the Lands adjoining thereto.

31. During One Month after the first Publication of the Draft Order the Board of Trade shall receive any Objections or Representations made to them in Writing respecting the proposed Order.

32. The Board of Trade shall, as soon as conveniently may be after the Expiration of the said Month, appoint some fit Person to act as Inspector respecting the proposed Order.

The Inspector shall proceed to make an Inquiry concerning the Subject Matter of the proposed Order, and for that Purpose to hold a Sitting or Sitzings in some convenient Place in the Neighbourhood of the Portion of the Sea Shore to which the proposed Order relates, and thereat to take and receive any Evidence and Information offered, and hear and inquire into any Objections or Representations made respecting the proposed Order, with Power from Time to Time to adjourn any Sitting; and the Inspector

may, for the Purpose of such Inquiry, take Evidence, and by Summons under his Hand require the Attendance of any Person, and examine him and any Person who attends before him, on Oath or otherwise, as he thinks expedient, and may administer an Oath or take any Affidavit or Declaration for the Purpose of the Inquiry; and any Person so summoned who, after Tender to him of his reasonable Expenses, refuses or neglects to obey such Summons, and any Person who refuses or neglects to answer any Question which the Inspector is authorized to ask, shall be liable, on summary Conviction, to a Penalty not exceeding Ten Pounds for each Offence; and any Person who wilfully gives false Evidence in any Examination on Oath in any such Inquiry, or in any Affidavit or Declaration to be used in any such Inquiry, shall be deemed guilty of Perjury.

Notice shall be published in such Manner as the Board of Trade direct of every such Sitting (except an adjourned Sitting) Fourteen Days at least before the holding thereof.

33. The Inspector shall make a Report in Writing to the Board of Trade setting forth the Result of the Inquiry, and stating whether in his Opinion the proposed Order should be approved, with or without Alteration, and if with any, then with what Alteration, and his Reasons for the same, and the Objections and Representations, if any, made on the Inquiry, and his Opinion thereon.

34. As soon as conveniently may be after the Expiration of the said Month, or after the Receipt by the Board of Trade of the Report of the Inspector, they shall proceed to consider the Objections or Representations that have been made respecting the proposed Order and also the Report of the Inspector, and thereupon they shall either refuse the Application or settle and make an Order in such Form and containing such Provisions as they think expedient.

35. Where the Board of Trade make an Order, the Promoters shall cause it to be published and circulated in such Manner as the Board of Trade think sufficient for giving Information to all Parties interested, and shall give Notice of it, in such Manner as the Board of Trade direct or approve, to the Owners or reputed Owners, Lessees or reputed Lessees, and Occupiers (if any) of the Portion of the Sea Shore to which the Order relates, and of the Lands adjoining thereto.

36. All Expenses incurred by the Board of Trade in relation to any Memorial, or to any Order consequent thereon, shall be defrayed by the Promoters, and the Board of Trade shall, if they think fit, on or at any Time after the Pre-

sentation of the Memorial, require the Promoters to pay to the Board of Trade such Sum as the Board of Trade think requisite for or on account of those Expenses, or to give Security to the Satisfaction of the Board of Trade for the Payment of those Expenses on Demand.

37. An Order of the Board of Trade under this Part of this Act shall not of itself have any Operation, but the same shall have full Operation when and as confirmed by Act of Parliament, with such Modifications, if any, as to Parliament seem fit.

38. If in the Progress through Parliament of a Bill confirming an Order, a Petition is presented to either House of Parliament against the Order, the Bill, as far as it relates to the Order petitioned against, may be referred to a Select Committee, and the Petitioner shall be allowed to appear and oppose as in case of a Private Bill.

39. The Board of Trade may from Time to Time make an Order for amending an Order that has been confirmed by Act of Parliament, and all the Provisions of this Part of this Act relative to an original Order shall apply also to an amending Order, *mutatis mutandis*.

40. Where an Order of the Board of Trade under this Part of this Act confers a Right of Several Oyster and Mussel Fishery, the Persons obtaining the Order, in this Act referred to as the Grantees, shall, by virtue of the Order and of this Part of this Act, but subject to any Restrictions and Exceptions contained in the Order, have, within the Limits of the Fishery, the exclusive Right of depositing, propagating, dredging, and fishing for, and taking Oysters and Mussels, and in the Exercise of that Right may, within the Limits of the Fishery, proceed as follows, namely, make and maintain Oyster and Mussel Beds or either of them, and at any Season collect Oysters and Mussels, and remove the same from Place to Place, and deposit the same as and where they think fit, and do all other Things which they think proper for obtaining, storing, and disposing of the Produce of their Fishery.

41. Where an Order of the Board of Trade under this Part of this Act, without conferring a Right of Several Oyster and Mussel Fishery, confers a Right of regulating an Oyster and Mussel Fishery, and imposes Restrictions on or makes Regulations respecting the dredging and fishing for and taking Oysters and Mussels, or either of them, within the Limits of the regulated Fishery, or imposes Tolls or Royalties upon Persons dredging, fishing for, and taking Oysters and Mussels, or either of them, within the Limits

of such Fishery, the Persons obtaining the Order, in this Act included in the Term the Grantees, shall, by virtue of the Order and of this Part of this Act, but subject to any Restrictions and Exceptions contained in the Order, have Power to do all or any of the following Things; namely,

- (a.) To carry into effect and enforce such Restrictions and Regulations;
- (b.) To levy such Tolls or Royalties;
- (c.) To provide for depositing and propagating Oysters and Mussels within the Limits of the Fishery, and for improving and cultivating the Fishery.

All such Restrictions, Regulations, Tolls, and Royalties shall be imposed on and apply to all Persons equally, and shall be for the Benefit of the Fishery only, and the Tolls and Royalties shall be applied in the Improvement and Cultivation of the Fishery.

Any Person who dredges or fishes for or takes any Oysters or Mussels in contravention of any such Restriction or Regulation, or without paying any such Toll or Royalty, shall be liable on summary Conviction to pay a Penalty not exceeding Twenty Pounds, and to forfeit all Oysters and Mussels so taken or a Sum equal to the Value thereof if they have been sold, which Forfeiture may be enforced in the same Manner as a Penalty.

The Court may direct such Forfeiture to be delivered or paid to the Grantees to be applied by them for the Improvement and Cultivation of the Fishery.

42. Whenever it is necessary in any legal Proceeding to prove that, in pursuance of any Act of Parliament or of an Order under this Part of this Act, the Limits of any Oyster and Mussel Fishery have been duly buoyed or otherwise marked, or Notices of such Limits have been duly published, posted, or distributed, or that Notice of the Provisions of the Order or of such Act relating to the Oyster and Mussel Fishery has been duly published, a Certificate purporting to be under the Hand of One of the Secretaries or Assistant Secretaries of the Board of Trade, certifying that the Board of Trade are satisfied that the said Limits were so buoyed or marked, or that the said Notices were duly published, posted, or distributed, shall be received as Evidence that the same have been so buoyed or marked, or that the said Notices have been so published, posted, or distributed.

43. The Portion of the Sea Shore to which an Order of the Board of Trade under this Part of this Act relates (as far as it is not by Law within the Body of any County) shall for all Purposes of Jurisdiction be deemed to be within the Body of the adjoining County, or to be within the Body

of each of the adjoining Counties, if more than One.

44. The Board of Trade shall not in any Case make an Order conferring a Right of Several Oyster and Mussel Fishery, or a Right of regulating an Oyster and Mussel Fishery, for a longer Period at once than Sixty Years.

45. A Right of Several Oyster or Mussel Fishery conferred by an Order of the Board of Trade under this Part of this Act, or by "The Roach River Oyster Fishery Act, 1866," and a Right of regulating an Oyster and Mussel Fishery, shall, notwithstanding anything in the Order or in the said Act, be determinable by a Certificate of the Board of Trade (which Certificate they are hereby empowered to make) certifying to the Effect that the Board of Trade are not satisfied that the Grantees under the Order, or the Company under the said Act (as the Case may be), are properly cultivating the Oyster or Mussel Ground within the Limits of such Fishery, or are properly carrying into effect and enforcing the Restrictions and Regulations, and levying the Tolls or Royalties; and on any such Certificate being made, the Right of Several Fishery or Right of regulating the Fishery (as the Case may be) by such Order or the said Act conferred shall, by virtue of this Part of this Act and of the Certificate, be absolutely determined, and all Provisions of this Part of this Act or of the said Act shall cease to operate in relation to such Fishery as a Several Oyster and Mussel Fishery or as a regulated Fishery.

For the Purposes of this Provision the Board of Trade may from Time to Time, with respect to any such Fishery, make such Inquiries and Examination by an Inspector or otherwise, and require from the Grantees or Company such Information, as the Board of Trade think necessary or proper, and the Grantees or Company shall afford all Facilities for such Inquiries and Examination, and give such Information, accordingly.

46. Where any Portion of the Sea Shore proposed to be comprised in an Order of the Board of Trade under this Part of this Act belongs to Her Majesty, Her Heirs or Successors, in right of the Crown, but is not under the Management of the Board of Trade, or forms Part of the Possessions of the Duchy of Lancaster or of the Duchy of Cornwall, the Board of Trade shall not make the Order without such Consent as herein-after mentioned; namely,

In the first-mentioned Case of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or One of them;

In the secondly-mentioned Case of the Chancellor of the Duchy of Lancaster in Writing

under his Hand attested by the Clerk of the Council of the Duchy:

In the thirdly-mentioned Case of the Duke of Cornwall, or other the Persons for the Time being empowered to dispose for any Purpose of Lands of the Duchy of Cornwall.

47. Where any Portion of the Sea Shore comprised in an Order of the Board of Trade under this Part of this Act does not belong to Her Majesty, Her Heirs or Successors, in right of the Crown, or form Part of the Possessions of the Duchy of Lancaster or of the Duchy of Cornwall, the Board of Trade shall incorporate in the Order "The Lands Clauses Consolidation Act, 1845," or "The Lands Clauses Consolidation (Scotland) Act, 1845," as the Case requires, and shall apply the Provisions thereof respectively to the Purchase or taking of such Portion of the Sea Shore.

48. No Order made by the Board of Trade under this Part of this Act shall take away or abridge any Right of Several Fishery, or any Right on, to, or over any Portion of the Sea Shore, which Right is enjoyed by any Person under any Local or Special Act of Parliament, or any Royal Charter, Letters Patent, Prescription, or immemorial Usage, without the Consent of such Person.

49. The Persons obtaining an Order under this Part of this Act shall at all Times keep at some convenient Place, in the Neighbourhood of the Portion of the Sea Shore to which the Order relates, Copies of the Order with the Act confirming it, and of this Part of this Act, printed respectively by some of Her Majesty's Printers, and shall sell such Copies to all Persons desiring to buy them at a Price not exceeding Sixpence for One Copy of this Part of this Act and of the Order and of the Act confirming it together.

If any such Persons fail to comply with this Provision, they shall for every such Offence be liable to a Penalty not exceeding Five Pounds, and to a further Penalty not exceeding One Pound for every Day during which such Failure continues after the Day on which the First Penalty is incurred.

50. There shall be annually laid before both Houses of Parliament a Report of the Board of Trade respecting the Applications to and Proceedings of the Board of Trade under this Part of this Act during each Year.

Protection of Oyster Beds.

51. All Oysters and Mussels being in or on an Oyster or Mussel Bed within the Limits of a Several Oyster and Mussel Fishery granted by an Order under this Part of this Act, and all

Oysters being in or on any private Oyster Bed which is owned by any Person independently of this Act, and is sufficiently marked out or sufficiently known as such, shall be the absolute Property of the Grantees or of such Owner, as the Case may be, and in all Courts of Law and Equity and elsewhere, and for all Purposes, civil, criminal, or other, shall be deemed to be in the actual Possession of the Grantees and such Owner respectively.

52. All Oysters and Mussels removed by any Person from an Oyster or Mussel Bed within the Limits of any such Several Fishery, and all Oysters removed by any Person from any such private Oyster Bed, and not either sold in Market overt or disposed of by or under the Authority of the Grantees or Owner (as the Case may be), shall be the absolute Property of the Grantees and Owner respectively, and in all Courts of Law and Equity and elsewhere, and for all Purposes, civil, criminal, or other, the absolute Right to the Possession thereof shall be deemed to be in the Grantees and Owner respectively.

53. It shall not be lawful for any Person other than the Grantees, their Agents, Servants, and Workmen, within the Limits of any such Several Fishery, or in any Part of the Space within the same described in this Behalf in the Order, or other than the Owner of any such private Oyster Bed, his Agents, Servants, and Workmen, within the Limits of such Bed, knowingly to do any of the following Things:

To use any Implement of Fishing, except a Line and Hook or a Net adapted solely for catching floating Fish, and so used as not to disturb or injure in any Manner any Oyster or Mussel Bed, or Oysters or Mussels, or the Oyster or Mussel Fishery:

To dredge for any Ballast or other Substance except under a lawful Authority for improving the Navigation;

To deposit any Ballast, Rubbish, or other Substance:

To place any Implement, Apparatus, or Thing prejudicial or likely to be prejudicial to any Oyster or Mussel Bed, or Oysters or Mussels, or to the Oyster or Mussel Fishery, except for a lawful Purpose of Navigation or Anchorage:

To disturb or injure in any Manner, except as last aforesaid, any Oyster or Mussel Bed, or Oysters or Mussels, or the Oyster or Mussel Fishery:

And if any Person does any Act in contravention of this Section he shall be liable to the following Penalty, namely, to a Penalty not exceeding Two Pounds for the First Offence, and not exceeding Five Pounds for the Second Offence, and not exceeding Ten Pounds for the Third and

subsequent Offence; and every such Person shall also be liable to make full Compensation to the Grantees and Owner respectively for all Damage sustained by them or him by reason of his unlawful Act, and in default of Payment the same may be recovered from him by the Grantees and Owner respectively by Proceedings in any Court of competent Jurisdiction (but not in a summary Manner), whether he has been prosecuted for or convicted of an Offence against this Section or not.

54. Provided always, That nothing in the last foregoing Section shall make it unlawful for any Person to do any of the Things therein mentioned,—

(a.) In the Case of a Fishery granted by an Order under this Part of this Act, if at the Time of his doing the same the Limits of the Several Fishery or of the Space within the same described in that Behalf in the Order are not sufficiently marked out in manner prescribed by or under the Order, or if Notice of those Limits has not been given to him in manner so prescribed :

(b.) In the Case of a private Oyster Bed owned by any Person independently of this Act, if it is not sufficiently marked out and known as such.

55. When Two or more Oyster or Mussel Beds or Fisheries belonging to different Proprietors are contiguous to each other, and any Proceeding by Indictment or otherwise is taken against any Person for stealing Oysters or Mussels from any Bed formed under an Order made in pursuance of this Part of this Act, or for stealing Oysters from any Bed formed independently of this Act, it shall be sufficient, in alleging and proving the Property and lawful Possession of the Oysters or Mussels stolen, and the Place from which they were stolen, to allege and prove that they were the Property of and in the lawful Possession of one or other of such Proprietors, and were stolen from one or other of such contiguous Beds or Fisheries.

56. This Part of this Act shall, as to all Orders made under the Oyster and Mussel Fisheries Act, 1866, which have been or may be confirmed in this Session of Parliament, apply in the same Manner as if they had been made and confirmed in pursuance of this Part of this Act.

All Orders made under the Oyster and Mussel Fisheries Act, 1866, before the Commencement of this Act, and not so confirmed, and all Proceedings taken before the Commencement of this Act with a view to obtain any such Orders, shall have Effect and be proceeded with as if they had

been respectively made and taken under this Part of this Act.

PART IV.

LEGAL PROCEEDINGS.

57. All Penalties, Offences, and Proceedings under this Act, or under any Order in Council made thereunder, (except any Felony, and except as otherwise provided,) may be recovered, prosecuted, and taken in a summary Manner, and—

In England, before any Justice, and

In Scotland, before any Court or Judge acting under the Summary Procedure Act, 1864, and any Act amending the same, in manner directed by those Acts, and

In the Isle of Man, and the Islands of Guernsey, Jersey, Alderney, and Sark respectively, before any Court, Governor, Deputy Governor, Deemster, Jurat, or other Magistrate, in the Manner in which the like Penalties, Offences, and Proceedings are by Law recovered, prosecuted, and taken, or as near thereto as Circumstances admit.

58. If any Person feels aggrieved by any Conviction under this Act, or by any Determination or Adjudication of the Court with respect to any Compensation under this Act, where the Sum adjudged to be paid exceeds Five Pounds, or the Period of Imprisonment adjudged exceeds One Month, he may appeal therefrom in manner following; (that is to say,)

In England, in manner directed by Law, subject, in the City of London and the Metropolitan Police District, to the Enactments in that Behalf made, and subject elsewhere to the Conditions and Regulations following :

1. The Appeal shall be made to some Court of General or Quarter Sessions for the County or Place in which the Court whose Decision is complained of has Jurisdiction, holden not less than Fifteen Days and not more than Four Months after the Decision of the Court from which the Appeal is made :
2. The Appellant shall within Three Days after the said Decision give Notice in Writing to the other Party of his Intention to appeal, and the Ground of such Appeal :
3. Immediately after such Notice the Appellant shall before a Justice of the Peace enter into Recognizances with Two sufficient Sureties conditioned personally to try such Appeal, and to abide the Judgment of the Court thereon, and to pay such Costs as may be awarded by the Court :
4. The Court may adjourn the Appeal, and upon the Hearing thereof they may reverse,

confirm, or modify the Decision of the Justice or Justices, with or without Costs to be paid by either Party :

In Ireland, in manner directed by the Petty Sessions, Ireland, Act, 1851, and any Act amending the same :

In Scotland, the Isle of Man, and the Islands of Guernsey, Jersey, Alderney, and Sark, in manner, in which Appeals from the like Convictions and Determinations and Adjudications are made.

59. Where a Person belonging to a French Sea-Fishing Boat is charged with having committed outside of the exclusive Fishery Limits of the British Islands an Offence against the Fishery Regulations of this Act, the Court shall have Jurisdiction to hear and shall hear the Case in the same Manner as if such Person were liable to a Penalty under this Act, subject to the following Provisions :

- (1.) The Statement on Oath of each Witness shall be put into Writing, and such Writing, in this Act referred to as the Deposition, shall (in the Presence of the Accused, unless he has left the Port,) be read over to and signed by the Witness and by the Person or One of the Persons who constitute the Court :
- (2.) After the Examination of all the Witnesses has been completed the Court shall inquire whether the Accused has any Answer to make to the Accusation, and shall warn him that what he says may be given in Evidence against him :
- (3.) Any Statement made by the Accused shall be put into Writing, and signed by the Person or Persons constituting the Court, and added to the Depositions :
- (4.) If the Court is of opinion that the Evidence is not sufficient to put the Accused upon his Trial, or to raise a strong or probable Presumption of his Guilt, the Court shall order him to be discharged. If the Court is of the contrary Opinion, the Court shall make an Order directing him to be sent back to France for Trial, and directing the Depositions to be sent to the Collector of Customs of the Port for Transmission to the British Consular Officer of the Port to which the Accused belongs :
- (5.) All Proceedings under this Section shall, if possible, be completed before the Expiration of Three clear Days after the Arrival of the Offender at the Port in the British Islands.

60. For the Purpose of giving Jurisdiction to Courts under this Act the following Provisions shall have Effect :

- (1.) A Sea-Fishing Boat shall be deemed to be a Ship within the Meaning of any Act relating to Offences committed on board a Ship :
- (2.) The same Court shall have Power to exercise the Jurisdiction conferred by this Act with respect to an Offence committed by a Foreign Subject as would have Jurisdiction to try such Offence if it had been committed by a British Subject.

61. If any Offender belonging to a British Sea-Fishing Boat is taken into a French Port in pursuance of the Convention, the Depositions, Minutes, and other Documents, authenticated in manner provided by Article Twenty-eight of the Convention, shall be receivable in Evidence without further Proof of their Authenticity, and a Certificate under the Seal of a French Consular Officer in the British Islands that such Documents have been so authenticated shall be conclusive Evidence of the Fact.

If the Depositions were taken in the Presence of and so as to be understood by the Accused, or if the Accused had an Opportunity of cross-examining the Deponents, or if the Minutes are Minutes of a Judicial Proceeding at which the British Consular Officer of the Port was present, and in which the Matter in dispute was fairly investigated, and the Accused had an Opportunity of making his Defence, the British Consular Officer shall certify such Fact or Facts under his Hand and Seal, and until the contrary is proved such Certificate shall be sufficient Evidence of the Matters therein stated, and such Seal, Signature, and Certificate shall be deemed to be a Seal, Signature, and Document within the Meaning of Sections Three and Five of the Act of the Session of the Eighteenth and Nineteenth Years of the Reign of Her present Majesty, Chapter Forty-two, intituled "An Act to enable Diplomatic and Consular Agents abroad to administer Oaths and do Notarial Acts."

62. Service of any Summons or other Matter in any legal Proceeding under this Act shall be good Service if made personally on the Person to be served, or at his last Place of Abode, or if made by leaving such Summons for him on board any Sea-Fishing Boat to which he may belong, with the Person being or appearing to be in command or charge of such Boat.

63. Where any Offence against the Fishery Regulations of this Act has been committed by some Person belonging to any Sea-Fishing Boat, the Master or Person for the Time being in charge of such Boat shall in every Case be liable to pay any Penalty imposed or Compensation awarded in respect of such Offence, unless the

Person who actually committed such Offence is proved guilty to the Satisfaction of the Court.

Any Penalty under this Act, except a Penalty for the Nonpayment of which Detention in a Port is specially provided as the Remedy, may be recovered in the ordinary Way, or, if the Court think fit so to order, by Distress or Pounding and Sale of the Sea-Fishing Boat to which the Offender belongs, and her Tackle, Apparel, and Furniture, and any Property on Board thereof or belonging thereto, or any Part thereof.

64. The Court imposing any Penalty or enforcing any Forfeiture under this Act may, if it think fit, direct the whole or any Part thereof to be applied in or towards Payment of the Expenses of the Proceedings; and, subject to such Direction, and to any Direction given under any express Provision in this Act, all Penalties and Forfeitures recovered under this Act shall be paid into the Receipt of Her Majesty's Exchequer in such Manner as the Commissioners of the Treasury may direct, and shall be carried to the Consolidated Fund.

65. Nothing in this Act shall prevent any Person being liable under any other Act or otherwise to any Indictment, Proceeding, Punishment, or Penalty, other than is provided for any Offence by this Act, so that no Person be punished twice for the same Offence.

Nothing in this Act, or in any Order in Council made thereunder, nor any Proceedings under such Act or Order with respect to any Matter, shall alter the Liability of any Person in any Action or Suit with reference to the same Matter, so that no Person shall be required to pay Compensation twice in respect of the same Injury.

PART V.

MISCELLANEOUS.

66. Whereas by a Convention concluded between the United Kingdom and France on the Twenty-sixth Day of January One thousand eight hundred and twenty-six it was, amongst other Matters, agreed that Sea-Fishing Boats of either Country, when forced by Stress of Weather to seek Shelter in the Ports or on the Coasts of the other Country, should on certain Conditions be exempted from all Dues to which they would otherwise be liable, and Doubts have arisen whether that Part of the said Convention has ever been confirmed by the Authority of Parliament, and it is expedient to remove such Doubts, and to enable Her Majesty to provide for the due Execution of the said Convention and of any

other like Convention or Treaty which may be made by Her Majesty: Be it enacted, That where any such Convention or Treaty as mentioned in this Section has been or may hereafter be concluded with any Foreign Country, Her Majesty may by Order in Council direct that every Sea-Fishing Boat belonging to such Foreign Country, when forced by Stress of Weather to seek Shelter in any Port or Place in the British Islands, shall, if it does not discharge or receive on board any Cargo, and complies with the other Conditions, if any, specified in such Order, be exempt from all Dues, Tolls, Rates, Taxes, Duties, Imposts, and other Charges to which it would otherwise be liable in such Port or Place, and every such Boat shall be exempt accordingly.

67. The Irish Fishery Commissioners may from Time to Time lay before Her Majesty in Council Byelaws for the Purpose of restricting or regulating the dredging for Oysters on any Oyster Beds or Banks situate within the Distance of Twenty Miles measured from a straight Line drawn from the Eastern Point of Lambay Island to Carnore Point on the Coast of Ireland, outside of the exclusive Fishery Limits of the British Islands, and all such Byelaws shall apply equally to all Boats and Persons on whom they may be binding.

It shall be lawful for Her Majesty, by Order in Council, to do all or any of the following Things; namely,

- (a) To direct that such Byelaws shall be observed;
- (b) To impose Penalties not exceeding Twenty Pounds for the Breach of such Byelaws;
- (c) To apply to the Breach of such Byelaws such (if any) of the Enactments in force respecting the Breach of the Regulations respecting Irish Oyster Fisheries within the exclusive Fishery Limits of the British Islands, and with such Modifications and Alterations as may be found desirable;

(d) To revoke or alter any Order so made. Provided that the Length of Close Time prescribed by any such Order shall not be shorter than that prescribed for the Time being by the Irish Fishery Commissioners in respect of Beds or Banks within the exclusive Fishery Limits of the British Islands.

Every such Order shall be binding on all British Sea-Fishing Boats, and on any other Sea-Fishing Boats in that Behalf specified in the Order, and on the Crews of such Boats.

68. On the Coast of Cornwall, except so much of the North Coast as lies to the East of Trevoe Head, no Person between the Twenty-fifth of

July and Twenty-fifth of November in any Year—

- (a) shall, from Sunrise to Sunset, within the Distance of Two Miles from the Coast, measured from Low-water Mark (whether in Bays or not), use a Drift Net or Trawl Net, or
- (b) shall, within Half a Mile of any Sea-Fishing Boat stationed for Seine-Fishing, anchor any Sea-Fishing or other Boat (not being a Boat engaged in Seine-Fishing), or lay, set, or use any Net, Boulder, or Implement of Sea-Fishing (except for the Purpose of Seine-Fishing):

Any Person who acts in contravention of this Section shall be liable on summary Conviction to a Penalty not exceeding Twenty Pounds, which may be recovered in the same Manner as a Penalty for an Offence against the Fishery Regulations of this Act.

69. With respect to any Orders in Council made in pursuance of this Act, the following Provisions shall have Effect:

- (1.) They shall be published in the *London Gazette*, or otherwise published in such Manner as the Board of Trade may direct for such sufficient Time before they come into force as to prevent Inconvenience:
- (2.) They may be proved in any legal Proceeding by the Production of a Copy of the Gazette containing the said Advertisement, or of a Copy of the Orders or Regulations purporting to be printed by the Printer to Her Majesty.

70. The Enactments in this Act which are restricted in Terms to the Seas outside the exclusive Fishery Limits of the British Islands or to any particular Part of the British Islands and the

Seas adjoining the same shall apply only to those Seas and such Part, but, save as aforesaid, this Act shall apply to the Seas adjoining the Coasts of France specified in Article Three of the First Schedule to this Act outside of the exclusive Fishery Limits of France, and to the whole of the British Islands as defined by this Act, and to the Seas surrounding the same, whether within or without the exclusive Fishery Limits of the British Islands, and the Royal Courts of Guernsey and Jersey shall register this Act in their respective Courts.

Provided that nothing in this Act relating to Oyster or Mussel Fisheries, or to Oysters or Mussels, shall in any way whatever alter, interfere with, or affect the Jurisdiction which the Irish Fishery Commissioners would have Power to exercise over the Seas surrounding Ireland and over the Oyster Fisheries and Oyster Beds in those Seas if this Act had not passed.

71. The Enactments described in the Second Schedule to this Act are hereby repealed:

Provided that—

1st. This Repeal shall not affect the Validity or Invalidity of anything already done or suffered, or any Right or Title conferred by or in pursuance of any Enactment hereby repealed, or already acquired or accrued, or any Remedy or Proceeding in respect thereof, or any Proof of any past Act or Thing, or any Offence committed before the Commencement of this Act, or any Penalty or Proceeding in respect thereof:

2d. This Repeal shall not revive or restore any Jurisdiction, Toll, Imposition, Office, Duty, Bounty, Franchise, Liberty, Custom, Privilege, Restriction, Exemption, Usage, or Practice not now existing or in force.

SCHEDULES referred to in the foregoing Act.

FIRST SCHEDULE.

CONVENTION between HER MAJESTY and the EMPEROR of the FRENCH, relative to FISHERIES in the SEAS between GREAT BRITAIN and FRANCE.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of the French, having charged a Mixed Commission with preparing a revision of the Convention of the 2nd of August 1839, and of the Regulation of June 23, 1843, relative to the fisheries in the seas situated

between Great Britain and France; and the members of that Commission having agreed upon certain arrangements which experience has shown would be useful, and which appear to them such as will advantageously modify and complete the former arrangements in the common interest of the fishermen of the two countries; their said Majesties have judged it expedient that the arrangements proposed by the said Commission should be sanctioned by a new Convention, and have for that purpose named as their Plenipotentiaries, that is to say,

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right

Honourable Richard Bickerton Pemell, Lord Lyons, a Peer of the United Kingdom, a Member of Her Britannic Majesty's most Honourable Privy Council, Knight Grand Cross of the most Honourable Order of the Bath, Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of the French;

And His Majesty the Emperor of the French, Leonel, Marquis de Moustier, Grand Cross of the Imperial Order of the Legion of Honour, &c. &c. &c., His Minister and Secretary of State for Foreign Affairs;

Who, after having communicated to each other their full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

British fishermen shall enjoy the exclusive right of fishery within the distance of three miles from low-water mark, along the whole extent of the coasts of the British islands; and French fishermen shall enjoy the exclusive right of fishery within the distance of three miles from low-water mark along the whole extent of the coast of France; the only exception to this rule being that part of the coast of France which lies between Cape Carteret and Point Meinga.

The distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays, the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland.

The miles mentioned in the present Convention are geographical miles, whereof sixty make a degree of latitude.

ARTICLE II.

It is agreed that the lines drawn between the points designated by the letters A, B, C, D, E, F, G, H, I, K, on the chart annexed to the present Convention, and signed by the respective Plenipotentiaries, shall be acknowledged by the High Contracting Parties, as defining from Point Meinga to Cape Carteret, the limits between which and the French shore the right of fishery shall be reserved exclusively to French fishermen, and these lines are as follows; that is to say,

The first line runs from the point A, three miles from low-water mark (Point Meinga bearing south) to the point B, of which the landmarks are Agon Tower on with the clump of trees upon Mount Huchon, and the summit of Gros Mont in a line with the Semaphore on Grand Isle.

The second line runs from the said point B towards Agon Tower and the clump of trees upon Mount Huchon, in the direction north sixty-four degrees east, until, at the point C, it

brings the windmill of Lingreville to bear due east.

The third line runs from point C due east towards Lingreville Windmill, until the Grand Huguenant is brought to bear on the Etat Rock at point D.

The fourth line runs from point D northward (keeping the Grand Huguenant in one with the Etat Rock) until it intersects at E a line whose landmarks are Agon Tower on with Coutances Cathedral.

The fifth line runs eastward from point E to point F, where the Steeple of Pirou is brought to bear in a line with the Sennequet Lighthouse.

The sixth line runs from point F due north to point G, where the Steeple of Blainville is brought in a line with the Sennequet Lighthouse.

The seventh line runs from point G in the direction of Pirou Steeple to point H, where the Lighthouse on Cape Carteret bears north twenty-four degrees west.

The eighth line runs from point H to point I nearly abreast of Port Bail; point I having for landmarks the Fort of Port Bail in a line with the Steeple of Port Bail.

And finally, the ninth line runs from point I to the Three Grunes at point K, where Cape Carteret bears east ten degrees north, in a line with Barneville Steeple.

It is further agreed that all the bearings specified in the present Article are to be taken according to the true meridian, and not according to the magnetic meridian.

ARTICLE III.

The arrangements of the present Convention shall apply beyond the fishery limits of both countries, as defined by the preceding Articles, to the seas surrounding and adjoining Great Britain and Ireland, and adjoining the coasts of France between the frontiers of Belgium and Spain. The rules respecting oyster fishery shall, however, be observed only in the seas comprised within the limits herein-after described.

ARTICLE IV.

All British and French fishing boats shall be lettered and numbered.

In the United Kingdom there shall be a series of numbers for the fishing boats belonging to each collectorship of Customs, and in France a series of numbers for the fishing boats belonging to each district of Maritime Registry; and to these numbers shall be prefixed a letter (or letters) to be designated by the Board of Customs in the United Kingdom, and by the Ministry of Marine in France.

ARTICLE V.

The letter (or letters) and number shall be placed on each bow of the boat, 3 or 4 inches

(8 or 10 centimetres French) below the gunwale, and they shall be painted in white oil colour on a black ground.

For boats of 15 tons burthen and upwards the dimensions of the letters and numbers, shall be 18 inches (45 centimetres French) in height, and 2½ inches (6 centimetres French) in breadth.

For boats of less than 15 tons burthen, the dimensions shall be 10 inches (25 centimetres French) in height, and 1½ inches (4 centimetres French) in breadth.

The same letter (or letters) and number shall also be painted on each side of the mainsail of the boat, in black oil colour on white sails, and in white oil colour on tanned or black sails. Such letter (or letters) and number on the sails shall be one-third larger in every way than those placed on the bows of the boat.

The name of each fishing boat, and that of the port to which she belongs, shall be painted in white oil colour on a black ground on the stern of the boat, in letters which shall be at least 3 inches (8 centimetres French) in height and ½ inch (12 millimetres French) in breadth.

The letters, numbers, and names placed on the boats and on their sails shall not be effaced, covered, or concealed in any manner whatsoever.

ARTICLE VI.

All the buoys, barrels, and principal floats of each net, and all other implements of fishery, shall be marked with the same letter (or letters) and number as those of the boats to which they belong.

These letters and numbers shall be large enough to be easily distinguished. The owners of the nets or other fishing implements may further distinguish them by any private marks they judge proper.

ARTICLE VII.

The letters and numbers of British fishing boats shall, after having been entered in the registry book kept at the collectorship of Customs, be inserted on the licences or other official papers of those boats.

The letters and numbers of French fishing boats shall, after having been entered in the registry book kept at the Maritime Registry Office, be inserted on the muster rolls of those boats.

ARTICLE VIII.

The licences or other official papers of British fishing boats, and the muster rolls of French fishing boats, shall contain the description and tonnage of each boat, as well as the names of its owner and of its master.

ARTICLE IX.

The fishermen of both countries shall, whenever required, exhibit their licences or other official papers, or their muster rolls, to the commanders of the fishery cruizers, and to all other persons of either country appointed to superintend the fisheries.

ARTICLE X.

Fishing of all kinds, by whatever means and at all seasons, may be carried on in the seas lying beyond the fishery limits which have been fixed for the two countries, with the exception of that for oysters, as herein-after expressed.

ARTICLE XI.

From the 16th of June to the 31st of August inclusive, fishing for oysters is prohibited outside the fishery limits which have been fixed for the two countries, between a line drawn from the North Foreland Light to Dunkirk, and a line drawn from the Land's End to Ushant.

During the same period and in the same part of the Channel no boat shall have on board any oyster dredge, unless the same be tied up and sealed by the Customs authorities of one of the two countries in such a manner as to prevent its being made use of.

ARTICLE XII.

No boat shall anchor between sunset and sunrise on grounds where drift-net fishing is actually going on.

This prohibition shall not apply to anchorings which may take place in consequence of accidents, or any other compulsory circumstances; but in such case the master of the boat thus obliged to anchor shall hoist, so that they shall be seen from a distance, two lights placed horizontally about 3 feet (1 metre French) apart, and shall keep those lights up all the time the boat shall remain at anchor.

ARTICLE XIII.

Boats fishing with drift nets shall carry on one of their masts two lights, one over the other, 3 feet (1 metre French) apart.

These lights shall be kept up during all the time their nets shall be in the sea between sunset and sunrise.

ARTICLE XIV.

Subject to the exceptions or additions mentioned in the two preceding Articles, the fishing boats of the two countries shall conform to the general rules respecting lights which have been adopted by the two countries.

ARTICLE XV.

Trawl boats shall not commence fishing at a less distance than three miles from any boat fishing with drift nets.

If trawl boats have already shot their nets, they must not come nearer to boats fishing with drift nets than the distance above mentioned.

ARTICLE XVI.

No boat fishing with drift nets shall shoot its nets so near to any other boat which has already shot its nets on the fishing ground as to interfere with its operations.

ARTICLE XVII.

No decked boat fishing with drift nets shall shoot its nets at a less distance than a quarter of a mile from any undecked boat which is already engaged in fishing.

ARTICLE XVIII.

If the spot where fishing is going on should be so near to the fishery limits of one of the two countries that the boats of the other country would, by observing the regulations prescribed by Articles XV., XVI., and XVII. preceding, be prevented from taking part in the fishery, such boats shall be at liberty to shoot their nets at a less distance than that so prescribed; but in such case the fishermen shall be responsible for any damage or losses which may be caused by the drifting of their boats.

ARTICLE XIX.

Nets shall not be set or anchored in any place where drift-net fishing is actually going on.

ARTICLE XX.

No one shall make fast or hold on his boat to the nets, buoys, floats, or any part of the fishing tackle belonging to another boat.

No person shall hook or lift up the nets, lines, or other fishing implements belonging to another person.

ARTICLE XXI.

When nets of different boats get foul of each other, the master of one boat shall not cut the nets of another boat except by mutual consent, and unless it be found impossible to clear them by other means.

ARTICLE XXII.

All fishing boats, all rigging gear or other appurtenances of fishing boats, all nets, buoys, floats, or other fishing implements whatsoever, found or picked up at sea, shall, as soon as possible, be delivered to the Receiver of Wreck if the article saved be taken into the United

Kingdom, and to the Commissary of Marine if the article saved be taken into France.

The Receiver of Wreck or the Commissary of Marine, as the case may be, shall restore the articles saved to the owners thereof, or to their representatives.

These functionaries shall fix the amount which the owners shall pay to the salvors.

ARTICLE XXIII.

The execution of the regulations concerning lights and signals, licences, muster rolls, and official papers, the lettering and numbering of boats and implements of fishing, is placed, with respect to the fishermen of each of the two nations, under the exclusive superintendence of the cruisers and agents of their own nation.

Nevertheless, the commanders of the cruisers of one of the two nations shall acquaint the commanders of the cruisers of the other nation with any infractions of the above-mentioned regulations committed by the fishermen of such other nation which may come to their knowledge.

ARTICLE XXIV.

All infractions of the regulations concerning the placing of boats on the fishing ground, the distances to be observed between them, the prohibition of oyster fishing during a portion of the year, and concerning every other operation connected with the act of fishing, and more particularly concerning circumstances likely to cause damage; shall be taken cognizance of by the cruisers of either nation, whichever may be the nation to which the fishermen guilty of such infractions may belong.

ARTICLE XXV.

The commanders of cruisers of either country shall exercise their judgment as to the causes of any infractions brought to their knowledge, or as to damage arising from any cause whatever committed by British or French fishing boats in the seas beyond the fishery limits which have been fixed for the two countries; they may detain the offending boats and take them into the port nearest the scene of the occurrence, in order that the infraction or damage may be there duly established, as well by comparing the declarations and counter-declarations of the parties interested as by the testimony of those who were present.

ARTICLE XXVI.

When the offence shall not be such as to require exemplary punishment, but shall nevertheless have caused damage to any fisherman, the commanders of the cruisers shall be at liberty, should the circumstances admit of it, to arbitrate at sea between the parties concerned. On refusal of the offenders to defer to their arbitration the said commanders shall take both them and their

boats into the nearest port, to be dealt with as stated in the preceding Article.

ARTICLE XXVII.

Every fishing boat which shall have been taken into a foreign port in conformity with the two preceding Articles shall be sent back to her own country for trial as soon as the infraction for which she may have been detained shall have been duly established. Neither the boat nor her crew shall, however, be detained in the foreign port more than three clear days.

ARTICLE XXVIII.

The depositions, minutes of proceedings, and all other documents concerning the infraction, after having been authenticated by the Collector of Customs in the United Kingdom, or by the Commissary of Marine in France, shall be transmitted by that functionary to the Consular Agent of his nation residing in the port where the trial is to take place.

Such Consular Agent shall communicate those documents to the Collector of Customs, or to the Commissary of Marine, as the case may be; and if, after having conferred with that functionary, it shall be necessary for the interest of his countrymen, he shall proceed with the affair before the competent tribunal or magistrates of the country.

ARTICLE XXIX.

In both countries the competent Court or magistrate shall be empowered to condemn to a fine of at least eight shillings (ten francs), or to imprisonment for at least two days, persons who may infringe the regulations of the Convention concerning—

1. The close season for oysters, and illegal possession of dredges on board during that season;
2. The letters, numbers, and names to be placed on the boats, sails, nets, and buoys;
3. The licences or muster rolls;
4. The flags and lights to be carried by the boats;
5. The distances to be observed by the boats between each other;
6. The placing and anchoring of vessels and boats;
7. The placing and shooting of nets and the taking them up;
8. The clearing of nets;
9. The placing of buoys upon nets.

In case of repetition of the offence, the amount of fine or period of imprisonment may be doubled.

ARTICLE XXX.

In all cases of assault committed or of damage or loss inflicted at sea by fishermen of either

country upon fishermen of the other country, the Courts of the country to which the offenders belong shall condemn the latter to a fine of at least eight shillings (10 francs), or to imprisonment for at least two days. They may, moreover, condemn the offenders to pay adequate compensation for the injury.

ARTICLE XXXI.

Fishing boats of either of the two countries shall be admitted to sell their fish in such ports of the other country as may be designated for that purpose, on condition that they conform to the regulations mutually agreed upon. Those regulations, together with a list of the ports, are annexed to the present Convention; but without prejudice to the opening by either country of any additional ports.

ARTICLE XXXII.

The fishing boats of the one country shall not enter within the fishery limits fixed for the other country, except under the following circumstances:—

1. When driven by stress of weather or by evident damage.
2. When carried in by contrary winds, by strong tides, or by any other cause beyond the control of the master and crew.
3. When obliged by contrary winds or tide to beat up in order to reach their fishing ground; and when from the same cause of contrary wind or tide they could not, if they remained outside, be able to hold on their course to their fishing ground.
4. When during the herring fishing season, the herring boats of the one country shall find it necessary to anchor under shelter of the coasts of the other country, in order to await the opportunity for proceeding to their fishing ground.
5. When proceeding to any of the ports of the other country open to them for the sale of fish in accordance with the preceding Article; but in such case they shall never have oyster dredges on board.

ARTICLE XXXIII.

When fishing boats, availing themselves of the privilege specified in Article XXXI., shall have oysters on board, they shall not carry any dredges or other implement for taking oysters.

ARTICLE XXXIV.

The commanders of cruisers may authorize boats belonging to their own country to cross the exclusive fishery limits of the other country, whenever the weather is so threatening as to compel them to seek shelter.

ARTICLE XXXV.

Whenever, owing to any of the exceptional circumstances specified in the three preceding Articles, the fishing boats of either country shall be in the ports or within the fishery limits fixed for the other country, the masters of such boats shall immediately hoist a blue flag two feet (60 centimetres French) high, and three feet (one metre French) long, and shall keep that flag flying at the masthead so long as they remain in such ports or within such limits. The flag shall be hauled down as soon as the boat is outside the said limits.

Such boats must return outside the said limits as soon as the exceptional circumstances which obliged them to enter shall have ceased.

ARTICLE XXXVI.

The commanders of the cruisers of each of the two countries, and all officers or other agents appointed to superintend fisheries, shall exercise their judgment as to infractions of the regulations with regard to the fishery limits, and when they shall be satisfied of the fact of the infraction they may detain the boats of the offenders, or cause them to be detained, and may take them, or cause them to be taken into port, where, upon clear proof of the offence, such boats may be condemned by the competent Court or magistrate to a fine not exceeding 10 pounds (250 francs). In default of payment such boats may be detained for a period not exceeding three months.

In case of repetition of the offence the fine may be doubled.

ARTICLE XXXVII.

The proceedings and trial in cases of infraction of the provisions of the present Convention shall take place as speedily and as summarily as the laws in force will permit.

ARTICLE XXXVIII.

The terms "British Islands" and "United Kingdom," employed in this Convention, shall include the Islands of Jersey, Guernsey, Alderney, Sark, and Man, with their dependencies.

ARTICLE XXXIX.

Her Britannic Majesty engages to recommend to Parliament to pass an Act to enable Her to carry into execution such of the arrangements contained in the present Convention as require legislative sanction. When such an Act shall have been passed, the Convention shall come into operation from and after a day to be then fixed upon by the two High Contracting Parties. Due notice shall be given in each country by the Government of that country of the day which may be so fixed upon.

ARTICLE XL.

The Convention shall continue in force for 10 years from the day on which it may come into operation, and if neither party shall, 12 months before the expiration of the said period of 10 years, give notice of its intention to terminate its operation, the Convention shall continue in force one year longer, and so on from year to year, until the expiration of one year's notice from either party for its termination.

The High Contracting Parties however reserve to themselves the power to make, by mutual consent, any modification in the Convention which experience shall have shown to be desirable, provided it is not inconsistent with the principles on which it is based.

ARTICLE XLI.

The Convention concluded between the High Contracting Parties on the 2nd of August 1839, and the Regulations of the 23rd of June 1843, shall continue, in force until the day when, as provided in Article XXXIX., the present Convention shall come into operation, and shall then altogether cease and determine.

ARTICLE XLII.

The present Convention shall be ratified, and the ratifications shall be exchanged as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, the 11th of November in the year of our Lord 1867.

(L.S.)	LYONS.
(L.S.)	MOUSTIER.

ADDITIONAL ARTICLE.

It is agreed that Article XXXI. of the Convention signed this day shall not come into operation until the two Contracting Parties shall have come to a further understanding on the subject. Due notice shall be given of the day that may be fixed upon for its coming into operation.

The present Additional Article shall have the same force and validity as if it were inserted, word for word, in the Convention signed this day. It shall be ratified, and the ratifications shall be exchanged at the same time as those of the Convention.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, the 11th of November in the year of our Lord 1867.

(L.S.)	LYONS.
(L.S.)	MOUSTIER.

*Declaration annexed to the Convention of
November 11, 1867.*

The fishermen of each country shall not be allowed to land or discharge their fish in the other country except at places where there is a Custom House, and during office hours.

Immediately upon their arrival, and in all cases before they commence the discharge of their cargo, they shall present their muster roll, or licence, or official paper, to the proper officer of Customs, and shall pass an entry at the Custom House stating as nearly as possible the quantity of fish which they have on board.

If the master of a fishing boat cannot write, the Officer of Customs shall fill up for him the form required, and the master shall affix his mark thereto.

The Custom House officers shall have power to

board and search the fishing boats of the other country in the manner directed by the Customs laws.

During their stay in the ports of the other country, the fishermen of either country shall, if required to do so by the Customs authorities, deposit in a warehouse or in the Custom House, until their departure, all stores subject to duty, which shall not be necessary for their daily consumption. No charge shall be made for such warehousing.

The ports enumerated in the subjoined list, where there is a Custom House establishment, are those that shall be open in each country to the fishermen of the other country. In case the Customs establishment at any of those ports should be abolished, notice thereof shall be given to the Government of the other country.

LIST of the Ports in the UNITED KINGDOM open for the Importation of Fish by French Fishing BOATS.

In England.

Bristol.
Cardiff.
Dover, C.
Folkestone, C.
Falmouth, C.
Grimsby.
Hartlepool.
Harwich.
Hull.

Liverpool.
London.
Lowestoft.
Middlesborough.
Newcastle.
Newhaven, C.
Newport.
Portsmouth, C.
Plymouth, C.

Ramsgate.
Shields.
Shoreham, C.
Southampton, C.
Sunderland.
Swansea.
Weymouth, C.
Whitby.
Yarmouth.

Aberdeen.
Glasgow.

In Scotland.

Greenock.
Leith.

Wick.

Belfast.
Cork.

In Ireland.

Dublin.
Galway.

Waterford.

In the Channel Islands.

Jersey, C.

Guernsey, C.

The Ports in the Channel are marked with a C.

LIST of the Ports of the FRENCH EMPIRE open for the Importation of Fish by BRITISH FISHING BOATS.

Directions.	—	Directions.	—
DUNKERQUE	- Gravelines. Dunkerque.	Boulogne— <i>suite</i> .	Crottoy. Abbeville. Berck (plage maritime). Etaples. Boulogne. Calais.
BOULOGNE	- Hourdel. St. Valéry-sur-Somme.		

Directions.	—	Directions.	—
LE HAVRE	- Harfleur. Le Havre. Fécamp. St. Valéry-en-Caux. Dieppe. Tréport. Eu.	Brest— <i>suite</i> .	Pont l'Abbé. Audierno. Douarnenez. Morgat. Camaret. Port Launay. Le Faon. Landerneau. Brest. Le Conquet. Labrevrach. Roscoff. Moriaix.
ROUEN	- Rouen. Croisset. Duclair. Caudebec.		
CAEN	- Isigny. Port-en-Bessin. Courseulles. Caen. Ouistreham. Trouville. Honfleur. Pont-Audemer.	VANNES	- Redon. La Roche-Bernard. Tréhiguier. Billiers. Pénérf. Ambon. Vannes. Belle-Croix. Sarzeau. Suscinio. Saint Armel. Novalo. Quatre-vents. Ile d'Ars (Ile du Morbihan). Port Novalo. Larmorbaden. Locmariaquer. Auray. Rochdu. La Trinité. Carnac. Porthaliguen. Palais (Ile). Etel. Port Louis. Hennebon. Lorient. Kernevel. Groix (Ile).
SAINT LÔ	- Granville. Regneville. Portbail (Havre). Dielette. Carentan. Cherbourg. Barfleur. Saint Vaast. Omonville.		
SAINT BRIEUC	- Lannion. Perros. Tréguier. Lézardrieux. Pontrieux. Paimpol. Portrieux. Binic. Le Légué. Dahonet. Erquy. Le Guildo. Plouer. Dinan. Saint Suliac. Saint Servan. Saint Malo. La Houlle. Le Vivier.	NANTES	- Noirmoutiers. St. Gilles. Ile d'Yeu. La Barre-de-Mont (pour sur canal). Beauvoir (idem). Boin (idem). Bourgneuf. Pornic. Paimbœuf. Saint Nazaire. Nantes.
BREST	- Quimperlé. Douélan. Pontaven. Concarneau. Quimper.		

Directions.	—	Directions.	—
Nantes— <i>suite</i> .	Chantenay. La Basse-Indre. Port Nichet. Poulliguen. Le Croisic. La Turballe. Le Rosais.	La Rochelle— <i>suite</i> .	Marans. La Flotte (Ile de Ré). St. Martin (idem). Loix (idem). Ars (idem). Luçon (port sur canal). L'Aiguillon. Les Sables. Saint-Martin de Brem.
LA ROCHELLE -	La Tremblade. Mornac. L'Eguille. Le Gua. Nieulle (port sur canal). Lusac (port sur canal). Marennes (idem). Le Chapus. Le Château (Ile d'Oléron). St. Pierre (idem). St. Georges (idem). St. Denis (idem). Bronage (port sur canal). Moëze. Charente. Rochefort. Fouran. Ile d'Aix (Ile). La Rochelle. Lauzières.	BORDEAUX -	La Teste. Gujan. Certes. Le Verdon. La Fosse (port sur canal). Paillac. Bordeaux. Libourne. Plaigne. Bourg. Blaye. Montagne. Les Meschers. Royan.
		BAYONNE -	Saint Jean de Luz. Bayonne.

In witness whereof the respective Plenipotentiaries have signed these Annexes to the Convention concluded this day, and have affixed thereto the seals of their arms.

At Paris the 11th November 1867.

(L.S.) LYONS.
(L.S.) MOUSTIER.

SECOND SCHEDULE.

A description of a portion of an Act is inclusive of the section first or last mentioned, as forming the beginning or as forming the end of the portion comprised in the description.

Date of Act.	Title of Act.
4 Hen. 7. c. 21. - -	An Act for y ^e Preservation of the frye of Fyshe.
7 Hen. 7. c. 9. [In Statutes of the Realm only.]	Orford.
5 Eliz. c. 5. - -	An Act touching certayne Politique Constitutions made for the Maintenance of the Navye.
13 & 14 Car. 2. c. 28. -	An Act for the Regulation of the Pilchard Fishing in the Counties of Devon and Cornwall.
10 & 11 Will. 3. c. 24. [10 Will. 3. c. 13. in Statutes of the Realm.]	An Act for making Billingsgate a free Market for the Sale of Fish

Date of Act.	Title of Act.
9 Anne, c. 26. - [c. 26. in Statutes of the Realm.]	An Act for the better Preservation and Improvement of the Fishery within the River of Thames, and for regulating and governing the Company of Fishermen of the said River.
1 Geo. 1. s. 2. c. 18. -	An Act for the better preventing fresh Fish taken by Foreigners being imported into this Kingdom; and for the Preservation of the Fry of Fish; and for the giving Leave to import Lobsters and Turbets in Foreign Bottoms; and for the better Preservation of Salmon within several Rivers in that Part of this Kingdom called England.
2 Geo. 2. c. 19.	An Act for regulating, well-ordering, governing, and improving the Oyster Fishery in the River Medway and Waters thereof, under the Authority of the Mayor and Citizens of the City of Rochester in the County of Kent.
29 Geo. 2. c. 23. In part.	An Act for encouraging the Fisheries in that Part of } In part; namely,— Great Britain called Scotland
33 Geo. 2. c. 27. -	Except Sections One and Seventeen, so far as they relate to Scotland.
	An Act to repeal so much of an Act passed in the Twenty-ninth Year of His present Majesty's Reign, concerning a free Market for Fish at Westminster, as requires Fishermen to enter their Fishing Vessels at the Office of the Searcher of the Customs at Gravesend; and to regulate the Sale of Fish at the First Hand in the Fish Markets at London and Westminster; and to prevent Salesmen of Fish buying Fish to sell again on their own Account; and to allow Bret and Turbot, Brill and Pearl, although under the respective Dimensions mentioned in a former Act, to be imported and sold; and to punish Persons who shall take or sell any Spawn, Brood, or Fry of Fish, unsizeable Fish, or Fish out of Season, or Smelts under the Size of Five Inches, and for other Purposes.
2 Geo. 3. c. 15. In part.	An Act for the better supplying the Cities of London } In part; namely,— and Westminster with Fish, and to reduce the present exorbitant Price thereof, and to protect and encourage Fishermen
	Except Section Seven.
11 Geo. 3. c. 31. In part.	An Act for the Encouragement of the White Her- } In part; namely,— ring Fishery
	Except Sections Eleven to Thirteen.
19 Geo. 3. c. 26. -	An Act to continue and amend an Act made in the Eleventh Year of His present Majesty's Reign, intituled "An Act for the Encouragement of the White Herring Fishery."
26 Geo. 3. c. 45.	An Act to continue and amend an Act made in the Twenty-fifth Year of the Reign of His present Majesty, for the Encouragement of the Pilchard Fishery, by allowing a further Bounty upon Pilchards taken, cured, and exported.
26 Geo. 3. c. 81. - In part.	An Act for the more effectual Encouragement of the } in part; namely,— British Fisheries
	Except Section Nineteen.
27 Geo. 3. c. 10.	An Act to extend the Provisions of an Act made in the Twenty-sixth Year of His present Majesty's Reign, intituled "An Act for the more effectual Encouragement of the British Fisheries."
30 Geo. 3. c. 54. -	An Act for vesting the Estates and Property of the Trustees of Westminster Fish Market in the Marine Society for the Purposes therein mentioned, and for discontinuing the Powers of the said Trustees.
31 Geo. 3. c. 45. -	An Act for the Encouragement of the Pilchard Fishery, by allowing a further Bounty upon Pilchards taken, cured, and exported.
35 Geo. 3. c. 54.	An Act for the Encouragement of the Mackerel Fishery.
35 Geo. 3. c. 56.	An Act to continue and amend an Act made in the Twenty-sixth Year of the Reign of His present Majesty, intituled "An Act for the more effectual Encouragement of the British Fisheries."

Date of Act.	Title of Act.
36 Geo. 3. c. 77.	An Act to explain and amend an Act made in the last Session of Parliament, intituled, "An Act for the Encouragement of the Mackerel Fishery."
36 Geo. 3. c. 118.	An Act to authorize the Sale of Fish at Billingsgate by Retail.
37 Geo. 3. c. 94.	An Act to continue an Act made in the Thirty-first Year of the Reign of His present Majesty, intituled "An Act for the Encouragement of the Pilchard Fishery, by allowing a further Bounty upon Pilchards taken, cured, and exported."
38 Geo. 3. c. 58.	An Act to continue until the First Day of March One thousand seven hundred and ninety-nine an Act made in the Thirty-fifth Year of the Reign of His present Majesty, intituled "An Act to continue and amend an Act made in the Twenty-sixth Year of the Reign of His present Majesty, intituled 'An Act for the more effectual Encouragement of the British Fisheries.'"
39 Geo. 3. c. 190. In part.	An Act to revive and continue until the End of the next Session of Parliament an Act made in the Thirty-fifth Year of the Reign of His present Majesty, to continue and amend an Act made in the Twenty-sixth Year of the Reign of His present Majesty, intituled "An Act for the more effectual Encouragement of the British Fisheries;" and to amend an Act made in the Twenty-sixth Year of the Reign of His present Majesty, for extending the Fisheries and improving the Sea Coast of this Kingdom - in part; namely,— Section One.
39 & 40 Geo. 3. c. 85.	An Act to continue until the Fifth Day of April One thousand eight hundred and one, and amend, an Act of the last Session of Parliament, for continuing several Acts for the Encouragement of the British Fisheries.
39 & 40 Geo. 3. c. 107.	An Act to permit until Six Weeks after the Commencement of the next Session of Parliament the Importation of Swedish Herrings into Great Britain.
41 Geo. 3. Sess. 2. c. 97.	An Act the Title of which begins with the Words "An Act to continue several Laws relating to encouraging the Fisheries," and ends with the Words "as relates to ascertaining the Strength of Spirits by Clarke's Hydrometer."
41 Geo. 3. Sess. 2. c. 99.	An Act for granting Bounties for taking and bringing Fish to the Cities of London and Westminster, and other Places in the United Kingdom.
42 Geo. 3. c. 3.	An Act to revive and continue until the Twenty-fifth Day of March One thousand eight hundred and three so much of an Act made in the Forty-first Year of the Reign of His present Majesty as relates to permitting the Use of Salt Duty-free in preserving of Fish, and to discontinuing the Bounty payable on White Herrings exported, and to indemnify all Persons who have issued or acted under any Orders for delivering Salt Duty-free for the Purposes in the said Act mentioned.
42 Geo. 3. c. 19.	An Act to amend so much of an Act made in the Twenty-ninth Year of the Reign of His late Majesty King George the Second, intituled "An Act for explaining, amending, and rendering more effectual an Act made in the Twenty-second Year of His present Majesty's Reign, intituled 'An Act for making a free Market for the Sale of Fish in the City of Westminster, and for preventing the forestalling and monopolizing of Fish, and for allowing the Sale of Fish, under the Dimensions mentioned in a Clause contained in an Act of the First Year of His late Majesty's Reign, in case the same are taken with a Hook,' as relates to the Sale of Eels."

Date of Act.	Title of Act.
42 Geo. 3. c. 79.	- An Act to revive and continue until the Fifth Day of April One thousand eight hundred and four, and to amend, several Acts passed in the Twenty-seventh, Thirty-fifth, and Thirty-ninth Years of His present Majesty's Reign, for the more effectual Encouragement of the British Fisheries; and to continue until the Fourteenth Day of June One thousand eight hundred and three, and from thence to the End of the then next Session of Parliament, so much of an Act of the Sixth Year of the Reign of His present Majesty as relates to the prohibiting the Importation of Foreign wrought Silks and Velvets.
42 Geo. 3. c. lxxviii.	- An Act for repealing so much of an Act made in the Second Year of the Reign of His present Majesty, intituled "An Act for the better sup- " plying the Cities of London and Westminster with Fish, and to " reduce the present exorbitant Price thereof; and to protect and " encourage Fishermen," as limits the Number of Fish to be sold by Wholesale within the said City of London, and for the better Regulation of the Sale of Fish by Wholesale in the Market of Billingsgate within the said City.
43 Geo. 3. c. 29.	- <i>An Act the Title of which begins with the Words</i> "An Act to revive and " continue," <i>and ends with the Words</i> "to the End of the then next " Session of Parliament."
44 Geo. 3. c. 86.	- An Act for reviving, amending, and further continuing several Laws relating to the more effectual Encouragement of the British Fisheries until the Fifth Day of April One thousand eight hundred and six, and to the Encouragement of the Trade and Manufactures of the Isle of Man, to the improving the Revenue thereof, and the more effectual Prevention of smuggling to and from the said Island, until the Fifth Day of July One thousand eight hundred and five.
45 Geo. 3. c. 102.	- An Act to revive and continue an Act made in the Thirty-first Year of His present Majesty, intituled "An Act for the Encouragement of the " Pilchard Fishery by allowing a further Bounty upon Pilchards taken, " cured, and exported."
46 Geo. 3. c. 34.	- An Act for further continuing until the Twenty-fifth Day of March One thousand eight hundred and seven an Act made in the Thirty-ninth Year of His present Majesty, for the more effectual Encouragement of the British Fisheries.
47 Geo. 3. sess. 2. c. 51.	- An Act to revive and continue until the Twenty-fifth Day of March One thousand eight hundred and eight an Act of the Thirty-ninth Year of His present Majesty, for the more effectual Encouragement of the British Fisheries.
47 Geo. 3. sess. 2. c. 67.	- An Act to permit, until the End of the next Session of Parliament, the Importation of Swedish Herrings into Great Britain.
48 Geo. 3. c. 86.	- An Act to revive and continue until the Twenty-fifth Day of March One thousand eight hundred and nine an Act of the Thirty-ninth Year of His present Majesty, for the more effectual Encouragement of the British Fisheries.
48 Geo. 3. c. 110. In part.	- An Act for the further Encouragement and better Regulation of the British White Herring Fishery until the First Day of June One thousand eight hundred and thirteen, and from thence to the End of the then next Session of Parliament } in part; namely,— Except Sections 4, 5, 7, 9, 10, 11, 12, 18, 31, 32, 34 to 45, 47 to 50, 51, 53, 54, and 56 to 60, so far as they relate to Scotland, and are not inconsistent with this Act.
50 Geo. 3. c. 54.	- An Act to revive and continue until the Twenty-fifth Day of March One thousand eight hundred and eleven an Act of the Thirty-ninth Year of His present Majesty, for the more effectual Encouragement of the British Fisheries.

Date of Act.	Title of Act.
50 Geo. 3. c. 108. In part.	<ul style="list-style-type: none"> - An Act to amend and enlarge the Powers of an Act passed in the Second Year of His present Majesty, for the Encouragement of the Fisheries of this Kingdom, and the Protection of the Persons employed therein } in part; namely,— Sections One to Four.
51 Geo. 3. c. 34.	<ul style="list-style-type: none"> - An Act for continuing the Premiums allowed to Ships employed in the Southern Whale Fishery.
51 Geo. 3. c. 101.	<ul style="list-style-type: none"> - An Act for amending an Act of the Forty-eighth Year of His present Majesty, for regulating the British White Herring Fishery.
52 Geo. 3. c. 42.	<ul style="list-style-type: none"> - An Act for amending the Laws relating to the Allowance of the Bounties on Pilchards exported until the Twenty-fourth Day of June One thousand eight hundred and nineteen.
54 Geo. 3. c. 102.	<ul style="list-style-type: none"> - An Act to continue until the End of the next Session of Parliament several Acts relating to the British White Herring Fishery.
55 Geo. 3. c. 94. In part.	<ul style="list-style-type: none"> - An Act to continue and amend several Acts relating to the British White Herring Fishery } in part; namely,— Except Sections 1 to 4, 9 to 15, 17, 18, 20, 21, 23, 31 to 33, and 38 to 43, so far as they relate to Scotland, and are not inconsistent with this Act.
59 Geo. 3. c. 77.	<ul style="list-style-type: none"> - An Act to continue until the Twenty-fourth Day of June One thousand eight hundred and twenty-six an Act for amending the Laws relating to the Allowance of the Bounties on Pilchards exported.
1 Geo. 4. c. 82.	<ul style="list-style-type: none"> - An Act to amend an Act of the Fifty-ninth Year of the Reign of His late Majesty King George the Third for the Encouragement and Improvement of the Irish Fisheries.
1 Geo. 4. c. 103.	<ul style="list-style-type: none"> - An Act for the further Encouragement and Improvement of the British Fisheries.
1 & 2 Geo. 4. c. 79. In part.	<ul style="list-style-type: none"> - An Act to repeal certain Bounties granted for the Encouragement of the Deep Sea British White Herring Fishery, and to make further Regulations relating to the said Fishery } in part; namely,— Except Section 9 and except Sections 3 and 5 so far as they relate to Scotland.
5 Geo. 4. c. 64. In part.	<ul style="list-style-type: none"> - An Act to amend the several Acts for the Encouragement and Improvement of the British and Irish Fisheries } in part; namely,— Sections 1 to 8.
7 Geo. 4. c. 34.	<ul style="list-style-type: none"> - An Act to amend an Act of the Fifth Year of His present Majesty, for amending the several Acts for the Encouragement and Improvement of the British and Irish Fisheries.
11 Geo. 4. & 1 Will. 4. c. 54. In part.	<ul style="list-style-type: none"> - An Act to revive, continue, and amend several Acts relating to the Fisheries } in part; namely,— So much as relates to England, and so much as is inconsistent with this Act.
4 & 5 Will. 4. c. 20.	<ul style="list-style-type: none"> - An Act to explain and amend an Act passed in the Thirty-third Year of the Reign of His late Majesty King George the Second, to regulate the Conveyance and Sale of Fish at first hand.
6 & 7 Vict. c. 79.	<ul style="list-style-type: none"> - An Act to carry into effect a Convention between Her Majesty and the King of the French concerning the Fisheries in the Seas between the British Islands and France.
14 & 16 Vict. c. 26. In part.	<ul style="list-style-type: none"> - An Act to amend the Acts relating to the British White Herring Fishery } in part; namely,— Sections 5 and 6.
18 & 19 Vict. c. 101.	<ul style="list-style-type: none"> - An Act for the more effectual Execution of the Convention between Her Majesty and the French Government concerning the Fisheries in the Seas between the British Islands and France.

Date of Act.	Title of Act.
23 & 24 Vict. c. 92. In part.	An Act to amend the Law relative to the Scottish } in part; namely,— Herring Fisheries Sections 7, 11 to 13, and 25.
24 & 25 Vict. c. 72. In part.	An Act to make further Provision for the Regu- } in part; namely,— lation of the British White Herring Fishery in Scotland Sections 2, 3, and 6, and so much of the Remainder of the Act as is inconsistent with this Act.
28 & 29 Vict. c. 22. In part.	An Act to amend the Acts relating to the Scottish } in part; namely,— Herring Fisheries So much as is inconsistent with this Act.
29 & 30 Vict. c. 85.	An Act to facilitate the Establishment, Improvement, and Maintenance of Oyster and Mussel Fisheries in Great Britain.
30 & 31 Vict. c. 18.	An Act for the Preservation and further Protection of Oyster Fisheries.

CAP. XLVI.

The Boundary Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. Short Title.
2. Act to be construed with 2 & 3 W. 4. c. 64. and 30 & 31 Vict. c. 102.
3. Definition of certain Terms.
4. Alteration of Boundaries of old Boroughs as specified in First Schedule.
5. Boundaries of new Boroughs as specified in Second Schedule.
6. Alterations of Names of Divisions of certain Counties contained in 30 & 31 Vict. c. 102.
7. Explanation of the Contents of the Hundreds of Pirehill in Staffordshire.
8. Certain Parishes to be included in the Divisions of East and West Staffordshire.
9. Alteration of Divisions of Counties.
10. Alteration of Places for holding Courts for Election of Members.
11. Boundaries of Counties and Boroughs on Sea Lane.
12. Marking Boundaries of Boroughs.
13. To render valid certain Precepts, Notices, &c.
14. First Registration of Occupiers in Borough within extended Boundaries.
15. Schedule to be of the same Force as the Act.

Schedules.

An Act to settle and describe the Limits of certain Boroughs and the Divisions of certain Counties in England and Wales, in so far as respects the Election of Members to serve in Parliament. (13th July 1868.)

WHEREAS by "The Representation of the People Act, 1867," divers Places named in the Schedule (B.) to that Act annexed were constituted Boroughs for the Purpose of returning a Member or Members to serve in future Parliaments, and it was by the said Act provided that

until otherwise directed by Parliament the temporary Contents or Boundaries of such new Boroughs should be the several Places in that Behalf mentioned in the said Schedule:

And whereas the Borough of the Tower Hamlets was by the said Act divided into Two Boroughs respectively comprising the Places described in Schedule (C.) to that Act annexed:

And whereas by the said Act the several Counties named in the Schedule (D.) to that Act annexed were divided into Divisions for the Purpose of returning Members to serve in Parliament, and it was by the said Act provided that until otherwise directed by Parliament each of

such Divisions should consist of the Hundreds, Lathes, Wapentakes, and Places in the said Act specified :

And whereas by the said Act the Right Honourable Lord Viscount Eversley, the Right Honourable Russell Gurney, Sir John Thomas Buller Duckworth, Baronet, Sir Francis Crossley, Baronet, and John Walter, Esquire, were appointed Boundary Commissioners for England and Wales, and were directed to proceed by themselves, or by Assistant Commissioners appointed by them, to inquire into the temporary Boundaries of every Borough constituted by the said Act, with Power to suggest such Alterations therein as they might deem expedient; and also to inquire into the Boundaries of every other Borough in England and Wales, except such as were wholly disfranchised by the said Act, with a view to ascertain whether the Boundaries should be enlarged in accordance with the Directions in that Behalf in the said Act contained; and also to inquire into the Divisions of Counties as constituted by the said Act, and as to the Places for holding Courts for the Election of Members for such Divisions, with a view to ascertain whether, having regard to the Matters in the said Act in that Behalf specified, any and what Alterations should be made in such Divisions or Places; and with all practicable Despatch to report to One of Her Majesty's Principal Secretaries of State upon the several Matters thereby referred to them; and it was by the said Act further directed that their Report should be laid before Parliament :

And whereas the said Commissioners have lately made their Report dated the Fifth Day of February One thousand eight hundred and sixty-eight, in conformity with the said Act, upon the several Matters thereby referred to them, and such Report has been laid before Parliament :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited for all Purposes as "The Boundary Act, 1868."

2. This Act, so far as is consistent with the Tenor thereof, shall be construed as One with the Act passed in the Session of the Second and Third Years of King William the Fourth, Chapter Sixty-four, intituled "An Act to settle and describe the Divisions of Counties, and the Limits of Cities and Boroughs, in England and Wales, in so far as respects the Election of Members to serve in Parliament," and hereinafter referred to as "The Boundary Act, 1832," and with "The Representation of the People Act, 1867."

3.—

"Borough" shall mean any Borough, City,

County of City, County of a Town, or Place returning, or being One of a Combination of Places returning, a Member or Members to serve in Parliament, other than a County at large, or Riding or Division of a County at large :

"New Borough" shall in this Act mean a Place constituted by "The Representation of the People Act, 1867," a Borough returning a Member or Members to serve in Parliament :

"Old Borough" shall in this Act mean any Borough returning, or being One of a Combination of Places returning, a Member or Members to serve in Parliament, and not included in the Definition of a new Borough :

"District Borough" shall mean a Combination of Boroughs returning a Member or Members to serve in Parliament.

4. The Boundaries of the following Boroughs, viz., Abingdon, Ashton-under-Lyne, Aylesbury, Barnstaple, Bath, Bewdley, Blackburn, Bolton-le-Moors, Bridgwater, Brighton, Cambridge, Chatham, Cheltenham, Chester, Chichester, Cirencester, Coventry, Derby, Droitwich, Dudley, Durham, Exeter, Finsbury, Gloucester, Greenwich, Guildford, Halifax, Hastings, Hertford, Huddersfield, Kidderminster, King's Lynn, Kingston-upon-Hull, Lewes, Macclesfield, Monmouth District, Morpeth, Newport (Isle of Wight), Northampton, Oldham, Oxford, Penryn and Falmouth, Peterborough, Plymouth, Preston, Richmond, Rochdale, Salisbury, Stafford, Stamford, Stoke-upon-Trent, Stroud, Sunderland, Taunton, Wakefield, Walsall, Wilton, New Windsor, Worcester, Beaumaris District, Cardiff District, Cardigan District, Carmarthen District, Carnarvon District, Denbigh District, Flint District, Merthyr Tydvil, Pembroke District, Swansea District, shall be altered in manner specified in the First Schedule to this Act annexed; and such Boroughs shall, for all the Purposes within "The Representation of the People Act, 1867," and the Acts referred to therein, but for such Purposes only, include the Places and be comprised within the Boundaries which in such Schedule are respectively specified and described in conjunction with the Names of such Boroughs.

Save as aforesaid, the Boundaries of all old Boroughs shall remain unchanged.

5. The new Boroughs specified in the Second Schedule to this Act annexed shall, for all Purposes relating to the Election of a Member or Members to serve in Parliament, include the Places and be comprised within the Boundaries which in such Schedule are respectively specified and described in conjunction with the Names of such Boroughs.

The new Boroughs formed by the Division of

the Tower Hamlets under "The Representation of the People Act, 1867," shall respectively comprise the Places described in Schedule (C.) to the said Act annexed.

6. The following Alterations shall be made in the Names of the Divisions of Cheshire and Essex and Norfolk contained in "The Representation of the People Act, 1867;" that is to say, "North Cheshire" shall be called "East Cheshire," "South Cheshire" shall be called "West Cheshire," "North-west Essex" shall be called "West Essex," and "North-east Essex" shall be called "East Essex," and "North-east Norfolk" shall be called "North Norfolk," and "South-east Norfolk" shall be called "South Norfolk."

The Contents of the Northern and Mid Divisions of the West Riding of Yorkshire as constituted by "The Representation of the People Act, 1867," shall, for all Purposes relating to the Election of Members to serve in Parliament, henceforth be distributed into Two other Divisions, named respectively the Northern Division and the Eastern Division.

7. Whereas by Schedule (D.) annexed to "The Representation of the People Act, 1867," the Division of North Staffordshire includes the Hundred of Pirehill North, and the Division of West Staffordshire includes the Hundred of Pirehill South: And whereas Doubts are entertained as to the Contents of the said Hundreds: Be it enacted, That for the Purposes of the said Act the Hundreds of Pirehill North and Pirehill South shall respectively be deemed to consist of the Parishes and Places in that Behalf set forth in the Fifth Schedule annexed hereto.

8. Whereas by Schedule (D.) annexed to "The Representation of the People Act, 1867," the Division of West Staffordshire includes the Hundred of Seisdon, and the Division of East Staffordshire includes the Hundred of South Offlow: Be it enacted, That, notwithstanding anything contained in that Act, the Parish of Rushall shall form Part of and be included in the Division of East Staffordshire; and the Townships of Willenhall and Wednesfield, although within the Hundred of South Offlow, shall form Part of and be included within the Division of West Staffordshire.

9. The Divisions of Counties named in the Second Column of the Third Schedule to this Act annexed shall respectively, for the Purpose of the Election of Members to serve in Parliament, consist of the Places and Wapentakes mentioned in connexion with such Divisions in the Third Column of such Schedule.

Save as aforesaid, the Divisions of Counties constituted by "The Representation of the People Act, 1867," shall comprise the Parts in the

said Act declared to be temporarily comprised therein.

Nothing in this Act contained shall affect the Division of Counties constituted for the Purpose of returning Members to serve in Parliament by any Act other than "The Representation of the People Act, 1867."

10. The Court for the Election of Members to serve in Parliament for each of the Divisions of Counties specified in the Second Column of the Fourth Schedule hereto shall be holden at the Place named for that Purpose in connexion with such Division in the Third Column of the said Schedule.

Save as aforesaid, the Places named in the Fourth Column of Schedule (D.) to "The Representation of the People Act, 1867," as temporarily appointed for holding Courts for Election of Members for each of the Divisions of Counties mentioned in the said Schedule in connexion with such Places, shall be permanently appointed for that Purpose.

11. Where any County, Division of a County, or Borough abuts on the Sea Coast or on any Tidal River, the Boundaries of such County, Division of a County, or Borough shall, for all Purposes relating to the Election of a Member or Members to serve in Parliament, be deemed to extend to the Low-water Mark.

12. Where the Boundary of a Borough does not follow the Boundary of a Parish or Township or other well defined Line of Demarcation, the Returning Officer shall as soon as may be after the passing of this Act cause the several Points of Deviation of the Boundary to be marked by means of Boundary Stones, Posts, or other Marks, and such Boundary Marks shall from Time to Time be maintained and renewed by the Returning Officer of such Borough.

For the Purposes of this Section a Returning Officer may by himself or his Workmen enter upon any Lands, doing as little Damage as possible, and making Compensation for such Damage, the Amount of such Damage to be determined, in case of Dispute, in manner provided by "The Lands Clauses Consolidation Act, 1845," with respect to disputed Compensation for Land.

All Expenses properly incurred by a Returning Officer in pursuance of this Section shall be deemed to be Expenses incurred by him in respect of Registration, and shall be defrayed accordingly.

13. All Precepts, Notices, Forms, Claims, and other Documents issued or used before the passing of this Act under or by virtue of the Statute of the Sixth Victoria, Chapter Eighteen, in

lation to the Registration of Voters in and
or the several Divisions of the Counties of
Cheshire, Essex, and Norfolk, shall be as valid
and effectual as if the Names of the said Divi-
sions were not altered or affected in or by this
Act.

14. Where by reason of an Alteration of the
boundary of any Borough by this Act the Occu-
pier of a Dwelling House or other Tenement
for which the Owner at the Time of the passing
of this Act is liable to be rated instead of the
Occupier) would be entitled to be registered as
an Occupier at the next Registration of Parlia-

mentary Voters if he had been rated to the Poor
Rate for the whole of the required Period, such
Occupier shall, notwithstanding he has not been
so rated, be entitled to be registered, subject to
the following Condition,—

That he has been duly rated as an ordinary
Occupier to all Poor Rates in respect of
the Premises made after the passing of this
Act.

15. The Schedule hereto, with the Notes
thereto annexed, shall be of the same Force as if
they were enacted in the Body of this Act.

INDEX.

FIRST SCHEDULE.

OLD BOROUGHES.
(ENGLAND.)

- | | |
|--------------------|-------------------------|
| Abingdon. | Kidderminster. |
| Ashton-under-Lyne. | King's Lynn. |
| Aylesbury. | Kingston-upon-Hull. |
| Barnstaple. | Lewes. |
| Bath. | Macclesfield. |
| Bewdley. | Monmouth District. |
| Blackburn. | Morpeth. |
| Bolton-le-Moors. | Newport, Isle of Wight. |
| Bridgewater. | Northampton. |
| Brighton. | Oldham. |
| Cambridge. | Oxford. |
| Chatham. | Penryn and Falmouth. |
| Cheltenham. | Peterborough. |
| Chester. | Plymouth. |
| Chichester. | Preston. |
| Gloucester. | Richmond. |
| Leicester. | Rochdale. |
| Derby. | Salisbury. |
| Droitwich. | Stafford. |
| Dudley. | Stamford. |
| Durham. | Stoke-upon-Trent. |
| Exeter. | Stroud. |
| Gloucester. | Sunderland. |
| Greenwich. | Taunton. |
| Reading. | Walsfield. |
| Windsor. | Walsall. |
| Worcester. | Wilton. |
| | New Windsor. |
| | Worcester. |

OLD BOROUGHES.

(WALES.)

- | | |
|----------------------|--------------------|
| Beaumaris District. | Denbigh District. |
| Cardiff District. | Flint District. |
| Cardigan District. | Merthyr Tydvil. |
| Carmarthen District. | Pembroke District. |
| Carnarvon District. | Swansea District. |

SECOND SCHEDULE.

NEW BOROUGHES.

- | | |
|-------------|-----------------|
| Burnley. | Middlesborough. |
| Chelsea. | Stalybridge. |
| Darlington. | Stockton. |
| Dewsbury. | Wednesbury. |
| Gravesend. | |

THIRD SCHEDULE.

DIVISIONS OF COUNTIES.

- | | |
|----------------|--------------------------------|
| Somersetshire. | West Riding of York-
shire. |
|----------------|--------------------------------|

FOURTH SCHEDULE.

Places appointed for holding Courts for Election
of Members.

FIFTH SCHEDULE.

Contents of the Hundreds of Pirehill.

FIRST SCHEDULE.

Note.—The Expressions herein-after mentioned have in the Schedules the following Meanings; that is to say,

“Present Borough” means the Area comprised within the Limits of an old Borough prior to the Alterations made therein by this Act.

“Present Boundary” means the Boundary of an old Borough as existing prior to the Alterations made therein by this Act.

“Municipal Borough” means the Area at the Time of the passing of this Act comprised within the Limits of a Place as constituted a Municipal Borough for the Purposes of the Act passed in the Session holden in the Fifth and Sixth Years of the Reign of King William the Fourth, Chapter Seventy-six, intituled “An Act to provide for the Regulation of Municipal Corporations in England and Wales.”

“Local Government District” means the Area at the Time of the passing of this Act comprised within the Limits of any Town or Place subject to the “Local Government Act, 1858.”

“Not altered,” as applied to any Place, means that the Description of such Place is the same as that contained in Schedule (O.) of the Boundary Act, 1832.

OLD BOROUGHS (ENGLAND).

ABINGDON.

Description.

The present Borough of Abingdon, and those Parts of the Parishes of Sutton Courtney and St. Helen which are included between the present Boundary of the Borough and the following Boundaries respectively; that is to say,

Sutton Courtney and St. Helen.—From the Southernmost Point of the present Boundary at the River Isis, Westward, along the Berks and Wilts Canal to the Point at which it is crossed by the Bridge on the Steventon Road; thence Northward to a Point Eighty Yards distant from the Bridge measured along the said Road; thence in a straight Line to the Junction of the River Ock with the Larkhill Stream; thence along the said Stream to the Point at which it meets the Faringdon Road; thence in a straight Line to the North-west Angle of the present Boundary on the Wootton Road;

St. Helen.—From the Northernmost Angle of the present Boundary in a straight Line to the Point at which the Boxhill Footway meets the Oxford Road; thence by Sir

George Bowyer's private Road to the Radley Road; thence Westward along the Radley Road till it meets the present Boundary.

ASHTON-UNDER-LYNE.

Description.

The present Borough of Ashton-under-Lyne: The Local Government District of Hurst in the Parish of Ashton-under-Lyne:

So much of the Township of Dukinfield as adjoins the present Borough; and lies at the North of the River Tame; and

That detached Part of the Audenshaw Division of the Township of Ashton-under-Lyne which is within the Municipal Borough of Ashton-under-Lyne.

AYLESBURY.

Description.

The Three Hundreds of Aylesbury, and all such Parts of the Parish of Dinton as are not within the said Three Hundreds.

BARNSTAPLE.

Description.

The present Borough of Barnstaple, and that Part of the Parish of Pilton which lies between the present Boundary of the Borough and Bradford Water and the River Taw.

BATH.

Description.

The present Borough of Bath, and so much of the Parish of Twerton as is included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point in the present Boundary at which the Great Western Railway crosses it on the Western Side, along the Northern Fence of the said Railway to the Point at which it crosses Brook Lane; thence along Brook Lane to the Point at which it meets the Lower Bristol Road; thence, Westward, along the Lower Bristol Road to the Point at which it meets the Road from Motley Bridge; thence along the last-mentioned Road to the River Avon; thence, Eastward, along the River Avon to the Point at which it meets the present Boundary.

BEWDLEY.

Description.

The present Borough of Bewdley and the Hamlet of Upper Mitton.

FIRST SCHEDULE.

BLACKBURN.

Description.

The present Borough of Blackburn :

The Part of the Township of Little Harwood at Carr Houses contained between the Boundary of the Township of Blackburn and the Harwood Brook ; and

The several Parts of the Township of Witton and of the Township of Livesey contained between the present Boundary of the Borough and the following Boundary ; that is to say,

From the Point at which the River Blackwater meets the Boundary of the Township of Blackburn on the Western Side of the same, Westward, along the River Blackwater to the Point at which the same meets the River Darwen ; thence, Eastward, in a straight Line through Fenisccliffe Bridge to the Point at which the same meets the Northern Boundary of the Township of Livesey ; thence, Eastward, along the Boundary of the Township of Livesey to the Point at which the same meets Bower House Lane ; thence, Southward, along Bower House Lane to the Point at which the same meets the Livesey Branch Road near the Waterloo Tavern ; thence, Eastward, in a straight Line to the Northernmost Point of the Boundary of the Township of Lower Darwen, West of Hey Gate ; thence, Eastward, along the Boundary of the Township of Lower Darwen to the Point at which the same meets the present Boundary of the Borough.

BOLTON-LE-MOORS.

Description.

The present Borough of Bolton-le-Moors (including that Part of the Township of Little Bolton lying to the North of Astley Brook, and called Little Bolton Higher End), and

So much of the Townships of Sharples and Halliwell as lies between the present Boundary of the Borough and the following Boundary ; that is to say,

From the Northernmost Point of the present Boundary at Little Bolton Higher End, Northward, in a straight Line to the Point in the Blackburn Road at which it is met by Broad-o'-th'-Lane ; thence, Westward and Southward, along Broad-o'-th'-Lane to the Point at which the same meets the Boundary of the Southernmost of the Three detached Parts of the Township of Little Bolton ; thence, Southward, along the Boundary of the said detached Part of the Township of Little Bolton (excluding it) to the Point at which the same meets the Boundary of the Township of Halliwell ; thence, Westward, along the Boundary of the Township

of Halliwell to the Point at which the same meets Dean Brook ; thence, Westward, up Dean Brook to Smithills Mill Bridge ; thence, Eastward, along Pilkington Street to Top-o'-th'-Lane ; thence, Southward, along Cooper's Lane for about One hundred and thirty Yards to the Point at which it is left by the Lane which leads Southwards past Bennet's and Vallet's to the Horwich Road ; thence along the last-mentioned Lane to the Point at which it meets the Horwich Road ; thence in a straight Line to the Point at which the Boundary between the Townships of Halliwell and Heaton meets the Boundary of the Township of Little Bolton in the Chorley New Road.

BRIDGEWATER.

Description.

The present Borough of Bridgewater, and such Parts of the Parishes of Wemdbon and Bridgewater as are included between the present Boundary of the Borough and the following Boundaries respectively ; that is to say,

Wemdbon.—From the present Boundary of the Borough at its Westernmost Point on the Wemdbon Road along that Road, Westward, to the Eastern Wall of the Cemetery ; thence along that wall to its Northern Extremity ; thence in Prolongation of the same Wall to a Point at which that Line would be intersected by the Prolongation Westward of a Line in Production of the Wall that forms the Northern Boundary of Providence Place ; thence along the said Line and Wall to the Point at which, if produced Eastward, it would intersect Malt Shovel Lane ; thence, Southward, along Malt Shovel Lane to the Bridge over the Canal ; thence, Northward, along the Canal to the Point at which it meets the present Boundary :

Bridgewater.—From the present Boundary of the Borough at the Point at which it meets the Bath Road, Southward, in a straight Line to the Point at which the South-eastern Boundary of the Field called Ten Acre Pasture, and numbered 565 in the Tithe Map of the Parish of Bridgewater, meets the Road from the Railway Station to the Weston Zoyland Road ; thence in a straight Line to the Point at which the Weston Zoyland Road meets the present Boundary.

BRIGHTON.

Description.

The present Borough of Brighton and the Parish of Preston.

FIRST SCHEDULE.

CAMBRIDGE.

Description.

The present Borough of Cambridge, and also so much of the Parish of Chesterton as lies between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point in the Borough Boundary at which the Huntingdon Road leaves the Boundary of the Parish of Chesterton, Eastward, in a straight Line to the Point in the Histon Road at which the said Road is met by an Occupation Road leading from French's Mill; thence along such Occupation Road to the said Mill; thence in a straight Line to the First Milestone from Cambridge on the Ely Road; thence, North-eastward, along the said Road to the Point at which it is joined by the Green End Road; thence, South-eastward, in a straight Line to the Point at which the Northern Fence of the Chesterton Railway Station meets the Railway from Leicester to London; thence along the said Fence to its Eastern Extremity; thence in a straight Line to the nearest Point of the present Boundary in the River Cam.

CHATHAM.

Description.

The present Borough of Chatham, and so much of the Parishes of Chatham and Gillingham as lies between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point in the Boundary of the present Borough between the Boundary Stone of the City of Rochester marked 5, and the Windmill on the Top of Chatham Hill, at which that Boundary is crossed by the Road leading South from the Medway Union Workhouse, South-eastward, in a straight Line to the Boundary Stone on the Roadside at Hale, near "The Waggon" Public House, between the Parishes of Chatham and Gillingham; thence, Northward, along the Boundary between the said Parishes to the Point at which it meets the Sittingbourne Road; thence, North-eastward, in a straight Line to the Angle of the Boundary of the Township of Grange near the South Side of the London, Chatham, and Dover Railway, and adjoining the Footpath to Woodland; thence along the Western Boundary of the said Township of Grange to the Sea Shore, and Westward along the Sea Shore until it meets the present Boundary of the Borough.

CHELTENHAM.

Description.

The present Borough of Cheltenham, together with so much of the Parish of Leckhampton as lies between the present Boundary of the Borough and the following Boundary; that is to say,

Leckhampton.—From the Point at which the present boundary crosses a Road leading from the Old Bath Road to Leckhampton Church, Southward, along the said Road to the Point nearly opposite Colburn End Farm, at which it crosses a Stream or Ditch which falls into Hatherley Brook; thence, Northward, down the said Stream or Ditch to the Point at which it crosses the present Boundary.

CHESTER.

Description.

The present Borough of Chester, together with so much of the Townships of Saltney in the County of Flint, Great Boughton, Hoole, and Newton respectively, as is included between the present Boundary of the Borough and the following Boundaries respectively; that is to say,

Saltney.—From the Point in the River Dee at Saltney Stage at which St. Mary's Ward joins Trinity Ward, Westward, along the River Dee to the Point at which the same is joined by Balderton Brook near Stoop Bridge Stage; thence up the said Brook to the Bridge in Green Lane; thence, Eastward, along Green Lane until it meets the nearest Boundary Stone in the present Boundary;

Great Boughton.—From the Point at which the River Dee is joined by Huntington Brook, up that Brook to the Centre of the Bridge on the Saintn and Aidford Road, commonly called Sandy Lane; thence, Northward, in a straight Line to the Point at which Batchelor's Lane is joined by Stile Lane near Vaughan's House; thence along Stile Lane to the Point at which the same meets Poorhouse Lane; thence in a straight Line to a Point in Beckcotes Lane One hundred Yards from its Junction with the Southern Extremity of Heath Lane; thence, Westward, along Beckcotes Lane to the said Extremity, and, Northward, along Heath Lane to the Point at which it meets the present Boundary;

Hoole and Newton.—From the South-eastern Angle of the Boundary of the Township of Hoole at which it joins the present Boundary and the old City Boundary, Northward, along the Boundary of the said Township as far as it is also the Boundary

FIRST SCHEDULE.

of the Parish of St. John the Baptist; thence, Westward, along the Boundary of the said Parish to the Boundary Stone in it situated behind Mr. Moule's House, near the District Church of Hoole; thence in a straight Line for Ninety Yards to the South-eastern Extremity of the Lane leading to the Chester and Frodsham Turnpike Road; thence along the said Lane to the Point at which it joins the said Turnpike Road; thence, South-westward, along the said Turnpike Road to the Point at which it is joined by the Newton and Upton Road; thence, Northward, along the Newton and Upton Road to the Point at which the same is joined by Brook Lane; thence, Southward, along Brook Lane to the Point at which the same meets the present Boundary.

CHICHESTER.

Description.

The present Borough of Chichester, and so much of the Parishes of Oving and Rumboldsyke as is contained between the present Boundary of the Borough and the following Boundary; that is to say,

From the Eastern Extremity of the present Boundary of the Borough at St. James' Post along the Arundel Road to the Point at which it meets the Cemetery Lane; thence along the said Lane to the Point at which it meets the Oving Road; thence along the Lane which runs nearly due South to the Point at which the said Lane cuts the London, Brighton, and South Coast Railway; thence, Westward, along the Northern Fence of the said Railway to the Point at which it meets the present Boundary.

CIRENCESTER.

Description.

The present Borough of Cirencester and the Parish of Stratton.

COVENTRY.

Description.

The present Borough of Coventry and the Parish of Stoke.

DERBY.

Description.

The present Borough of Derby and the Townships of Litchurch and Little Chester.

DROITWICH.

Description.

The present Borough of Droitwich: the Portion of the Parish of Stoke Prior which lies to

the South of the Road from Hynets Farm to Webb's Farm; and the Two Portions of the Parish of Hanbury which are not within the present Borough, and lie to the South and South-west of the Road from Hanbury to Feckenham.

DUDLEY.

Description.

The present Borough of Dudley; the Extra-parochial Grounds of Dudley Castle Hill; the Ecclesiastical Districts of Pensnett, Brockmoor, Quarry Bank, and Brierley Hill, in the Parish of Kingswinford, and of Reddall Hill in the Parish of Rowley Regis.

DURHAM.

Description.

The present Borough of Durham, and that Portion of the Township of Framwellgate which lies between the present Boundary of the Borough and the following Boundary; that is to say,

From the North-west Corner of the present Boundary of the Borough, near the Junction of the Lanchester and Newcastle High Roads, Westward, along the Lanchester High Road to the Point at Western Lodge and White Smocks Turnpike at which it is met by a Road coming in from the South; thence along this latter Road in a Southerly Direction to the Point at which it crosses the Boundary between the Townships of Framwellgate and Crossgate; thence in a South-westerly Direction along the said Boundary to the Point at which it reaches the present Boundary of the Borough.

EXETER.

Description.

From the Turnpike Gate on the Morton Road, Southward, along Cowick Lane to the Point at which the same meets Stone Lane; thence along Stone Lane to the Point at which the same meets the Road from Exeter to Alphington; thence, Southward, along the Road from Exeter to Alphington to the Point at which the same is joined by Marsh Barton Lane; thence along the Northern Hedge of Marsh Barton Lane to the Point at which the same meets the Fence of the South Devon Railway; thence along such Fence, Southward, to the Railway Arch; thence through the said Arch and along Marsh Barton Lane to the Point at which the same reaches the Canal; thence in a straight Line to a Boundary Stone on the Left Bank of the River Exe above the old Abbey; thence, Southward, along the Leat to the Point at which the same is joined by the Brook which runs down through East Wonford; thence along the said Brook to the Point at

FIRST SCHEDULE.

which the same crosses the Old Stoke and Tiverton Road near the Road to Mincing Lake Farm; thence along the Old Stoke and Tiverton Road to the Point at which the same meets the Boundary of the County of the City; thence, Northward, along the Boundary of the County of the City to the Point near Exwick at which the River Exe is crossed by a Road leading to the Railway Station; thence, Westward, along that Road to the Point at which the same meets the Road from Exwick to the Turnpike Gate on the Morton Road; thence along the said Road to the Point at which the same reaches such Turnpike Gate.

FINSBURY.

Description.

The present Borough of Finsbury; the detached Parts of the Parish of Hornsey in Stoke Newington; and that Part of the Parish of Hornsey which intervenes between the Parishes of Islington and Stoke Newington, and lies to the South of the new Tottenham and Hampstead Railway, from Stroud Green to the Bridge where it is crossed by the Great Northern Railway, and of a straight Line between the Centre of the said Bridge and the North-western Angle of the Boundary of the Parish of Stoke Newington.

GLOUCESTER.

Description.

The present Borough of Gloucester, and the Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point at which Dockham Ditch is crossed by the present Boundary, Northward, along Dockham Ditch to the Point at which it meets a Road leading from the Meadows to Sandhurst Lane; thence along the said Road to its Junction with Sandhurst Lane; thence across Sandhurst Lane to and along a public Highway leading therefrom to the Tewkesbury Road, thence in a straight Line South-eastward to the Point at which the Turnpike Road from Gloucester to Cheltenham crosses the Barnwood Brook; thence up the Barnwood Brook to the Point at which it is crossed by the Great Western Railway; thence, Southward, along the Western Fence of the Great Western Railway to the Point at which it meets the Footpath leading from Gloucester to Robin's Wood Hill; thence, Westward, in a straight Line to a Point in the Stroud Road at which it is met by a Ditch or Watercourse leading down to the Bristol Road; thence, Westward, along the said Ditch or Watercourse to the Point at which it joins Still Ditch;

thence along Still Ditch to the Point at which it enters the River Severn; thence in a straight Line to the Southernmost Point of the present Boundary in Castle Mead.

GREENWICH.

Description.

The present Borough of Greenwich, and that Part of the Parish of Plumstead which is not within the Borough.

GUILDFORD.

Description.

The present Borough of Guildford, and the Lands contained between the present Boundary of the Borough and the Two following Boundaries respectively; that is to say,

From the Point at which the present Boundary meets the River Wey, Southward, along the said River to a Point in it due East of St. Catherine's Chapel; thence, Westward, in a straight Line to St. Catherine's Chapel; thence, Northward, in a straight Line to the Junction of the Portsmouth Road and the Sandy Lane leading to Compton; thence, Westward, along the said Lane to Piccard's Farm; thence, Northward, along the Road leading through the said Farm to its Northern Extremity; thence, Northward, in a straight Line to the present Boundary of the Borough at Booker's Tower; and

From the Angle of the present Boundary in the Merrow Road, South-eastward, along the Cross Road from the Merrow Road to the Point at which the said Cross Road joins the Road leading past the Union Workhouse to Merrow Downs; thence, South-westward, in a straight Line to the South-eastern Angle of the present Borough.

HALIFAX.

Description.

The Municipal Borough of Halifax as constituted by "The Halifax Extension and Improvement Act, 1865," (28 & 29 Vict. c. 140).

HASTINGS.

Description.

The present Borough of Hastings; so much of the Parish of St. Leonard as is not already within the Borough; and so much of the Parishes of St. Mary-in-the-Castle and Ore as lies between the present Boundary of the Borough and the following Boundary; that is to say,

From the Easternmost Point at which the Boundary of the Parish of Ore meets the Boundary of the Parish of All Saints, Northward, along the Boundary of the Parish of Ore to the Easternmost Point of that Bound-

FIRST SCHEDULE.

dary; thence, Westward, in a straight Line to the Point opposite to the Borough Cemetery at which the Road known as Ore Lane meets the old Road from Hastings to London; thence, Westward, in a straight Line to the Northernmost Point at which the Boundary of the Parish of St. Leonard's leaves the St. Leonard's and Sedlescombe Turnpike Road; thence, Southward, along the Boundary of the Parish of St. Leonard to the Point at which it meets the present Boundary of the Borough.

HERTFORD.

Description.

The present Borough of Hertford; and so much of the Parish of Bengoe as is contained within the following Boundary; that is to say,

From the Point to the Westward of the Town at which the River Beane leaves the Borough Boundary, Northward, along the said River to the Point at which it joins the Backwater from the Mole Wood Mill Stream to the same River; thence along the said Backwater to the Sluice Gate at which the said Mill Stream falls into the same Backwater; thence, in a South-easterly Direction, along the said Mill Stream to the Bridge over the same, near to the Mole Wood Mill, where the same Stream is crossed by the public Footway, known as the Church Path; thence, Eastward, along the Church Path to the single Tree growing therein at Sixteen Chains Distance (as measured along the same Path) from the Point at which the same joins the Hertford and Sacombe Road; thence in a straight Line to the Tree growing in the West Fence of the said Hertford and Sacombe Road at Ten Chains Distance (as measured along the same) from the Point at which the same joins the public Footway from Bengoe to Goldings; thence, Eastward, in a straight Line to the Point at which the River Rib meets the Road from Bengoe to Ware; thence along the said River Rib to the Point at which the same joins the present Boundary of the Borough in the River Lea.

HUDDERSFIELD.

Description.

The present Borough of Huddersfield; the Township of Lindley-cum-Quarmby; the Hamlet of Lower Linthwaite; the Township of Lockwood (including the Two detached Portions of the Township of South Crossland which are surrounded by it); the Township of Almondbury; the Township of Dalton; and so much of the

Township of Longwood as is included within the following Boundary; that is to say,

From the Point at which the Boundaries of the Townships of Lindley-cum-Quarmby and Longwood meet the present Boundary of the Borough, North-westward, along the Boundary of the said Townships to the Point called Raw Nook; thence, South-eastward, along the Road which leads from Raw Nook to Dodlee to the Point at which the said Road meets the Road leading from Dodlee to Clough Bottom; thence, South-westward, along the last-mentioned Road to the Point at which it meets the Boundary of the Townships of Longwood and Golcar; thence along the Boundary of the Townships of Longwood and Golcar, South-eastward, to the Point in the River Colne at Miln's Bridge at which the Townships of Longwood, Golcar, and Linthwaite meet; thence along the said River to the Point at which it meets the present Boundary of the Borough.

KIDDERMINSTER.

Description.

The present Borough of Kidderminster, and such Parts of the Parishes of Kidderminster and Wolverley as lie between the present Boundary of the Borough and the following Boundaries respectively; that is to say,

Kidderminster, 1.—From the Point at which the present Boundary meets the Sutton Common Road, Southward, along that Road to the Point at which it meets the Stourport Road; thence, Eastward, along the Stourport Road to the Point at which it meets the present Boundary:

Kidderminster, 2.—From the South-eastern Angle of the present Boundary in Chester Lane, Southward, along that Lane to the Point at which it meets the Lane leading by Gorset Hall to Comberton Farm; thence along the last-mentioned Lane to the Point at which it meets the Bromsgrove Road; thence along the Bromsgrove Road to the Occupation Road by Comberton Farm; thence along such Occupation Road to its Termination; thence, Northward, along the Hedge proceeding from this Point to the Borough Boundary on the Road to Offmore Farm:

Kidderminster, 3.—From the Point at which the present Boundary meets the Boundary of the Parish of Wolverley, Northward and Westward, along the last-named Boundary to the Point at which it meets the Road to Bridgnorth; thence, Southward, along the Bridgnorth Road to the Point at which it is met by the Road from Franch to High Habberley; thence, South-westward, along

FIRST SCHEDULE.

the last-mentioned Road to the Entrance Gate to High Habberley House; thence in a straight Line to the South-western Angle of the Borough in the Bewdley Road:

Wolverley.—From the Point in the present Boundary of the Borough at its Junction with the Cookley and Wolverhampton Road, Northward, along that Road to the Point at which it is met by the Road leading to Woiverley by Sion Hill; thence along such Road to the Lea Castle Gate; thence, Southward, along a Lane to the East of Sion House to the Occupation Road leading to Sion Hill Farm; thence, Westward, along such Occupation Road, through the Farm-yard, and along the Occupation Road from such Farm-yard, Westward, to the Swing Bridge on the Staffordshire and Worcestershire Canal; thence, Southward, along the Canal to the Point at which it meets the present Boundary of the Borough.

KING'S LYNN.

Description.

The present Borough of King's Lynn, and the Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the present Boundary on the North-east at the New Bridge near Walker's House, Northward, along Alma Lane, crossing the Railway, to the Point at which that Lane joins the Gaywood Road; thence, Westward, along the Gaywood Road to the Point at which it is met by Salter's Road; thence, Northward, along Salter's Road to the Point at which the said Road joins the old East Sea Bank; thence, Northward, along the old East Sea Bank to the new Sea Bank; thence, Westward, along the new Sea Bank to the Point at which it joins the old West Sea Bank; thence, South-westward, along the old West Sea Bank (which forms the Eastern Boundary of the Parish of North Lynn) to the Estuary Cut; thence, Southward, along the East Side of the Estuary Cut to the Point at which it meets the present Boundary of the Borough.

KINGSTON-UPON-HULL.

Description.

The present Borough of Kingston-upon-Hull, together with such Parts of the Parishes of Hessle, North Ferriby, and Kirk Ella as are included between the present Boundary of the Borough and the following Boundary; that is to say,

From the South-western Angle of the present Boundary at the River Humber, along that River, Westward, as far as the new Drain of the Hessle and Anlaby Drainage; thence up the said Drain to the Point at which it is

crossed by the Hull and Selby Railway; thence curving along the South Side of the said Railway in a North-easterly Direction past Hessle Junction, and along the South Side of the Northern Branch of the said Railway, to the Point at which it crosses the Eastern Boundary of the Parish of Hessle; thence, Northward, along the said Parish Boundary, and along the Boundary between the Parishes of North Ferriby and Kirk Ella to the Point at which it meets the Boundary of the Parish of Cottingham at Spring Bank; thence, Eastward, along the Boundary of the Parish of Cottingham on the South Side of Spring Bank to the North-western Angle of the present Boundary of the Borough.

LEWES.

Description.

The present Borough of Lewes, and the Space contained between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point of the present Boundary called "Malling Mill" in a straight Line to the Centre of the Road immediately on the North of the said Mill, such straight Line being in Production of the present Boundary from the Point of it known as the "Site of an old Windmill" to "Malling Mill;" thence, Westward, in a straight Line to the North-western Corner of the Wall of the Garden of "Malling House;" thence in a straight Line to the Point at which the old Turnpike Road from the Spital Burn to Offham crosses the Road leading from the Inn called the "Elephant and Castle" in the Town of Lewes to the Windmill near the Race Stand known as "Steeres Mill" or the "Offham Mill;" thence Southward in a straight Line to the Windmill known as the Spital Mill; thence in a straight Line to the Point of the present Boundary called the Smock Windmill.

MACCLESFIELD.

Description.

The present Borough of Macclesfield, and the Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point at which the Shore's Clough Brook leaves the Boundary of the Township of Hudsfield along the Shore's Clough Brook to the Point at which the same joins the River Bollen; thence along the River Bollen to the Point at which the same is joined by West Brook; thence along West

FIRST SCHEDULE.

Brook to the Point at which the same joins the present Boundary.

Point at which it meets the present Boundary of the Borough.
Usk.—Not altered.

MONMOUTH DISTRICT BOROUGH.

Description.

MONMOUTH.—Not altered.

NEWPORT.—The present Borough of Newport. So much of the Parish of Christchurch as is comprised within the Local Government District of Christchurch:

So much of the Parish of St. Woollos as lies between the present Boundary of the Borough and the following Boundary; that is to say,

From the Northernmost Point of the present Boundary in the River Usk near the Mouth of Crindau Pill, Westward, along the Boundary of the Parish of St. Woollos to the Point at which the said Boundary is cut by the Eastern Valleys Railway; thence, Southward, along the South Side of the said Railway to the Point at which the said Railway cuts the present Boundary near the Marshes Gate Toll Bar; thence in a straight Line to the Westernmost Entrance of the Tunnel of the Crumlin Canal at the Barrack Road; thence along the said Canal to the Western Fence of Two Fields numbered respectively 77a and 79 on the Tithe Map of the Parish of St. Woollos; thence along such Fence to the Point at which the same is met by the Barrack Road; thence, Eastward, along the said Barrack Road to the Western Fence of a Field numbered 106 in the Tithe Map of the Parish of St. Woollos; thence along such Fence to a Stream running through the Field numbered 115 in the aforesaid Tithe Map; thence along such Stream to the Western Fence of a Field numbered 124 in the aforesaid Tithe Map; thence along such Fence to the Point at which it meets the Parish Road leading from Pentonville to Ty Llwyd; thence, Westward, along the Southern Boundary of the Property of William Evans, Esquire, to the Point at which it reaches the Footpath leading to the Risca Road; thence along the said Footpath and in a straight Line across the said Road to the nearest Point of the Wall of the Cemetery; thence along the said Wall to the Turnpike Road leading from Newport to Bassaleg; thence, Eastward, along the said Road to the Point at which the same meets the Boundary Fence dividing the Property of Lord Tredegar from that of Lady Power; thence, Southward, along such Boundary Fence to the Occupation Bridge over the South Wales Railway near the Southern End of the Tunnel; thence along the Eastern Side of the said Railway to the Cardiff Road; thence, Eastward, along the said Road to the

MORPETH.

Description.

The present Borough of Morpeth, and the Townships of Cowpen and Newsham.

NEWPORT, ISLE OF WIGHT.

Description.

The present Borough of Newport, and so much of the Parishes of Whippingham and Carisbrook respectively as lies between the present Boundary of the Borough and the following Boundaries; that is to say,

Whippingham.—From the Point at which the Fairy (or Fairlee) Hole Stream joins the present Boundary at the River Medina, Eastward, along the said Stream for One hundred Yards beyond the Point at which it meets Cross Lane; thence, Southward, in a straight Line to the Point at which the Occupation Road leading past the Eastern End of a Field called Long Mead meets the Old Ryde (or Staplers) Road at Polars; thence in a straight Line to the Point at which the Occupation Road leading to Hedera House (Mr. Dash's) meets the Barton Village Road; thence along the said Road to the Point at which it meets the Footpath leading from Barton Village to Staplers; thence, Westward, along the said Path and in Production of the Direction thereof in a straight Line to the Southern End of Elm Road; thence in a straight Line to the Pan Turnpike; thence, Westward, in a straight Line to the nearest Point in the River Medina (excluding the Mill); thence, Northward, down the said River to the Point at which it meets the present Boundary:

Carisbrook, No. 1.—From the present Boundary at the Point at which the Footpath to Shide meets Church Litton Lane, Southward, in a straight Line to Shide Cross; thence, Westward, along White Pit Lane to the Point at which the Castle and Gatecombe Roads diverge; thence, North-westward, along the Cross Road leading to the Carisbrook Road to the Point at which it meets the Carisbrook Road; thence down the Stream from the Mill to the Point at which it meets the Lukely Brook; thence, Northward, along the said Brook to the Point at which it meets the present Boundary:

Carisbrook, No. 2.—From the Point at which the present Boundary crosses Petticoat Lane, Northward, in a straight Line to the Point at which Tin Pit Lane meets Exbury Road; thence in a straight Line to the Angle of the

FIRST SCHEDULE.

Road immediately to the North of Mr. Walter Brown's Farm (Providence Cottage); thence in a straight Line to the Hunny Hill Road; thence in a straight Line to the Point at which the Fairlee Hole Stream joins the River Medina.

The Boundary of the Borough in the River Medina is to be closed by a straight Line to be drawn across the River according with the Boundary last described.

NORTHAMPTON.

Description.

The present Borough of Northampton, and the Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point on the North of Northampton at which Gipse Lane (leading from Kings-
thorpe to the Toll Bar on the Kettering Road) leaves the present Boundary at the North-east Corner of the Racecourse, along the said Lane towards Kingsthorpe to the Point at which it crosses the Brook from Kingsthorpe Lodge; thence along the said Brook to the Point at which it joins the North Branch of the River Nen; thence along the said Branch of the said River to the Point South of St. Andrew's Mill at which the same is rejoined by the Mill Stream; thence in a straight Line to the Point at which Dallington Mill Lane meets the Druchurch Road at Dallington Side Bar; thence in a straight Line to the Point at which the Daventry Road crosses the small Brook immediately to the West of the "Red House" Inn; thence in a straight Line to the Point at which the Rothersthorpe and Banbury Lane is met by a public Footway from Cotton End; thence, Eastward, along the same Lane to the Point at which it meets the Towcester Road; thence along the Towcester Road towards Northampton to the Point at which it meets the London Road; thence in a straight Line to the Point in the present Boundary to the Eastward of Nun Mill at which the Mill Stream meets the River Nen.

OLDHAM.

Description.

The present Borough of Oldham and the Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point near Holt's Mill at which the River Medlock leaves the present Boundary of the Borough, along the River Medlock to the Point at which the same meets Wood

Brook; thence along Wood Brook to the Point at which the same meets the County Boundary between Lancashire and Yorkshire; thence, Northward, along the said County Boundary to the Point at which it meets the present Boundary of the Borough at Mill Bottom.

OXFORD.

Description.

The present Borough of Oxford:

So much of the Parish of St. Giles as is not already within the Borough; and

The Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point at which the Great Western Railway leaves the present Southern Boundary of the Borough, Southward, along the Eastern Side of the said Railway to the Point at which it crosses the Hinksey Stream; thence, Eastward, in a straight Line to the Point at which the Henley Road crosses the Cowley Marsh Ditch; thence along the said Ditch to the Point at which it meets the Boundary of the Parish of Headington; thence, Northward, along Moors Brook, and along the Ditch which crosses the Turnpike Road from Oxford to London near the Public House called "The White Horse," to the Point at which the said Ditch meets the Footpath leading from Headington to Oxford; thence, Southward, along the said Footpath to the Point in the present Boundary called "Joe Pullen's Tree."

PENRYN AND FALMOUTH.

Description.

The present Borough of Penryn and Falmouth; so much, if any, of the old Borough of Penryn as is not already within the Borough; and such Part of the Parish of Mylor as lies between the present Boundary of the Borough and the following Boundary; that is to say,

From the North-easternmost Angle of the present Boundary of the Borough (at which the Boundary between the Borough and the Parish of Mylor turns Southward) in a straight Line Eastward to the Point at which the Roads from Penryn to Mylor Bridge and from Penryn to Tregew diverge; thence along the said Road leading to Tregew to the Point at which it is met by the Road coming from the Pillars; thence, Northward, along that Road to the Junction of Roads at the Pillars; thence, Eastward, along the Road to Mylor Church Town to the Point at which it meets the Road from Flushing

FIRST SCHEDULE.

to Mylor Church Town; thence, South-eastward, in a straight Line to be drawn in Direction of the Tower of Pendennis Castle to the Point at which it meets the present Boundary.

PETERBOROUGH.

Description.

The present Borough of Peterborough, and the Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point at which the River Nene joins the Stream called the Cats Water at the Junction of the Three Counties of Huntingdon, Cambridge, and Northampton, along the River Nene, in a South-easterly Direction, to the Point at which the same joins the Stream called Morton Leam; thence, Southward, along the Morton Leam to the Point, South of the Railway Bridge over the same, at which the same joins a Brook called Fletton Spring; thence in a South-westerly Direction along the Fletton Spring, crossing the Fletton Road, to the Point at which the Fletton Spring meets the London Road; thence, Northward, along the London Road to the Boundary Stone at the Junction of Woodstone Lane with the London Road; thence in a North-westerly Direction along the Eastern Fence of Woodstone Lane to the Point at which the same joins the Oundle Road; thence in a straight Line to Woodstone Stanch on the River Nene.

PLYMOUTH.

Description.

The present Borough of Plymouth:
So much of the Tithing of Compton Gifford as lies to the South of Higher Compton Lane: and

The Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point at which Mill Bay Pier meets the present Boundary of the Borough, along the South Side of the said Pier to its Western Extremity; thence in a straight Line across the Entrance of Mill Bay to the nearest Point of the Boundary of the Parliamentary Borough of Devonport; thence, Northward, along the Boundary of the said Borough of Devonport to the Point at which it meets the present Boundary of the Borough.

PRESTON.

The present Borough of Preston, exclusive of such Part thereof (if any) as lies on the South side of the present Course of the River Ribble.

VOL. XLVI.—LAW JOUR. STAT.

RICHMOND.

Description.

The present Borough of Richmond, the Extra-parochial District of St. Martin's and the Hamlet of Slegill in the Township of Hipswell.

ROCHDALE.

Description.

From the Point at which the Oldham Road meets the Southern Boundary of the Hamlet of Buersill, Eastward, along the Deans and Silver Hill Lane to the Point at which the said Lane meets the Boundary of the Hamlet of Buersill; thence, Northward, along the Boundary of the Hamlet of Buersill to the Point at which the same meets the Boundary of the Hamlet of Newbold; thence, Westward, along the Boundary of the Hamlet of Newbold to the Point at which the same meets the Rochdale Canal; thence, Northward, along the Rochdale Canal to the Point at which the same meets the Eastern Boundary of the Hamlet of Belfield, near Belfield Mill; thence along the Boundary of the Hamlet of Belfield to the Point at which the same meets the Boundary of the Hamlet of Wuerdle; thence along the Boundary of the Hamlet of Wuerdle to the Point at which the same meets Ash Brook; thence, Northward, along Ash Brook to the Point at which the same meets the Littleborough Road at Smallbridge; thence, North-westward, in a straight Line to the Point at which the Eastern Boundary of the Township of Wardleworth touches the Bridge over Buckley Brook below Rydings Mill; thence, Northward, and then Westward, along the Boundary of the Township of Wardleworth to its North-western Angle in the Hamer Pasture Reservoir of the Rochdale Waterworks; thence, Westward, to the Point at which Smallshaw Brook meets the River Spodden; thence, Southward, in a straight Line to the Point at which Caldershaw Brook enters Caldershaw Reservoir; thence, Westward, along Caldershaw Brook to the Point at which the same meets the Southern Boundary of the Hamlet of Catley Lane; thence, Southward, along the Boundary of the Hamlet of Catley Lane to the Point at which it is crossed by the Footpath leading from Greave to Bottoms; thence, Southward, in a straight Line to the Point in the Boundary of the Hamlet of Chadwick at the River Roach, opposite to the Point at which Hill House Brook joins the said River; thence, Eastward, along the Boundary of the Hamlet of Chadwick to the Point at which the same meets Sudden Brook; thence along Sudden Brook to the Point at which the said Brook meets the Boundary of the Hamlet of Buersill; thence, Southward, along the Boundary of the Hamlet of Buersill to the Southernmost Point at which the Boundary of the said Hamlet

FIRST SCHEDULE.

touches Cripplegate Lane; thence, Eastward, in a straight Line to the Point first described.

SALISBURY.

Description.

The present Borough of Salisbury, and that Portion of the Parish of Fisherton Anger adjoining the present Borough (and now within the Borough of Wilton), which is contained within the following Boundary; that is to say,

From the North-western Angle of the present Boundary in the Devizes Road in a straight Line to the Point at which the Western Boundary of the Parish of Fisherton Anger crosses the Wilton Road; thence along the Boundary of the said Parish to the Point at which it meets the lower Road from Fisherton to Bemerton; thence in a straight Line, in a South-eastwardly Direction, to the present Boundary at the South-west Corner of the Premises occupied as the old Fisherton National School.

STAFFORD.

Description.

The present Borough of Stafford, and such Parts of the Parish of Castlechurch, called Castletown and Forebridge, to which the Act 3 & 4 W. 4. c. 90. has been applied, as lie between the present Boundary of the Borough and the following Boundaries respectively; that is to say,

No. 1.—From the Point at which the present Boundary is crossed by Spital Brook Lane, Eastward, along the said Lane to the Point at which it meets the Trent Valley Railway; thence, Westward, along the North Side of the said Railway (crossing the Lichfield Road) to the Point at which it crosses Spital Brook.

No. 2.—From the Westernmost Point of the present Boundary in the Penkridge Road, Southward, in a straight Line to the nearest Point of the outer Plantation of the Rowley Estate; thence, Westward, along the North Side of the said Plantation to the Lodge Gate at Rowley Lane; thence, South-westward, along the North Side of Oxleazer Lane for about One hundred and twenty Yards to the Point at which it is met by a Hedge; thence, Northward, along the said Hedge for about Ninety Yards to the Point at which it meets a Drain which runs to the Commission Main Drain; thence along the said Drain (crossing the Newport Road) to the Commission Main Drain; thence,

North-westward, along the Commission Main Drain to the Point at which it crosses Burley Lane; thence, Eastward, along Burley Lane to the Dorey Road; thence along the Dorey Road to the Gateway into Broadeye Meadows; thence along a Commission Ditch from the said Gateway to the River Sow.

STAMFORD.

Description.

The present Borough of Stamford, and so much of the Parish of St. Martin Stamford Baron as is included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point of the Wall of Burghley Park at which the present Boundary meets an Occupation Road called the "New Road," which runs from the Barnack and Pilgate Road to the River Welland, Eastward, along the Wall of Burghley Park to the Point at which that Wall cuts the Boundary of the Parish of Saint Martin Stamford Baron; thence, Northward, along the Boundary of the said Parish to the present Boundary of the Borough in the River Welland.

STOKE-UPON-TRENT.

Description.

The present Borough of Stoke-upon-Trent: The Local Government District of East Vale in the Parish of Caverswall:

So much of the Hamlet of Sneyd Green and Parish of Burslem as lies to the West of the Road leading from Hanley to Smallthorne:

And the Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point in the present Boundary at which the Mill Race forming such Boundary meets the Wall which is the Eastern Boundary of the Grounds of Spratslade House, Eastward, across the Trentham Road to the North-west Corner of the Boundary of the Local Government District of Dresden; thence along the Western, Southern, and Eastern Boundary of the said District to the Point at which it meets the Turnpike Road leading from Spratslade to the Uttoxeter Road; thence, Eastward, along the said Turnpike Road to the Point at which it meets the Boundary between the Parishes of Stone and Caverswall in the Uttoxeter Road; thence, North-westward, along the said Parish Boundary to the present Boundary of the Borough.

FIRST SCHEDULE.

STROUD.

Description.

The present Borough of Stroud, and such detached Portions of the Parishes of Standish and Brookthorpe as lie between the present Borough and the Parish of Haresfield.

SUNDERLAND.

Description.

The present Borough of Sunderland, and that Part of the Municipal Borough which is not within the Parliamentary Borough.

TAUNTON.

Description.

The present Borough of Taunton, and so much of the Parish of St. James as is included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point in the present Boundary at which the Mill Cross Stream enters it at Mr. Benson's Farm in Greenway Lane, Northward, in a straight Line to a Point on the Kingston Road One hundred and ninety-five Yards (measured along the said Road) North of the First Milestone; thence, Eastward, in a straight Line to a Point on the Cheddon Road Two hundred and eight Yards (measured along the said Road) North of the First Milestone; thence, Southward, along the Cheddon Road to the Point at which it meets the present Boundary at Prior's Wood Lane.

WAKEFIELD.

Description.

The Municipal Borough of Wakefield.

WALSALL.

Description.

The present Borough of Walsall, and so much of the Parish of Rushall, adjoining the Borough, as is contained within the following Boundary; that is to say,

From the Point at which the present Boundary of the Borough intersects the Cartbridge Road along that Road in a Southerly Direction to its Junction with the Lichfield Road; thence, Northward, along the Lichfield Road to the End of Hall Lane; thence, Eastward, along Hall Lane to a Point Seventy-four Yards from and in production of the East End of Rushall Church; thence, South-eastward, in a straight Line to the Junction of Mr. Mellish's, New Street, with the Road from Longwood Bridge to Walsall;

thence, South-eastward, along the said Road to Longwood Bridge, and, Southward, along the same Road to the present Boundary of the Borough.

WILTON.

Description.

The present Borough of Wilton, except such Part thereof as is included within the following Boundary:

From the North-western Angle of the present Boundary of the Borough of Salisbury in the Devizes Road in a straight Line to the Point at which the Western Boundary of the Parish of Fisherton Anger crosses the Wilton Road; thence along the Boundary of the said Parish to the Point at which it meets the lower Road from Fisherton to Bemerton; thence in a straight Line in a South-eastwardly Direction to the present Boundary of the said Borough of Salisbury at the South-west Corner of the Premises occupied as the old Fisherton National School.

NEW WINDSOR.

Description.

The present Borough of Windsor:
So much of the Parish of Eton as lies to the East of the Great Western Railway; and

So much of the Parish of Clewer as lies between the present Boundary of the Borough and the following Boundaries respectively; that is to say,

From the Westernmost Point of the present Boundary in the River Thames Westward along the Main Channel of the said River to the Westernmost Point of the Bend in it North of the Clewer Mill; thence, Southward, in a straight Line to a Point on the Dedworth Road Two hundred Yards from its Junction with Hatch Lane, measured Westward along the said Road; thence along the Dedworth Road to its Junction with Hatch Lane; thence along Hatch Lane to the End of Albion Place; thence along the Hedgerow which is the Boundary of Saint John's Orphan Home to the Point at which it meets the Footpath that leads from the Dedworth Road to the Spital Road; thence, Northward, along the said Footpath to the Point at which it meets Green Lane; thence, Eastward, along Green Lane to Mr. Harris's Farm, and in a straight Line in prolongation of the said Lane to the Point at which it meets the present Boundary; and

From the Angle in the present Boundary about Two hundred Yards North of the "Stag and Hounds" in a straight Line to Clewer

FIRST SCHEDULE.

Lodge Gate on the Spital Road; thence, Westward, along the Spital Road to the Point at which it meets Chapel Lane; thence, Southward, along the said Lane and in a straight Line from the Extremity thereof to the Angle of the present Boundary at Mr. Applegath's House.

WORCESTER.

Description.

The present Borough of Worcester, and the Spaces included between the present Boundary of the Borough and the following Boundaries respectively; that is to say,

From the Point at which the present Boundary leaves the River Severn, Southward, along that River, to the Point at which it is joined by Duck Brook; thence, Eastward, along the Southernmost Branch of that Brook to the Point at which it meets the Oxford, Worcester, and Wolverhampton Railway; thence towards Worcester along the Western Side of the said Railway to the Point at which it crosses the Occupation Road to Middle Battenhall Farm; thence, Northward, along the said Occupation Road to the London Road at Red Hill; thence, Westward, along the said Road until it meets the Occupation Road leading by the East of Lark Hill to Perry Wood; thence along the said Occupation Road to the Point at which it meets a Bridle Road leading through the Wood to Wyld's Lane; thence along the said Bridle Road until it meets the present Boundary of the Borough: and

From the Point at which the present Boundary leaves the Northernmost End of Perry Wood in a straight Line to the Point on the Crowle Road opposite to Ronkswood Farm at which the Pathway to the Virgin Tavern leaves the said Road; thence along the said Pathway to the Tollerline Road; thence, Northward, along the Tollerline Road to the Point at which it meets the Occupation Road leading to Brickfield Farm; thence, Westward, along the last-named Occupation Road and along Green Lane to the Point at which the latter meets the Astwood Turnpike Road; thence, Northward, along the last-named Road to Billord Canal Bridge; thence along Bilford Lane to its Junction with the Droitwich Road; thence, Northward, along the Droitwich Road to its Junction with Checketts Lane; thence, Westward, along the said Lane to its Junction with the Ombersley Road; thence, Northward, along the said Road to its Junction with the First Lane leading to Northwick; thence along the said First Lane to its Junction with Northwick

Lane; thence, Southward, along Northwick Lane to the Point, North of the Junction of Northwick Lane and the Ombersley Road, at which it meets the Pathway leading to the Ferry over the River Severn; thence in a straight Line to the Point in the Hallow Road opposite the Second Milestone thereon; thence, Northward, along the said Road for a Distance of Thirty Yards; thence, Westward, along a Lane to the Laughan Brook; thence, Southward, along the said Brook to the Point at which it meets the Bransford Road; thence, Eastward, along the Bransford Road to the Point at which it meets the present Boundary of the Borough.

OLD BOROUGH (WALES).

BEAUMARIS DISTRICT BOROUGH.

Description.

BEAUMARIS:—
Not altered.

AMLWCH:—
Not altered.

HOLYHEAD:

The present Borough of Holyhead, and the Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point called "Capel Ulo" (which would be reached by producing the present Boundary across the Old Port Road for a Distance of Fifty Yards in a South-westerly Direction) in a straight Line to the Point at which the present Boundary meets, and proceeds along a Road leading Northwards from the Country to the Town; thence in a straight Line to the Southernmost Point of the Group of Houses called "Stryd;" thence in a straight Line to the Southernmost Point of the Group of Houses called Millbank Gardens; thence in a straight Line to the Point at which the Lane leading from Pffynan-Goillas meets the present Boundary in the South Stack Road; thence in a South-westerly Direction along the South Stack Road for a Distance of Two hundred and eighty-five Yards to the Point at which there is a slight Bend in the Road towards Llangoch; thence in a straight Line to the Wesleyan Chapel at the Upper End of Llangoch; thence in a straight Line to the Millpond of Melyn-Twr, where the same forms the present Boundary;

FIRST SCHEDULE.

thence along the present Boundary to the Point at which it is crossed by the Boundary Wall of the Government Harbour Works; thence in a Westerly Direction for a Distance of about Three hundred and fifty Yards along the said Wall to the Old Bell Tower; thence in a straight Line to the Southern Extremity of a Creek lying on the Western Side of the "Soldier's Point;" thence Eastward along the Shore to the Point at which it meets the present Boundary.

LLANGFNI:—
Not altered.

CARDIFF DISTRICT BOROUGH.

Description.

CARDIFF:—

The present Borough of Cardiff, and so much of the Parishes of Roath, Leckwith, and Llandaff as lies between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point at which the Roath Brook touches the North-eastern Angle of the present Borough, South-eastward, along the said Brook to the Point at which it is crossed by the South Wales Railway; thence, Eastward, along the South Side of the said Railway to the River Rumney; thence, Southward, along the said River to the Sea, and along the Sea-shore to the Westernmost Mouth of the River Ely; thence up the River Ely to the Point at which it is crossed by the Road from Cowbridge to Llandaff; thence, North-eastward, along the said Road to the Point at which it meets the Penshishly Road; thence along the Penshishly Road to the Point at which it meets the present Boundary of the Borough.

COWBRIDGE:—
Not altered.

LLANTRISSAINT:—
Not altered.

CARDIGAN DISTRICT BOROUGH.

Description.

CARDIGAN:—

The present Borough of Cardigan, and so much of the Hamlet of Pent-y-groes, in the Parish of St. Dogmel's, as is bounded on the North by the Abbey Hamlet, on the South by the Bridge-End Hamlet, on the East by the River Teifi, and on the West by the following Boundary; that is to say,

From the Point at which the Road leading from the Farmhouse and Offices called Waun-whiod intersects the Boundary of

the Bridge-End and Pent-y-groes Hamlets, Northward, along the said Road as far as the Clawddcam Cross Roads; thence along the old Road leading to Maeneiah to the Point at which it intersects the Boundary of the Pent-y-groes and Abbey Hamlets.

ABERYSTWITH:—
Not altered.

ADPAR:—
Not altered.

LAMPETER:—
Not altered.

CARMARTHEN DISTRICT BOROUGH.

Description.

CARMARTHEN:—
Not altered.

LLANELLY:—
The present Borough of Llanelly, and that Part of the Hamlet of Westlæ which is nearly surrounded by the Borough, and lies to the South of the Road from Trostre Farm to the Village of Marble Hall.

CARNARVON DISTRICT BOROUGH.

Description.

CARNARVON:—
Not altered.

BANGOR:—
The present Borough of Bangor:
So much of the Local Government District of Bangor in the Parish of Bangor as is not already within the Borough; and
The Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point at which the present Boundary of the Borough meets the Boundary of the Local Government District on the Side of the Menai Straits, along the last-mentioned Boundary to the Point at which it is intersected by the old Carnarvon Road at the Place called Pen-y-chwyntan; thence along the said Road in a South-westwardly Direction to the Point at which it is joined by an Occupation Road leading from the Farmhouse of Traws Canol; thence along the said Occupation Road to the North-eastern Angle of the said Farmhouse; thence in a straight Line to the North-eastern Angle of the Farmhouse of Bryn-Clwyd; thence in a straight Line to the Point at which the Boundary of the Local Government District is intersected by the Road leading to Pentir; thence, Eastward, along the Boundary of the said District to the Point at which it is intersected by the

FIRST SCHEDULE.

Road leading to Glas-dufryon; thence, Northward, along the last-mentioned Road to the Point at which it meets the present Boundary of the Borough.

CONWAY:—

Not altered.

CRICCIETH:—

The present Borough of Criccieth, and the Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Northernmost Point of the present Boundary of the Borough in a straight Line to the House at the Slate Quarry on the Brain Brook on the Farm called Ednyfedd; thence to the nearest Point in the Brain Brook and down the said Brook towards the Sea to the Point at which it meets the present Boundary.

NEVIN:—

Not altered.

PWLLHELI:—

Not altered.

DENBIGH DISTRICT BOROUGH.*Description.***DENBIGH:—**

From the Well called Ffynnon-Ddu in a straight Line to the Point at which the Road leading to Berllanbach joins the Road from Tymawr to Denbigh; thence along the Road to Berllanbach; thence in a straight Line to the Junction of Roads at Brynmulan; thence along the Road which passes Rosabach to the Point at which it joins the Road leading from Maes-y-Plwm to Bryn-y-Gwynt; thence along the Road which passes to the West of Segroitucha to the Point at which it joins the Road leading from Cerrig-y-druidion to Denbigh; thence, Westward, along the Cerrig-y-druidion Road to the Gate of the Road leading to Plas-Captain; thence along the last-named Road to Plas-Captain House; thence in a straight Line to the Boundary Stone at a Place called Waen-Twm-pi on the Road from Nantglyn to Denbigh; thence in a straight Line to Pandy Fulling Mill or Factory (sometimes called Pandyissa); thence in a straight Line to Pandyucha; thence in a straight Line to Fach-House; thence in a straight Line to the East Corner of Bryncoch House (excluding that House); thence in a straight Line to the Centre of Henllan Parish Pound at the Cross Roads near Erriyattbach; thence in a straight Line to Ffynnon Meirchion at Pandy Henllan; thence along the Stream called Aber-Meir-

chion to the Point on it opposite Henllan Mill; thence in a straight Line to the Keeper's Cottage at the Back of Henllan Vicarage, near to Garn Gardens; thence in a straight Line to Garn House; thence in a straight Line to Plas Heaton House; thence in a straight Line to the Well called Ffynnon Cneifiwr; thence along the Stream issuing from that Well to the Point at which the said Stream enters the River Clwyd; thence along the River Clwyd to the Point at which it is joined by the Aberham Stream; thence along the Aberham Stream to the Point first described.

HOLT:—

Not altered.

RUTHIN:—

Not altered.

WREXHAM:

The present Borough of Wrexham, and the Space included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point South of Croesnewydd Farm, at which the Township of Wrexham Regis joins the Townships of Acton and Stansty, along the Boundary of the Township of Stansty to Watt's Dyke, at which it meets the Boundary of the Township of Gwersyllt; thence along the Boundary between the Townships of Stansty and Gwersyllt to the Point at which it meets the Road leading from Rhosddu to Rhosrobin; thence, Southward, along the said Road to the Point at which it meets the Railway; thence along the Road South of the Park Wall of the Lodge to the Four Cross Road leading to Wheatsheaf, Wrexham, and Plascoch; thence along the Township Road leading past Plascoch, to the Plascoch Toll Bar on the Wrexham and Mold Turnpike Road; thence along the said Township Road to its Junction with the Road to Brymbo and Croesnewydd; thence along the last-named Township Road to its Junction with the Wrexham South Sea Township Road near to Croesnewydd Farm Gate; thence, Westward, along the said Road to its Junction with the Canal Lane; thence along the same to its Junction with the Wrexham and Ruthin Turnpike Road; thence, Eastward, along the said Turnpike Road to its Junction with the College Lane; thence along the said Lane to its Junction with the Wrexham and Bersham Townships Road; thence, crossing the said Townships Road, along the Road leading to Esless' Corn Mill to the said

FIRST SCHEDULE.

Mill; thence along the Footway South of the said Mill to the Wooden Bridge leading over the Great Western Railway, and along the said Footway to the Point at which it joins the Wrexham and Ruabon Turnpike Road; thence, Northward, for a Distance of about One hundred Yards along the said Turnpike Road to its Junction with the old Road leading to Ruabon; thence, Southward, along the said last-mentioned Road to the Gateway of the Lane leading through Little Erddig Farmyard to Erddig Park to the Point in the present Boundary of the Borough at the Bridge under the private Carriage Drive in Erddig Park.

FLINT DISTRICT BOROUGH.

*Description.***FLINT:—**

The present Borough of Flint and the Township of Coleshill Fechan.

CAERGWYLE:—

Not altered.

CAERWYS:—

Not altered.

HOLYWELL:—

The present Borough of Holywell, together with so much of the Townships of Whelstone, Bagillt Fawr, Bagillt Fechan, Brynford, and Holywell as lies between the present Boundary of the Borough and the following Boundaries respectively; that is to say,

Whelstone, Bagillt Fawr, and Bagillt Fechan.—From the Point in the Eastern Corner of the present Boundary of the Borough at which the Townships of Greenfield and Whelstone meet on the Shore of the Estuary of the Dee, Southward, along the said Estuary to the Junction of the Townships of Bagillt Fechan and Coleshill Fechan; thence, Westward, from the Shore, along the Boundary of the Township of Bagillt Fechan, to the Point at which the said Boundary is intersected by an Occupation Road leading from the Hamlet of Farm to Gadlas; thence, Northward, along the said Occupation Road, and along the Road leading to Holywell, to the Point at which it crosses the Boundary between the Townships of Bagillt Fechan and Bagillt Fawr; thence along the said Road to the Point at which the Rivulet separating the Townships of Bagillt Fawr and Whelstone passes under the said Road; thence along the

said Road to the Point at which it meets the present Boundary of the Borough at the Junction of the Townships of Whelstone, Holywell, and Brynford, at Nant Elbrook:

Brynford.—From the Point in the present Boundary of the Borough at the Junction of the Townships of Whelstone, Holywell, and Brynford, Southward, along the Rivulet in the Wood of Nant Elbrook to the Point at which it is joined by a tributary Stream running down thereto from the House and Grounds of Pistill; thence along the said Stream, South-westward, to the Point at which it crosses the Mold Turnpike Road; thence, Northward, in a straight Line to the Boundary Stone of the present Borough at Pen-y-bryn Hill:

Holywell.—From the Boundary Stone of the present Borough at Pen-y-bryn Hill, North-westward, in a straight Line crossing the Pen-y-ball Road to the South-west Corner of the Farmhouse called the Grange; thence, North-eastward, in a straight Line to the Boundary Stone at the Westernmost Angle of the present Boundary of the Borough.

MOLD:—

The present Borough of Mold, and so much of the Townships of Bryncanillt and Broncoed as lies between the present Boundary of the Borough and the following Boundary; that is to say,

From the Point at which the Road called the Pfordd-Glai leading from High Street crosses the present Boundary, Southward, along that Road to the Point at which it meets the Road from Pen-y-fford to Pwll-melyn; thence in a South-easterly Direction along the latter Road, passing Pen-y-fford and the Ruthin Road, to the Point near Glanraffon Colliery at which it turns to the North-east, in the Direction of the Town; thence along the Fence which divides the Two Fields numbered respectively 2251 and 2254 on the Tithe Map of the Parish of Mold from the Field numbered 2262 on the said Tithe Map to the Point at which the said Fence intersects a Stream running in an Easterly Direction; thence up the said Stream and along the Fence which runs on the South Side of the Field numbered 2261 on the said Tithe Map; thence along the West and South Sides of the Field numbered 2311 on the said Tithe Map; thence along the South

FIRST SCHEDULE.

Side of the Meadow (numbered 2313 on the said Tithe Map) adjoining the Garden; thence for a Space of about Twenty Yards along the West side of the Field numbered 2409 on the said Tithe Map; thence along the South Fence of the said Field and of the Field numbered 2408 on the said Tithe Map to the Point at which the said Fence meets a Lane leading from Broncoed to a Place called The Little Mill; thence along the said Lane to the Point at which it joins the Road leading from Mold to Nerquis; thence along the said Road in a North-westerly Direction to the Point at which it meets the Mold and Wrexham Turnpike Road; thence along the said Turnpike Road, towards Mold for about One hundred Yards, to the Point at which the Lane leading past Broomfield to Pentre leaves it in a North-easterly Direction; thence along the said Lane to the Point at which it meets the present Boundary of the Borough.

QVERTON :—
Not altered.

RHUDDLAN :—
From the Point in the Boundary of the Manor of Rhuddlan in the River Clwyd; South of the Town of Rhuddlan, at which the Boundary between the Townships of Pengwern and Gwernglefryd meets the River Clwyd, Southward, along the Boundary of the said Manor through Pengwern Park, and through Sarn, Farn, and Faenol-fawr Farms, to the Point at which the said Manor Boundary meets the Boundary of the Parish of Abergele and the Boundary of the County of Denbigh; thence, Northward, along the Boundary of the said Manor and County to the River Clwyd; thence, South-eastward, along the River Clwyd to the Point at which the Boundary between the Townships of Yscawen and Cefndu meets the said River; thence, North-eastward, along the Boundary between the Two last-mentioned Townships, and along the exterior Boundary of the Townships of Yscawen and Brynywall, to the Point at which the Boundary between the Townships of Brynywall and Rhydorddwy meets the Boundary of the Parish of Dyserth; thence, Southward, along the Boundary between the Parishes of Rhuddlan and Dyserth, and along the Boundary between the Parishes of Rhuddlan and Cwm, to the River Clwyd; thence, North-westward, along the River Clwyd to the Point first described.

ST. ASAPH :—
Not altered.

MERTHYR TYDVEL.

The present Borough of Merthyr Tydvel, and so much of the Local Government District of Mountain Ash, in the Parish of Llanworn, as is not included in the present Borough.

PEMBROKE DISTRICT BOROUGH.

*Description.***PEMBROKE :—**

The present Borough of Pembroke, and such Part of the Parish of Llanstadwell as is included between the present Boundary of the Borough and the following Boundary; that is to say,

From the Northernmost Point of Pater Battery at Pembroke Dockyard, Northward, in a straight Line to the Middle of the Ford across the Stream which runs through Church Lake, at which it meets the Sea Coast at the High-water Mark of ordinary Tides; thence up the said Stream to the Point at which it meets a Road running South from Little Honeyborough; thence along the said Road to the Cross Roads at Little Honeyborough; thence, Eastward, along the Road which runs East from the said cross Roads to the Point at which it meets the Road running South from Sheeping to Honeyborough; thence, Northward, along the last-mentioned Road to the Point at which it crosses the Northern Branch of a Stream near Sheeping which runs into Washhill Pill; thence, down the said Stream to the Point at which it meets the Eastern Boundary of the Parish of Llanstadwell; thence, Southward, along the said Parish Boundary to the Sea Shore, and in a straight Line to be drawn in Direction of the Powder Magazine between Hobb's Point and Pembroke Ferry, to the Point at which it meets the present Boundary of the Borough.

MILFORD :—
Not altered.

TENBY :—
Not altered.

WISTON :—
Not altered.

SWANSEA DISTRICT BOROUGH.

SWANSEA :—

The present Borough of Swansea, and such Parts of the Parishes of Swansea and Llangefelach as lie between the present Boundary of the Borough and the following Boundaries respectively; that is to say,

FIRST SCHEDULE.

Swansea.—From the Point at which the present Boundary meets the Cwm-Bwrla Road at the Public House called the ‘Travellers Well,’ Westward along the said Road to the Point at which it is met by a Lane which runs in a Northerly Direction to the Loughor Road; thence along the said Lane and across the Loughor Road to the Point at which the Eastern Side of the Lane meets the Eastern Fence of the Field numbered 1609 on the Tithe Map of the Parish of Llangefelach; thence along the said Fence, and thence to the nearest Point of the present Boundary.

Llangefelach, No. 1.—From the Point at which the present Boundary meets the Western Fence of the Field numbered 2481 on the Tithe Map of the Parish of Llangefelach, Northward along the said Fence, and along the Western Fence bounding the Fields numbered respectively 2483 and 2482 on the said Map, to the Point at which the said Fence meets the Road from Penlan Farm; thence, Eastward, along the said Road to the Point at which it meets the present Boundary.

Llangefelach, No. 2.—From the Point of the present Boundary at which the Roads called Heol-y-Cnap and Heol-y-Castell respectively join, Northward along the said Road ‘Heol-y-Castell’ to the Point at which it meets Duke’s Road; thence, Westward, along Duke’s Road to the Point at which it meets the Road from Three Cllasses; thence Northward, along the Road running from Three Cllasses to the Point at which the same meets the Road from Llangefelach; thence, Eastward, along the Llangefelach Road to the Point at which it meets the present Boundary at the ‘Cross,’ where the last-mentioned Road crosses the Road to Clydach.

ABERAVON:—

The present Borough of Aberavon and so much of the Hamlet of Michaelstone Lower as is not already included in the Borough.

KENFIG:—

Not altered.

LOUGHOR:—

Not altered.

NEATH:—

The present Borough of Neath, and such Parts of the Hamlets of Blaenhonddan and Dyffryn Clydach respectively as lie between the present Boundary of the Borough and the following Boundary; that is to say.

From the Point at which the South Wales Railway running West from the Town of Neath crosses the present Boundary, along the South Side of the said Railway, to the Point at which it first crosses the Boundary of the Hamlet of Dyffryn Clydach; thence along the same Side of the said Railway to the Point at which it again crosses the said Boundary; thence, Southward, along the Western Boundary of the said Hamlet of Dyffryn Clydach, to the Point at which it meets the present Boundary of the Borough.

SECOND SCHEDULE.

NEW BOROUGHES.

BURNLEY.

Description.

The Township of Burnley, and so much of the Township of Habergham Eaves as lies to the North of the following Boundary; that is to say,

From the Point on the West at which the Boundary of the Township of Habergham Eaves crosses the Road from Burnley to Accrington at the Canal, along that Road towards Burnley to the Point at which it is met by the cross Road coming from Causeway End; thence in a South-easterly and Easterly Direction along the Road to Causeway End to the Point at which it meets the Road from Burnley to Rochdale; thence, Northward, along the Rochdale and Burnley Road to the Point at which it is met by the Footpath called the Rabbit Walk; thence, Eastward, along the said Footpath to the River Calder, and in a straight Line across the said River to the Boundary of the Township of Burnley at Towneley Deer Park.

CHELSEA.

Description.

The Parish of St. Luke, Chelsea (including the detached Portion).

The Parish of Fulham.

The Parish of Hammersmith.

The Parish of St. Mary Abbotts, Kensington.

So much of the Parish of Willesden at Kensal Green as adjoins the Parish of Kensington, and the detached Portion of the Parish of Chelsea, and lies to the South of the London and North-western Railway, and to the West of a straight Line to be drawn from the Junction of the

SECOND SCHEDULE.

Parishes of Willesden and Paddington with the detached Portion of the Parish of Chelsea, to the nearest Point in the Southern Fence of the London and North-western Railway opposite to the said Junction.

DARLINGTON.*Description.*

The Municipal Borough of Darlington.

DEWSBURY.*Description.*

The Township of Dewsbury :
So much of the Township of Batley as lies to the South of the following Boundary ; that is to say,

From the Junction of the Townships of Heckmondwike, Gomersall, and Batley at Smithies Moor, Eastward, to the Point at Upper Batley at which a Bridle Road passing Batley Hall joins Upper Batley Lane ; thence along the said Bridle Road about Two hundred and forty Yards to the Point at which it turns Southwards ; thence in a straight Line to the Point on the Eastern Boundary of the Township at which Howley Beck is crossed by the Footpath leading from Upper Batley to School Croft :

The Nether Division of the Township of Soot-hill :

The Local Government District of Ravens-thorpe in the Parish of Mirfield : and

So much of the Township of Thornhill as lies to the North of the following Boundary ; that is to say,

From the Point in the River Calder near Greenwood Lock at which the Boundary between the Parishes of Mirfield and Thornhill leaves the said River, South-eastward, to the Point at which the Cromwell Colliery Railway crosses the Bridle Road leading to Thornhill Lees, about Three hundred and thirty-five Yards from the South Side of Moor Lane, measured along the said Railway ; thence, Eastward, in a straight Line to the Point near Hill Top at which the long Causeway joins the Road leading from Thornhill Road to Hill Top ; thence in a straight Line to the Junction of the Townships of Thornhill, Soothill, and Ossett-cum-Gawthorpe in the River Calder.

GRAVESEND.*Description.*

The Parishes of Milton and Gravesend, and so much of the Parish of Northfleet (not including

its detached Portion) as lies to the North of the Old Roman Road called "Walling Street."

MIDDLESBOROUGH.*Description.*

The Municipal Borough of Middlesborough, and such Parts of the Townships of Ormesby, Normanby, and Eaton as lie to the North of a straight Line to be drawn from the South-east Angle of the Municipal Boundary at Ormesby Beck to a Stile on the Eastern Boundary of the said Township of Eaton, at which Stile the Footpath leading Westward from Lackenby Lane, near Thorntree House, crosses Lackenby Beck.

STALYBRIDGE.*Description.*

The Municipal Borough of Stalybridge, and that Portion of the Township of Dukinfield which is not included in the Municipal Borough of Stalybridge, or in the Parliamentary Borough of Ashton-under-Lyne.

STOCKTON-ON-TEES.*Description.*

The Township of Stockton :

The Township of Thornaby :

So much of the Township of Linthorpe as lies to the North of the new navigable Channel or Cut of the River Tees : and

So much of the Parish of Norton as is included within the following Boundary ; that is to say,

From the Point at which the Parishes of Norton, Billingham, and Stockton meet in Billingham Beck, Northward, along the Boundary of the Parish of Norton until it reaches a Point at which a Path from Crook Dike Lane, and the Ironworks, going in a North-westerly Direction, begins to pass closely between the Mill Race of Wolviston Mill and Billingham Beck ; thence leaving Billingham Beck and the Parish Boundary of Norton, and crossing that Path in a South-westerly Direction to the Centre of the said Mill Race ; thence, South-eastward, along the said Mill Race for a Distance of about One hundred Yards, to the Angle of the said Mill Race, at which a small Beck meets it from the South ; thence up the said small Beck in a Westerly Direction to and through Whitehouse Plantation to the Point at which that Beck crosses the West Hartlepool Railway ; thence along the South Side of the said Railway in a Westerly Direction to the Point at which the Stockton and Durham High Road crosses the said Railway ; thence in a South-easterly Direction along the said Road to the Turnpike at

SECOND SCHEDULE.

which a Lane from Norton crosses it; thence along the said Lane, Westward, for a Distance of about Thirty Yards, to the Point at which it is joined by another Lane coming from the South; thence along this last-mentioned Lane in a South-easterly Direction to the Point at which it meets the Boundary of the Township of Stockton; thence, East-

ward, along the Boundary of the Township of Stockton to the Point first described.

WEDNESBURY.

Description.

The Parishes of Wednesbury, West Bromwich, Tipton, and Darlaston.

THIRD SCHEDULE.

DIVISIONS OF COUNTIES.

Name of County divided.	Division.	Parts comprised in such Division.
SOMERSETSHIRE	East Somerset	*The existing Sessional Divisions of— Frome, Keynsham, Kilmersdon, Long Ashton, Temple Cloud, Weston.

* The Parishes and Places in the existing Sessional Division of Frome are—

Beckington.	Laverton.	Nunney.	Wanstrow.
Berkley.	Leigh-upon-Mendip.	Orchardleigh.	Whatley.
Cloford.	Lullington.	Road.	Witham Friary.
Elm.	Marston Bigott.	Rodden.	Woolverton.
Frome Selwood.	Mells.	Standerwick.	

The Parishes and Places in the existing Sessional Division of Keynsham are—

Brislington.	Keynsham.	Publow.
Burnet.	Marksbury.	Queen Charlton.
Compton Dando.	Norton Malreward.	Salford.
Felton otherwise	Pensford.	Stanton Drew.
Whitchurch.	Priston.	Stanton Prior.

The Parishes and Places in the existing Sessional Division of Kilmersdon are—

Ashwick.	Hemington.	Stratton-on-the-Fosse.
Babington.	Holcombe.	Writhlington.
Buckland Dinham.	Kilmersdon.	
Hardington.	Radstock.	

The Parishes and Places in the existing Sessional Division of Long Ashton are—

Abbots Leigh.	Clevedon.	Kingston Seymour.	Weston-in-Gordano.
Backwell.	Dundry.	Long Ashton.	Winford.
Barrow Gurney.	Easton-in-Gordano	Nailsea.	Wragall.
Bedminster.	otherwise Saint	Portbury.	Yatton.
Brockley.	George.	Portishead.	
Chelvey.	Flax Bourton.	Tickenham.	
Clapton.	Kenn.	Walton-in-Gordano.	

The Parishes and Places in the existing Sessional Division of Temple Cloud are—

Cameley.	Compton Martin.	Hinton Blewett.	Stowey.
Chelwood.	East Harptree.	Liton.	Timbury.
Chew Magna.	Emberrow.	Midsomer Norton.	Ubley.
Chewton Mendip.	Farrington Gurney.	Nempnett.	West Harptree.
Chewstoke.	Farmborough.	Norton Hawkfield.	
Chilcompton.	Green Ore.	Paulton.	
Clutton.	High Littleton.	Stone Easton.	

THIRD SCHEDULE.

Name of County divided.	Division.	Parts comprised in each Division.
SOMERSETSHIRE— <i>cont.</i>	East Somerset— <i>cont.</i>	As established by virtue of the Order of Her Majesty's Justices of the Peace for the County of Somerset, and the following Parishes within the existing Sessional Division of Axbridge established by virtue of the said Order, viz.:— Banwell, Blagdon, Burrington, Butcombe, Charterhouse-on-Mendip, Christon, Churchill, Congresbury, Hutton, Kewstoke, Locking, Puxton, Rowberrow, Shipham, Uphill, Weston-super-Mare, Wick St. Lawrence, Winscombe, Worle, and Wrington.
	Mid Somerset	*The existing Sessional Divisions of— Crewkerne, Shepton Mallet, Somerton, Wells, Wincanton, and Yeovil.

The Parishes and Places in the existing Sessional Division of Weston are—

Bathampton.	Englishcombe.	Monckton Combe.	Swainswick.
Batheaston.	Farleigh.	Newton Saint Lo.	Tellisford.
Bathford.	Foxcote otherwise	Norton Saint Philip.	Twerton.
Bathwick.	Forscote.	Northstoke.	Walcot.
Camerton.	Freshford.	Saint Catherine.	Wellow.
Charlcombe.	Hinton Charterhouse.	Saint James.	Weston.
Claverton.	Kelston.	Saint Michael.	Woolley.
Combhay.	Langridge.	Saint Peter and Saint	
Corston.	Lyncombe and Wid-	Paul.	
Dunkerton.	combe.	Southstoke.	

*The Parishes and Places in the existing Sessional Division of Crewkerne are—

Crewkerne.	Lopen.	Misterton.	Wayford.
Hazelbury Plucknett.	Merriott.	North Perrott.	West Chinnock.
Hinton Saint George.	Middle Chinnock.	Seaborough.	

The Parishes and Places in the existing Sessional Division of Shepton Mallet are—

Batcombe.	East Cranmore.	Milton Clevedon.	Upton Noble.
Croscombe.	East Pennard.	Pilton.	West Cranmore.
Ditchcat.	Evercrech.	Pylla.	
Doulting.	Hornblotton.	Shepton Mallet.	
Downhead.	Lamyat.	Stoke Lane.	

THIRD SCHEDULE.

Name of County divided.	Division.	Parts comprised in such Division.
SOMERSETSHIRE—cont.	Mid Somerset—cont.	As established by virtue of the Order of Her Majesty's Justices of the Peace for the said County of Somerset, and the following Parishes within the existing Sessional Division of Axbridge established by virtue of the said Order, viz. :— Axbridge, Badgworth, Berrow, Biddisham, Bleadon, Brean, Burnham, Chapel Allerton, Cheddar, Compton Bishop, East Brent, Ioxton, Lympham, Mark, South Brent, Weare, and Wedmore.

The Parishes and Places in the existing Sessional Division of Somerton are—

Aller.	Compton Dundon.	Langport.	Walton.
Bahery.	East Lydford.	Long Sutton.	West Camel.
Baltonsborough.	High Ham.	Muchelney.	West Lydford.
Barton Saint David.	Haish Episcopi.	Pitney.	Yeovilton.
Butleigh.	Kingsdon.	Puldimore Milton.	
Charlton Adam.	Keinton Mandeville.	Somerton.	
Charlton Mackrell.	Kingweston.	Street.	

The Parishes and Places in the existing Sessional Division of Wells are—

Binegar.	Rodney Stoke.
Dinder.	United Parishes of Saint John the Baptist and Saint Benedict in the Town of Glastonbury.
In-Parish of Saint Cuthbert in Wells.	West Bradley.
Out-Parish of Saint Cuthbert in Wells.	West Pennard.
Liberty of Saint Andrew in Wells.	Westbury.
Meare.	Wookey.
North Wootton.	
Nyland and Batcombe.	
Priddy.	

The Parishes and Places in the existing Sessional Division of Wincanton are—

Alford.	Eastrip.	North Barrow.	South Cadbury.
Ansford.	Four Towers.	North Bruham.	Stoke Trister.
Blackford.	Gasper (Hamlet).	North Cadbury.	Stowell.
Bratton Seymour.	Goathill.	North Cheriton.	Sutton Montia.
Bruton.	Henstridge.	Penselwood.	Temple Combe.
Castle Cary.	Horsington.	Pitcombe.	Weston Bampfylde.
Charlton Horathorne.	Holton.	Pointington.	Wheatthill.
Charlton Musgrove.	Kilmington.	Sandford Orcas.	Wincanton.
Compton Pauncefoot.	Lovington.	Shepton Montague.	Yarlington.
Corton Dinham.	Maperton.	South Barrow.	Yarnfield (Hamlet.)
Cucklington.	Milborne Port.	South Bruham.	

THIRD SCHEDULE.

Name of County divided.	Division.	Parts comprised in such Division.
<i>Somersetshire—continued.</i>		
The Parishes and Places in the existing Sessional Division of Yeovil are—		
Ashington.	Hardington Mandeville.	Northover.
Barwick.	Ilchester.	Norton under Hamdon.
Brimpton.	Limington.	Odcombe.
Chilthorne Damer.	Lufton.	Pendomer.
Chilton Cantelo.	Marston Magna.	Preston Plucknett.
Chiselborough.	Martock.	Queen Camel.
Closworth.	Montacute.	Rimpton.
East Chinnock.	Mudford.	Sock Dennis.
East Coker.		Sparkford.
		Stoke under Hamdon.
		Sutton Bingham.
		Thorne Coffin.
		Tintinhull.
		Trent.
		West Coker.
		Yeovil.

YORKSHIRE, WEST RIDING	Northern Division	-	-	The Wapentake of— Ewecross and Staincliffe, The Parishes of— Bradford and Halifax, The Townships of— Bolton and Idle,	} in the Wapen- take of Morley.
	Eastern Division	-	-	The Wapentakes of— Claro, Skyrack, Barkstonash, Osgoldcross, and Morley (except the Parishes of Bradford and Halifax and the Townships of Bolton and Idle).	

FOURTH SCHEDULE.

County.	Division.	Places appointed for holding Courts for Election of Members.
Devonshire	North Devonshire	Barnstaple.
Essex	North-east Essex	Colchester.
Lincolnshire	South Lincolnshire	Spalding.
West Kent	West Kent	Sevenoaks.
Yorkshire, West Riding	Northern Division	Bradford.
" " "	Eastern Division	Leeds.

FIFTH SCHEDULE.

CONTENTS of the HUNDREDS of FIREHILL.

FIREHILL, NORTH.

FIREHILL, SOUTH.

Ashley.
Audley.
Balterley.
Barlaston.
Betley.
Biddulph.
Burslem.
Chapel and Hill Chorlton.
Keele.
Madeley.
Maer.
Muclestone.
Newcastle-under-Lyme.
Normicott.
Norton-in-the-Moors.
Standon.
Stoke-upon-Trent.
Swinerton.
Trentham.
Tyrley and Bloore, with Hales and Alvington.
Whitmore.
Wolstanton.

Abbot's Bromley.
Adbaston.
Blithfield-with-Newton.
Chartley Holme.
Chebsey.
Cold Norton.
Colton.
Colwich.
Cresswell.
Eccleshall.
Ellenhall.
Fradswell.
Gayton.
High Offley.
Hopton and Coton.
Ingestre.
Marston.
Milwich.
Ranton.
Ranton Abbey.
Salt and Enson.
Sandon.
Seighford.
Stafford, St. Mary and St. Chad.
Stone.
Stowe.
Tillington.
Tixall.
Weston upon Trent.
Whitgreave.
Worston.
Yarlet.

CAP. XLVII.

Consecration of Churchyards Act (1867) Amendment.

ABSTRACT OF THE ENACTMENTS.

- 1. *Giver of Land may reserve exclusive Right to Extent of One Sixth.*
- 2. *Recited Act to apply to Burial Grounds to Unions.*

An Act to amend "The Consecration of Churchyards Act, 1867."
(13th July 1868.)

WHEREAS it is expedient that the Consecration of Churchyards Act, 1867, should be amended as herein-after mentioned :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

- 1. That in all Cases where by the said Act the Giver of any Land to be added to a consecrated

Churchyard is empowered to reserve the exclusive Right in perpetuity of Burial, and of placing Monuments and Gravestones, in a Part of the Land so added not exceeding Fifty Square Yards or One Sixth of the whole of the said Land, in the Manner and subject to the Conditions and Restrictions in the said Act mentioned, it shall be lawful for the Giver of such Land to reserve such exclusive Right as aforesaid in a Part of the Land so added not exceeding One Sixth of the whole of the said Land, subject to the Restrictions and Conditions and in the Manner and for the Purpose in the said Act mentioned, and the said Act shall be read as if in the Ninth Section thereof the Words "not exceeding One Sixth Part of the whole of the said Land" were sub-

stituted for the Words "not exceeding Fifty Square Yards or One Sixth of the whole of the said Land;" Provided always, that all Powers with regard to the placing or Erection of Monuments and Gravestones in Churchyards, which before the passing of the said Act by Law pertained to the Bishop of the Diocese or to any Person acting under his Authority, shall remain in full Force in respect to the Land in which such exclusive Right shall have been reserved as aforesaid.

2. The Provisions of the said Act shall apply to Burial Grounds attached or belonging to Union Houses in England and Wales.

CAP. XLVIII.

The Representation of the People (Scotland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Application of Act.*

PART I.

FRANCHISES.

3. *Occupation Franchise for Voters in Burghs.*
4. *Lodger Franchise for Voters in Burghs.*
5. *Ownership Franchise for Voters in Counties.*
6. *Occupation Franchise for Voters in Counties.*
7. *Restriction on Number of Votes in Glasgow.*
8. *Electors employed for Reward within Six Months of an Election not to vote.*

PART II.

DISTRIBUTION OF SEATS.

9. *New Seats for the Universities of Glasgow and Dundee, and Counties of Lanark, Ayr, and Aberdeen.*
10. *Counties of Selkirk and Peebles to be united, and new District of Burghs to return One Member.*
11. *Certain Counties to be divided, and each Division to return a Member.*
12. *Registers of Voters to be formed for new Burghs and Divisions of Counties.*

PART III.

SUPPLEMENTAL PROVISIONS.

Incidents of Franchise.

13. *Successive Occupancy.*
14. *Liferenters. Joint Owners and Joint Occupants. Husbands in right of their Wives.*

Valuation Rolls.

15. *Dwelling Houses to be specially entered in Valuation Rolls.*
16. *Valuation Rolls in Counties to contain certain additional Particulars.*
17. *Provision for Claims by Persons improperly or erroneously exempted from Payment of Poor Rates.*
18. *Poor Rate to be demanded. Collector wilfully neglecting to do so punishable.*

Registration of Voters.

19. *Registration of Voters.*
20. *Alteration of Dates respecting Registration in Burghs.*
21. *Alteration of Dates respecting Registration in Counties.*
22. *Appeals from Decisions of Sheriff in Registration Court.*
23. *Constitution of Court of Appeal.*

Places for Election and Polling Places.

24. *Places for Election and Returning Officers for new Constituencies.*
25. *Payments for conveying Voters in Burghs to the Poll illegal.*
26. *Rooms to be hired for polling wherever they can be obtained.*

Elections in Universities.

27. *Franchise for Universities.*
28. *Qualifications for Members of General Councils.*
29. *Registration Book to be kept.*
30. *Registrar to enter Names therein.*
31. *Preparation of First Register under this Act. Revision by Registrar and Assistant Registrars.*
Authentication by the Vice-Chancellor. Register to be conclusive.
32. *Appeal against undue Insertion of Names.*
33. *Appeal against Omissions.*
34. *Quorum of University Court for Purposes of Act.*
35. *New Registers to be made up annually.*
36. *Allowance to Registrar and Assistant Registrars.*
37. *Returning Officers and Intimation of Election.*
38. *Proclamation of Writs for Universities.*
39. *Polling at University Elections.*
40. *University Election Expenses.*
41. *Provision for Incapacity of Vice-Chancellor or Registrar.*

Miscellaneous.

42. *Registration where Counties are divided.*
 43. *Certain Boroughs in England to cease to return Members.*
 44. *Shortening of Period for proceeding to Elections in Burghs.*
 45. *Galashiels to be wholly in Selkirkshire.*
 46. *In Burghs where there are no Magistrates, Police Commissioners to appoint Assessors.*
 47. *Where there is no Town Clerk, Police Commissioners or Sheriff to appoint a Person to act as such.*
 48. *Expenses of Valuation and Registration of Voters, and Remuneration of Person acting as Assessor and Town Clerk, to be assessed on the Burgh.*
 49. *Corrupt Payment of Rates to be punishable as Bribery.*
 50. *Receipt of Parochial Relief to disqualify for Counties as well as Burghs.*
 51. *Members holding Offices of Profit from the Crown, as in Schedule (H.), not to vacate their Seats on Acceptance of another Office.*
 52. *Provision in case of separate Registers.*
 53. *Temporary Provisions consequent on Formation of new Burghs.*
 54. *Register to be conclusive Evidence of Qualification.*
 55. *Right of voting not to be affected by Dependence of Appeal.*
 56. *General Saving Clause.*
 57. *Writs, &c. to be made conformable to this Act.*
 58. *Construction of Act.*
 59. *Interpretation of Terms.*
- Schedules.*

An Act for the Amendment of the Representation of the People in Scotland.
(13th July 1868.)

WHEREAS it is expedient to amend the Laws relating to the Representation of the People in Scotland:

VOL. XLVI.—LAW JOUR. STAT.

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act shall be cited for all Purposes as "The Representation of the People (Scotland) Act, 1868."

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2. This Act shall apply to Scotland only, except in so far as it provides that certain Boroughs in England shall cease to return Members to serve in Parliament.

PART I.

FRANCHISES.

3. Every Man shall, in and after the Year One thousand eight hundred and sixty-eight, be entitled to be registered as a Voter, and, when registered, to vote at Elections for a Member or Members to serve in Parliament for a Burgh, who, when the Sheriff proceeds to consider his Right to be inserted or retained in the Register of Voters, is qualified as follows; that is to say,

1. Is of full Age, and not subject to any legal Incapacity; and
2. Is, and has been for a Period of not less than Twelve Calendar Months next preceding the last Day of July, an Inhabitant Occupier as Owner or Tenant of any Dwelling House within the Burgh:

Provided that no Man shall under this Section be entitled to be registered as a Voter who, at any Time during the said Period of Twelve Calendar Months, shall have been exempted from Payment of Poor Rates on the Ground of Inability to pay; or who shall have failed to pay, on or before the First Day of August in the present or the Twentieth Day of June in any subsequent Year, all Poor Rates (if any) that have become payable by him, in respect of said Dwelling House or as an Inhabitant of any Parish in said Burgh, up to the preceding Fifteenth Day of May; or who shall have been in the Receipt of Parochial Relief within the Twelve Calendar Months next preceding the said last Day of July: Provided also, that no Man shall under this Section be entitled to be registered as a Voter by reason of his being a Joint Occupier of any Dwelling House.

4. Every Man shall in and after the Year One thousand eight hundred and sixty-eight be entitled to be registered as a Voter, and, when registered, to vote for a Member or Members to serve in Parliament for a Burgh, who is qualified as follows; (that is to say.)

1. Is of full Age, and not subject to any legal Incapacity; and
2. As a Lodger has occupied in the same Burgh separately, and as sole Tenant for the Twelve Months preceding the last Day of July in any Year, Lodgings of a clear yearly Value, if let unfurnished, of Ten Pounds or upwards; and
3. Has resided in such Lodgings during the Twelve Months immediately preceding

the last Day of July, and has claimed to be registered as a Voter at the next ensuing Registration of Voters.

5. Every Man shall, in and after the Year One thousand eight hundred and sixty-eight, be entitled to be registered as a Voter, and, when registered, to vote at the Election of a Member or Members to serve in Parliament for a County, who, when the Sheriff proceeds to consider his Right to be inserted or retained on the Register of Voters, is qualified as follows; that is to say,

1. Is of full Age, and not subject to any legal Incapacity; and
2. Is, and has been for a Period of not less than Six Calendar Months next preceding the last Day of July, the Proprietor (whether he has made up his Titles, or is infert, or not) of Lands and Heritages, the yearly Value of which, as appearing from the Valuation Roll of the County, shall be Five Pounds or upwards, after Deduction of any Feu Duty, Ground Annual, or other annual Consideration which he may be bound to pay or give or account for as a Condition of his Right, and after Deduction of any Annuity, Life-rent Provision, or such other annual Burden.

6. Every Man shall be entitled to be registered as a Voter, and, when registered, to vote at Elections for a Member to serve in Parliament for a County, who, when the Sheriff proceeds to consider his Right to be inserted or retained in the Register of Voters, is qualified as follows; that is to say,

1. Is of full Age, and not subject to any legal Incapacity; and
2. Is, and has been during the Twelve Calendar Months immediately preceding the last Day of July, in the actual personal Occupancy as Tenant of Lands and Heritages within the County of the annual Value of Fourteen Pounds or upwards, as appearing on the Valuation Roll of such County:

Provided that no Man shall under this Section be entitled to be registered who, at any Time during the said Period of Twelve Calendar Months, shall have been exempted from Payment of Poor Rates on the Ground of Inability to pay; or who shall have failed to pay, on or before the First Day of August in the present or the Twentieth Day of June in any subsequent Year, all Poor Rates (if any) that have become payable by him in respect of said Lands and Heritages up to the preceding Fifteenth Day of May; or who shall have been in the Receipt of Parochial Relief within Twelve Calendar Months next preceding the said last Day of July.

7. At a contested Election for the City of Glasgow no Person shall vote for more than Two Candidates.

8. No Elector who, within Six Months before any Election for any County or Burgh, shall have been retained, hired, or employed for or on behalf of any Candidate at such Election as Agent, Canvasser, Clerk, Messenger, or in other like Employment, shall be entitled to vote at such Election; and if he shall so vote, he shall be guilty of a Crime and Offence.

PART II.

DISTRIBUTION OF SEATS.

9. In all future Parliaments the Universities of Scotland shall return Two Members to serve in Parliament; the City of Glasgow shall return Three Members to serve in Parliament; and the Town of Dundee, and the Counties of Lanark, Ayr, and Aberdeen, shall each return Two Members to serve in Parliament; and one of the Members for the Universities of Scotland shall be returned jointly by the University of Edinburgh and the University of St. Andrews; and the other of such Members shall be returned jointly by the University of Glasgow and the University of Aberdeen.

10. From and after the End of the present Parliament the County of Selkirk shall cease to return a Member to serve in Parliament, and the County of Peebles shall cease to return a Member to serve in Parliament, and the said Counties shall jointly return One Member to serve in Parliament; and the Burghs and Towns of Hawick, Galashiels, and Selkirk, specified in Schedule (A.) hereto annexed, shall be constituted into a District of Burghs, and such District shall return One Member to serve in Parliament.

11. From and after the End of the present Parliament each County named in the First Column of Schedule (B.) to this Act annexed shall be divided into Two Divisions named in the Second Column of the said Schedule; and, until otherwise directed by Parliament, each of such Divisions shall consist of the Parishes mentioned in the Third Column of the said Schedule; and each of such Divisions shall in all future Parliaments return One Member to serve in Parliament, in the same Manner as if each such Division were a separate County.

12. Registers of Voters shall be formed in and after the Year One thousand eight hundred and sixty-eight, notwithstanding the Continuance of

the present Parliament, for and in respect of the Divisions of Counties constituted under this Act, in like Manner as if such Divisions had previously to the passing of this Act been separate Counties returning Members to serve in Parliament; and also for and in respect of the Burghs constituted by this Act in like Manner as if before the passing of this Act they respectively had been Burghs returning or contributing to return Members to serve in Parliament.

PART III.

SUPPLEMENTAL PROVISIONS.

Incidents of Franchise.

13. Different Premises occupied in immediate Succession by any Person as Owner or Tenant during the Twelve Calendar Months next previous to the last Day of July in any Year shall have the same Effect in qualifying such Person to vote for a Burgh or County respectively as a continued Occupancy of the same Premises in the Manner herein provided: And this Provision shall apply to the successive Occupancy of Premises in Counties of the annual Value of Fifty Pounds and upwards, as well as to Premises which for the First Time under this Act afford the Qualification for the Franchise.

14. In a County where Two or more Persons are interested as Liferenter and as Fiar in any Lands and Heritages to which a Right of voting is for the First Time attached by this Act, the Right to be registered and to vote shall be in the Liferenter, and not in the Fiar: And where any such Lands and Heritages shall be owned, held, or occupied by more Persons than One as Joint Owners, whether in Fee or in Liferent, or as Joint Tenants and Joint Occupants of the same, as the Case may be, each of such Joint Owners shall be entitled to be registered and to vote, provided his Share or Interest in the said Lands and Heritages is of the annual Value of Five Pounds as before specified, but not otherwise; and each of such Joint Tenants and Joint Occupants shall in like Manner be entitled to be registered and to vote, provided the annual Value of the said Lands and Heritages, as appearing on the Valuation Roll, held and occupied by them shall be sufficient, when divided by the Number of such Joint Tenants and Joint Occupants, to give to each of them a Sum of not less than Fourteen Pounds, but not otherwise: Provided always, that no greater Number of Persons than Two shall be entitled to be registered as Joint Owners or Joint Tenants of the same Lands and Heritages unless their Shares or Interests in the same shall have come to them by Inheritance, Marriage, Marriage Settlement, or mortis causa

Conveyance, or unless such Joint Owners or Joint Tenants shall be bona fide engaged as Partners carrying on Trade or Business in or on such Lands and Heritages: Provided also, that Husbands shall be entitled to be registered and to vote in respect of Lands and Heritages as aforesaid belonging, whether in Fee or in Life-rent, to their Wives, or owned or possessed by such Husbands after the Death of their Wives by the Courtesy of Scotland.

Valuation Rolls.

15. In every future Valuation Roll to be made up in any Burgh, under the Provisions of the Valuation Acts in force for the Time, or under the Provisions of this Act, the Assessor shall be bound to specify separately each Dwelling House, and to ascertain and enter the yearly Rent or Value of the same, and also, to enter the Name and Designation of the Proprietor or reputed Proprietor thereof, and, where there are Tenants or Occupiers, the Names and Designations of all such Tenants and Occupiers.

16. In every future Valuation Roll to be made up in any County the Assessor, in addition to the Particulars which by the Acts last mentioned are required to be ascertained by him, shall also ascertain and enter in such Roll the Amount of Feu Duty, Ground Annual, Rent, or other yearly Consideration payable as a Condition of his Right by every Proprietor of any Lands or Heritages entered in such Roll as of the yearly Rent or Value of Five Pounds or upwards, and the Name of the Person to whom the said Consideration is payable; and in order to the Ascertainment of the Particulars herein-before specified, it shall be lawful for the Assessor to call upon any Proprietor or Tenant for Receipts or other written Evidence of the Amount of such Feu Duty, Ground Annual, or other Consideration, and such Proprietor or Tenant shall be bound to furnish and deliver such Evidence to the Assessor under the same Penalty in case of Failure or of false Statement as is provided in similar Cases by the Act Seventeenth and Eighteenth Victoria, Chapter Ninety-one; and it shall also be lawful for the Assessor to exercise all the Powers which, under the said Act, he may lawfully exercise for the Purposes thereof.

17. Where the Name of any Person, otherwise entitled to the Franchise for any Burgh or County, has in any Year been omitted from the List of Voters prepared by the Assessor for such Burgh or County on the Ground that he has during the Twelve Calendar Months preceding the last Day of July in such Year been exempted from Payment of Poor Rates on account of Inability to pay, it shall be competent for such Person to give Notice to such Assessor of his

Claim to have his Name entered in the Register of Voters for such Burgh or County in the Manner provided in the Registration Acts, and such Claim shall be published and may be objected to in the Manner provided in the said Acts; and the Sheriff shall dispose of the said Claim, and if it shall be proved to his Satisfaction that the Person claiming has been improperly or erroneously exempted from Payment of the said Poor Rates, and that he has on or before the First Day of August in the present, or the Twentieth Day of June in any subsequent Year paid or tendered Payment of the Amount of Poor Rates, from Payment of which he was improperly or erroneously exempted as aforesaid, the Sheriff shall insert the Name of such Person in the Register of Voters for the Burgh or County, as the Case may be; and the Judgment of the Sheriff sustaining or refusing the Claim shall be liable to the Appeal provided in the said Registration Acts, and generally the Provisions of the said Acts shall apply to the Claims mentioned in this Section and to all the Proceedings following thereon.

18. Where any Poor Rate due from an Occupier of Premises to which a Right of voting is for the First Time attached by this Act remains unpaid on the Fifteenth Day of May in any Year, the Collector of Poor Rates for the Parish in which such Premises are situated shall, on or before the Twenty-fifth Day of July in the present or the First Day of June in any subsequent Year, unless such Rate has previously been paid, or has been duly demanded by a Demand Note served in like Manner as the Notice in this Section referred to, give or cause to be given a Notice in the Form set forth in Schedule (C.) to this Act to every such Occupier. The Notice shall be deemed to have been duly given if delivered to the Occupier, or left at his last or usual Place of Abode, or with some Person on the Premises in respect of which the Rate is payable. Any Collector of Poor Rate who shall wilfully withhold such Notice with Intent to keep such Occupier off the List or Register of Voters for the Burgh or County, as the Case may be, shall be deemed guilty of a Crime and Offence.

Registration of Voters.

19. The following Regulations shall be observed with respect to the Registration of Voters:

1. The Registration Acts shall apply to the Registration of all Persons on whom a Right to be registered and to vote is conferred for the First Time by this Act, in the same Manner, and subject to the same Regulations, as nearly as Circumstances admit, in and subject to which they now apply to the Registration of Persons en-

titled at present to be registered and to vote; and the said Acts, and also the Valuation Acts, shall apply to all Burghs and Divisions of Counties on which the Right of returning or contributing to return a Member to serve in Parliament is by this Act conferred:

2. The Collector of Poor Rates in each Parish shall, on or before the Third Day of August in the present and First Day of July in any subsequent Year, deliver or send to the Assessor for the Burgh or County, as the Case may be, a List in the Form in the Schedule (D.) hereunto annexed, or as near thereto as Circumstances admit, and in the Order as nearly as may be, in which the Names appear in the Valuation Roll of such Burgh or County, as the Case may be, duly certified by him, of all Occupiers of Premises who have been, during the Twelve Calendar Months preceding the last Day of July in each Year, exempted from Payment of Poor Rates on the Ground of Inability to pay, or who have failed to pay, on or before the First Day of August in the present or the Twentieth Day of June in any subsequent Year, all Poor Rates (if any) that have become payable by them up to the preceding Fifteenth Day of May, or who have been in the Receipt of Parochial Relief within the Twelve Calendar Months next preceding the last Day of July in such Year, and the Assessor shall be guided by the said Lists (which shall be *prima facie* Evidence of the Correctness of the Entries therein contained) in ascertaining the Right of any Person to be inserted or retained in the Register of Voters:

3. The Claim of every Person desirous of being registered as a Voter for a Member or Members to serve for any Burgh in respect of the Occupation of Lodgings shall be in the Form No. 1. in Schedule (I.), or to the like Effect, and shall have annexed thereto a Declaration in the Form, and be certified in the Manner, in the said Schedule mentioned, or as near thereto as Circumstances admit; and every such Claim shall, after the last Day of July and on or before the Twenty-first Day of September in any Year, be delivered to the Assessor of the Burgh in which such Lodgings shall be situate, and the Particulars of such Claim shall be duly published by such Assessor on or before the Twenty-fifth Day of September next ensuing in a separate List, according to the Form No. 2. in the said Schedule (I.):

4. The Provisions of the Registration Acts

relating to the Manner of publishing Lists of Claimants in Burghs, and to the Delivery of Copies thereof to Persons requiring the same, shall apply to every such Claim and List; and the Provisions of the same Acts with respect to the Proof of the Claims of Persons omitted from the List of Voters in Burghs, and to Objections thereto, and to the Hearing thereof, shall, so far as the same are applicable, apply to Claims and Objections, and to the Hearing thereof under this Section:

5. Wherever any List or Copy of a List other than a Register for which Payment is required and authorized by the Act Nineteenth and Twentieth Victoria, Chapter Fifty-eight, shall contain any Number of Persons Names exceeding Five thousand, the Rate to be demanded and paid therefor shall be Five Shillings; and for any such List or Copy of such List containing any Number of Persons Names exceeding Ten thousand the Rate to be demanded and paid therefor shall be Ten Shillings.

20. Whereas in consequence of the Increase of the Number of Voters in Burghs provided for by this Act it is necessary to alter certain of the Dates in the Preparation of the Register of Voters in said Burghs as provided for by the Act 19 & 20 Vict. c. 58: Be it enacted as follows:

The Second Section of the said recited Act shall be read as if the Words "Fifteenth Day of September" were substituted for the Words "Fifteenth Day of August," and the Words "from the Sixteenth to the Twenty-first Days of September" were substituted for the Words "from the Sixteenth to the Twenty-fifth Days of August" therein:

The Third Section of the said recited Act shall be read as if the Words "Twenty-first Day of September" were substituted for the Words "Twenty-fifth Day of August" therein:

The Fourth Section of the said recited Act shall be read as if the Words "Twenty-first Day of September" were substituted for the Words "Twenty-fifth Day of August" therein:

The Fifth Section of the said recited Act shall be read as if the Words "Twenty-fifth Day of September" were substituted for the Words "First Day of September," and the Words "between the Twenty-fifth Day of September and the First Day of October" were substituted for the Words "during the first Fourteen Days of September" therein:

The Sixth Section of the said recited Act shall be read as if the Words "Twenty-fifth of

September" were substituted for the Words "First of September" therein :

The Sixteenth Section of the said recited Act shall be read as if the Words "Fifteenth of September" were substituted for the Words "Sixteenth Day of August" therein :

The Eighteenth Section of the said recited Act shall be read as if the Words "Twenty-fifth Day of September" were substituted for the Words "First Day of September" therein :

The Nineteenth Section of the said recited Act shall be read as if the Words "Twenty-fifth Day of September" were substituted for the Words "First Day of September," and the Words "the Sixteenth Day of October" were substituted for the Words "the First Day of October" therein :

The Twenty-fifth Section of the said recited Act shall be read as if the Words "Fifteenth Day of October" were substituted for the Words "Thirtieth Day of September" therein :

The Twenty-sixth Section of the said recited Act shall be read as if the Words "Sixteenth Day of October" were substituted for the Words "First Day of October" therein :

The Twenty-ninth Section of the said recited Act shall be read as if the Words "Fifteenth Day of October" were substituted for the Words "Thirtieth Day of September," and the Provision in the said Section requiring the Town Clerk forthwith, after the Twenty-first Day of October in each Year, to make all such Corrections and Alterations on the Book therein mentioned as may be necessary to give Effect to all Decisions of the Court of Appeal, is hereby repealed.

21. Whereas in consequence of the Increase of the Number of Voters in Counties provided for by this Act it is necessary to alter certain of the Dates in the Preparation of the Register of Voters in Counties, as provided for by the Act of the Twenty-fourth and Twenty-fifth of Victoria, Chapter Eighty-three : Be it enacted as follows :

The Eighth Section of the said recited Act shall be read as if the Words "Twenty-fifth Day of August" were substituted for the Words "Fifteenth Day of August," and the Words "from the Twenty-sixth Day of August to the Fourth Day of September" were substituted for the Words "from the Sixteenth to the Twenty-fifth Days of August" therein :

The Ninth Section of the said recited Act shall be read as if the Words "Fourth Day of September" were substituted for the Words "Twenty-fifth Day of August" therein :

The Tenth Section of the said recited Act shall be read as if the Words "Eleventh Day of September" were substituted for the Words

"First Day of September," and the Words "from the Twelfth to the Twenty-fourth Days of September" were substituted for the Words "from the Second to the Fourteenth Days of September" therein :

The Eleventh Section of the said recited Act shall be read as if the Words "Eleventh Day of September" were substituted for the Words "First Day of September" therein :

The Twentieth Section of the said recited Act shall be read as if the Words "Twenty-sixth Day of August and the Thirtieth Day of October" were substituted for the Words "Sixteenth Day of August and the Twenty-first Day of October" therein :

The Twenty-first Section of the said recited Act shall be read as if the Words "Fourth Day of September" were substituted for the Words "Twenty-fifth Day of August" therein :

The Twenty-second Section of the said recited Act shall be read as if the Words "Eleventh Day of September" were substituted for the Words "First Day of September," and the Words "Fourth Day of September" were substituted for the Words "Twenty-fifth Day of August" therein :

The Twenty-third Section of the said recited Act shall be read as if the Words "Eleventh Day of September and the Eleventh Day of October" were substituted for the Words "First Day of September and the Fifth Day of October" therein :

The Twenty-fourth Section of the said recited Act shall be read as if the Words "Eleventh Day of September" were substituted for the Words "First Day of September" therein :

The Twenty-ninth Section of the said recited Act shall be read as if the Words "Eleventh Day of October" were substituted for the Words "Fifth Day of October" therein :

The Thirtieth Section of the said recited Act shall be read as if the Words "Eleventh Day of October" were substituted for the Words "Fifth Day of October" therein.

22. All Enactments at present in force regarding Appeals from the Judgments of Sheriffs in Registration Courts for Counties and Burghs are hereby repealed, and in lieu thereof it is enacted as follows :

If any Person whose Name shall have been struck out of any Register or List of Voters by the Sheriff, or who shall claim or object before the Sheriff at any Court, shall consider the Decision of the Sheriff on his Case to be erroneous in point of Law, he may, either himself or by some Person on his Behalf, in open Court, require the Sheriff to state the Facts of the Case, and such Question of Law, and his Decision thereon, in a Special Case; and the Sheriff shall

prepare and sign and date such Special Case, and deliver the same in open Court to the Sheriff Clerk or Town Clerk, as the Case may be; and each Person, or some Person on his Behalf, may thereupon in open Court declare his Intention to appeal against the said Decision, and may, within ten Days of the Date of such Special Case, lay a certified Copy thereof before the Court of Appeal herein-after constituted, for their Decision thereon; and the said Court shall with all convenient speed hear Parties and give their Decision on such Special Case, and shall specify exactly every Alteration or Correction, if any, to be made upon the Register in pursuance of such Decision; and the Register shall be as soon as may be after the thirty-first Day of October in each Year altered accordingly by or at the Sight of the Sheriff; and if it shall appear to the Sheriff that his Judgments respecting the Qualifications of any two or more Persons depend on the same Question of Law, he shall append to such Special Case the Names of all such Persons who have appealed against his Judgment on their respective Claims; and the Decision of the said Court on such Special Case shall extend and apply to the Qualifications of all such Persons, in like Manner as if a separate Appeal had been taken in the Case of each of them; and the said Court shall have Power to award the Costs of any Appeal; and the Decision of the said Court shall be final, and not subject to Review by any Court, or in any Manner whatsoever: Provided always, that if the said Court shall be of opinion that the Statement of the Matter of the Appeal in any Special Case is not sufficient to enable them to give Judgment in Law, it shall be lawful for the said Court to remit the said Special Case to the Sheriff by whom it shall have been signed, in order that the same may be more fully stated.

23. The Court for hearing Appeals under the preceding Section of this Act shall consist of three Judges of the Court of Session, to be named from Time to Time by Act of Sederunt of the said Court, One Judge to be named from each Division of the Inner House, and One from the Lords Ordinary in the Outer House; and it shall be competent from Time to Time by Act of Sederunt to supply any Vacancy which may occur in such Court, and to regulate the Sittings and Forms of Process therein so as to carry out the Provisions of this Act, and such Acts of Sederunt may be made, and such Court may sit, either during the Sitting of the Court of Session, or in Vacation or Recess; and the Junior Principal Clerk of Session shall be the Clerk of such Court.

Places for Election and Polling Places.

24. The Writ for the Election of the Member for the District of Burghs enumerated in Schedule

(A.) to this Act annexed shall be addressed to the Sheriff mentioned in the Fifth Column of the said Schedule, and, until otherwise directed by Parliament, shall be proclaimed at the Place named for that Purpose in the Third Column thereof; and the Writ for the Election of the Member for the Counties of Peebles and Selkirk shall be addressed to the Sheriff of the County of Peebles, and until otherwise directed by Parliament shall be proclaimed at the Burgh of Peebles; and in the Case of a Poll being demanded at any Election for said Counties the Sheriff of the County of Peebles shall forthwith send a written Notice to the Sheriff of the County of Selkirk that a Poll has been demanded, and also of the Day on which it is to be taken; and the Sheriffs of the said Counties of Peebles and Selkirk respectively shall appoint such a Number of Substitutes and Clerks as may be necessary at each of the Polling Places within their respective Counties; and all the Poll Books shall at the final Close thereof be sealed up and delivered or transmitted by the Sheriff Substitutes in charge of the Polls to the said Sheriff of the County of Peebles; and the Writs for the Election of Members for the Divisions of Counties enumerated in Schedule (B.) to this Act annexed shall be addressed to the Sheriffs of such Counties, and, until otherwise directed by Parliament, shall be proclaimed at the Places named for that Purpose in the Fourth Column of the said Schedule.

25. It shall not be lawful for any Candidate, or any one on his Behalf, at any Election for any Burgh, to pay any Money on account of the Conveyance of any Voter to the Poll, either to the Voter himself or to any other Person; and if any such Candidate, or any Person on his Behalf, shall pay any Money on account of the Conveyance of any Voter to the Poll, such Payment shall be deemed to be an illegal Payment within the Meaning of the "Corrupt Practices Prevention Act, 1854."

26. At every contested Election for any County or Burgh, unless some Building or Place belonging to the County or Burgh is provided for that Purpose, the Sheriff Clerk in any County, and in any City or Burgh the Town Clerk, shall, whenever it is practicable so to do, instead of erecting a Booth, hire a Building or Room for the Purpose of taking the Poll at the Places appointed for such County or Burgh.

Where in any Place there is any Room, the Expense of maintaining which is payable out of any Rates levied in such Place, or which is under the Control of the Town Council or other Local Authority, such Room may, with the Consent of those having the Control over the same, be used for the Purpose of taking the Poll at such Place.

Where the Town Clerk incurs any Expenses in

erecting Booths or hiring Rooms for taking any Poll under this Act, he shall have the same Right and Means of recovering the same from the Candidates which the Sheriff Clerk has by the present Law and Practice.

Elections in Universities.

27. The Chancellor, the Members of the University Court, and the Professors for the Time being of each of the Universities of Scotland, and also every Person whose Name is for the Time being on the Register, made up in Terms of the Provisions herein-after set forth, of the General Council of such University, shall, if of full Age, and not subject to any legal Incapacity, be entitled to vote in the Election of a Member to serve in any future Parliament for such University in Terms of this Act.

28. Under the Conditions as to Registration herein-after mentioned, the following Persons shall be Members of General Council of the respective Universities, viz. :

1. All Persons qualified under the Sixth or Seventh Section of the Act Twenty-first and Twenty-second Victoria, Chapter Eighty-three :
2. All Persons on whom the University to which such General Council belongs has after Examination conferred the Degree of Doctor of Medicine, or Doctor of Science, or Bachelor of Divinity, or Bachelor of Laws, or Bachelor of Medicine, or Bachelor of Science, or any other Degree that may hereafter be instituted :
3. And whereas it was provided by the said Sixth Section of the last-mentioned Act that in each University the General Council should consist of, inter alios, "all Persons who within Three Years from and after the passing of this Act shall establish, to the Satisfaction of the Commissioners herein-after appointed, that they have as Matriculated Students given regular Attendance on the Course of Study in the University for Four complete Sessions, or such regular Attendance for Three complete Sessions in the University, and regular Attendance for One such complete Session in any other Scottish University, the Attendance for at least Two of such Sessions having been on the Course of Study in the Faculty of Arts;" and whereas from various Causes many Persons omitted to establish their Qualifications in Terms of the Provision just mentioned before the Expiry of the Time mentioned therein, and it is expedient to afford such Persons the Opportunity of becoming Members of the General Councils of their respective

Universities: Be it enacted as follows : Every Person who may have omitted to establish his Qualification in Terms of the recited Provision of the Sixth Section of the Act last mentioned, but who would have been entitled to have become a Member of the General Council of the University in Terms of the said Provision if his Qualification had been established within the said Period, and he had applied for Registration in Terms of said Act, shall be a Member of the General Council of the University, provided that such Person shall establish his Qualification in Terms of the recited Provision to the Satisfaction of the Registrar and Assistant Registrars herein-after mentioned, and shall farther comply with the Conditions as to Registration herein-after mentioned.

Provided always, that no Graduate of any University shall be disqualified from being a Member of the General Council of such University by reason of his being enrolled as a Student in any Class of the University : Provided also, that the Conditions as to Registration herein-before mentioned shall not apply to the Chancellor, the Members of the University Court, or the Professors for the Time being of each University, who shall be Members of the General Council of their respective Universities, and entitled to vote as such, although their Names are not inserted on the Register herein-before mentioned.

29. The Registrar of each University shall keep a Registration Book which shall be in the Form of Schedule (E.) to this Act annexed, and in which, under the Conditions herein-after mentioned, shall be entered the Names, Designations, Qualifications, and ordinary Places of Residence of Persons qualified to be Members of General Council, and from which the Registers of General Council herein-after directed to be made up shall from Time to Time be prepared.

30. Within Two Months after the passing of this Act the Registrar shall transfer to the Registration Book from the presently existing Register the Names of all Persons who before the passing of this Act, and in virtue of the Provisions of any Ordinance of the Commissioners under the Act Twenty-first and Twenty-second Victoria, Chapter Eighty-three, have paid a Composition in lieu of annual Fees, and have been enrolled in such presently existing Register in virtue of such Payment; and he shall in like Manner from Time to Time after the passing of this Act, on Payment to the General University Fund of a Registration Fee of Twenty Shillings, enter in the Registration Book the Name of every qualified Person applying for Registration, but who

has not compounded under the Provisions of any such Ordinance as aforesaid: Provided always, that an Abatement shall be made from such Fee equal to the Sum that may already have been paid by the Applicant in Name of Entrance Money or annual Fees: Provided also, that after the passing of this Act no Person qualified to be a Member of General Council shall be required to pay any annual Fee as the Condition of having his Name retained in the Registration Book, or inserted in the Register to be from Time to Time made up from it, as herein-after enacted.

31. On the First Day of October One thousand eight hundred and sixty-eight the Registrar shall proceed to make up from the Registration Book an alphabetical Register of Members of General Council, which Register shall be in the Form of Schedule (F.) to this Act annexed, and shall be completed within Fifteen Days; but no Names shall be included therein which have not been entered in the Registration Book before the said First Day of October; and the said Register, having been completed by the Registrar as aforesaid, shall forthwith be revised and so far as necessary corrected by him, with the Assistance of Two Members of the General Council acting as Assistant Registrars, and who shall have been nominated and appointed for that Purpose by the University Court at a Meeting to be held of such Court on or before the said First Day of October; and the Revision or Correction shall be completed, and a Copy of the Register, with the Names numbered from One onwards in regular Order, shall be signed by the Registrar and Assistant Registrars on or before the Twenty-first Day of October following; and the Copy so signed shall thereafter be submitted by the Registrar to the Vice-Chancellor, and shall be authenticated by his Signature on every Page thereof, on or before the Twenty-fifth Day of October next ensuing; and the Register so authenticated shall, so far as it remains unaltered by the University Court as herein-after provided, be conclusive of the Right of Persons to be Members of the General Council from the Twenty-sixth Day of October One thousand eight hundred and sixty-eight to the Thirty-first Day of December One thousand eight hundred and sixty-nine, both Days inclusive: Provided always, that at any Meeting of or Election by the General Council of any University appointed to take place on or before the said Twenty-sixth Day of October One thousand eight hundred and sixty-eight the Registration Book for such University, as it stood on the Thirtieth Day of September immediately preceding, shall be conclusive Evidence of the Right of all Persons whose Names shall be entered therein to be Members of such General Council until the Fifth Day of November following.

32. The Registration Book and also the Register, authenticated as aforesaid, shall at all reasonable Times be open to Inspection, in the Office of the Registrar, by any Person applying for Inspection of the same, and Copies thereof may be made on Payment of a Fee of One Shilling for every One hundred Names, or fractional Part thereof, copied; and if any Member of the General Council shall consider himself aggrieved by the Insertion in the said Register of the Name of any Person whom he considers not duly qualified, it shall be competent to him, within Ten Days after the Day on or before which the Register is hereby required to be authenticated, to appeal and apply to the University Court to expunge the Name complained of; and Notice of such Appeal shall immediately be given by the Secretary of the Court to the Person against the Insertion of whose Name the Appeal is taken, with an Intimation of the Day on which the Appeal will be heard, and which shall be not sooner than Twenty nor later than Thirty Days after the last Day allowed for the Authentication of the Register; and it shall be in the Power of such Person to appear for his Interest either personally or by Substitute; and whether he appear or not, it shall be the Duty of the Registrar to attend and explain the Reasons for the Insertion of the Name complained of; and the Judgment of the Court sustaining or dismissing the Appeal shall be final, and not subject to any Process of Review, and the Register shall, if necessary, be altered by or at the Sight of the President of the said Court in conformity with such Judgment.

33. If any Person whose Name is not inserted in the Register so authenticated as aforesaid shall consider himself aggrieved by its Omission, it shall be competent to him, within the said Period of Ten Days after the Day on or before which the Register is hereby required to be authenticated, to appeal and apply to the University Court to have it so inserted; and the Court shall meet to consider such Appeal not later than Thirty Days after the last Day allowed for the Authentication of the Register, and after hearing the Appellant for his Interest, either personally or by Substitute, and the Registrar in explanation of the Reasons for the Omission of the Appellant's Name, shall give Judgment in the Appeal; and such Judgment shall be final, and not subject to any Process of Review, and the Register shall, if necessary, be altered by or at the Sight of the President of the said Court in conformity with such Judgment.

34. For the Purpose of performing any Duty required by this Act, the Presence of a Quorum of Three shall be sufficient to constitute a Meeting of the University Court.

35. On the First Day of December One thousand eight hundred and sixty-nine, and on the First, or when the First is on a Sunday on the Second Day of December in each succeeding Year, the Registrar shall proceed to prepare, in the Form of Schedule (F.) to this Act annexed, a new alphabetical Register for the Year to commence on the First Day of January next ensuing, which new Register he shall make up by transferring to it from that in force at the Time the Names, Designations, and Addresses (with such Corrections as he may consider necessary) of all Members not known to be dead, and by transferring to it from the Registration Book the Names, Designations, Qualifications, and ordinary Places of Residence of all Persons who shall have paid the Registration Fee since the Day of commencing to make up the Register of the preceding Year, and who are not known to have died since making Payment; and such new Register shall be completed within Fifteen Days, and shall thereafter be revised by the Registrar with the Assistance of Two Assistant Registrars appointed by the University Court, and shall then be authenticated by the Vice-Chancellor on or before the Thirty-first Day of December of the same Year, and such Revision and Authentication shall be carried out in the same Way as is provided in regard to the First Register directed to be made up under this Act; and the new Register shall have the same Effect for the Year to which it applies as it is hereinbefore provided that the said First Register shall have for the Period between the Twenty-sixth Day of October One thousand eight hundred and sixty-eight and the Thirty-first Day of December One thousand eight hundred and sixty-nine, and shall be subject in the same Way as the said First Register to Alteration by the University Court on Appeal taken either against undue Insertion or against undue Omission of Names.

36. The Registrar of each University shall be entitled to receive out of the General University Fund a Payment of One Guinea and a Half for every One hundred Names, or fractional Part thereof, that shall be entered in the First Register prepared under this Act, and of One Guinea for every Hundred Names, or fractional Part thereof, that shall be entered in the subsequent Registers, and to a Payment of Half a Guinea for every Hour, or fractional Part thereof, during which he shall be in attendance on the University Court while considering and disposing of Appeals under this Act, as the same shall be certified by the President or Secretary of the Court; and each Assistant Registrar nominated and appointed by the University Court under this Act, and officiating in Terms thereof, shall be entitled to receive from the same Fund a Payment of One

Guinea for every One hundred Names, or fractional Part thereof, that shall be entered in the First Register prepared under this Act, and of Half a Guinea for every Hundred Names, or fractional Part thereof, entered in the subsequent Registers.

37. The Vice-Chancellor of the University of Edinburgh shall be the Returning Officer for the said University and the University of Saint Andrews; and the Vice-Chancellor of the University of Glasgow shall be the Returning Officer for the said University and the University of Aberdeen; and the Writs for any Election of a Member to serve in Parliament for such Universities shall be directed to such Returning Officers respectively; and the Vice-Chancellor to whom a Writ for any such Election shall be directed shall endorse on the Back thereof the Day on which he received it, and shall, within Three Days thereafter, announce a Day and Hour (which Day shall not be less than Three or more than Six clear Days after that on which the Writ was received), and a Place within the City of Edinburgh, for an Election for the Universities of Edinburgh and Saint Andrews, or within the City of Glasgow for an Election for the Universities of Glasgow and Aberdeen, as the Case may be, and shall give Intimation thereof by Advertisement in such Newspapers as he shall deem expedient, and shall also, within the said first-mentioned Three Days, give Intimation thereof in Writing to the Vice-Chancellor of the University of Saint Andrews or of Aberdeen, as the Case may be.

38. On the Day announced as aforesaid by the Vice-Chancellor for the Election such Vice-Chancellor shall repair to the Place named by him, to which Place all Persons entitled to vote in such Election shall in the aforesaid Advertisement be invited to repair on the Day and at the Hour named; and the said Vice-Chancellor shall then and there proclaim the Writ by reading it; and if no more than One Candidate shall be proposed for the Choice of the Electors, he shall, upon a Show of Hands, forthwith declare the Person so put in Nomination to be duly elected; it being always competent for any Person entitled to vote in such Election under this Act to repair to the Place where the Writ is proclaimed, and to put any Person in Nomination; and if more than One Candidate shall be proposed, and a Poll shall be demanded, the Proceedings shall be adjourned for the Purpose of taking the Poll for not less than Six or more than Ten clear Days, exclusive of Saturdays and Sundays; and the Vice-Chancellor shall forthwith give public Intimation of such Adjournment, and of the Names of the Candidates who have been proposed, by Advertisement in such Newspapers as

he shall deem expedient, and shall also give Intimation thereof in Writing to the Vice-Chancellor of the University of Saint Andrews or of Aberdeen, as the Case may be.

39. The following Regulations shall be observed with respect to the Polling :—

1. On the Day to which the Proceedings have been adjourned as aforesaid for the Purpose of taking the Poll the Polling shall commence at each University at Eight o'Clock in the Morning, and may continue for not more than Five Days (exclusive of Sundays), but no Poll shall be kept open later than Four o'Clock in the Afternoon.
2. The Vice-Chancellor of each University shall appoint the Polling Place at such University, and, if he shall think fit, shall advertise the same, and also shall have Power to appoint One or more Pro-Vice-Chancellors to take the Poll at such University, and record the Votes in Poll Books, and decide all Questions with regard thereto, in the same Manner as nearly as may be, and except as herein provided, as Polls are now taken at Elections for Members to serve in Parliament for Burghs and Counties in Scotland; and such Vice-Chancellor shall have Power to appoint a Poll Clerk or Poll Clerks for the Purpose of assisting the Pro-Vice-Chancellor or Pro-Vice-Chancellors in taking the Poll as herein-before mentioned.
3. The Poll Books in which the Votes have been recorded as herein-before provided shall be forthwith delivered by the Pro-Vice-Chancellor to the Vice-Chancellor by whom he was appointed; and the Vice-Chancellors of the Universities of Saint Andrews and Aberdeen respectively shall, on receiving such Poll Books, immediately transmit them to the Vice-Chancellor, who is the Returning Officer for such University; and such Vice-Chancellor shall, within Three Days after such Poll Books have been received by him, in Presence of the Candidates or their Agents, or of such of them as shall think proper to attend or to appoint such Agent, cast up the Number of Votes as they appear on the several Books, and shall forthwith publish in the *Edinburgh Gazette* a Notice containing the Name of the Candidate for whom the largest Number of Votes has been given, and declaring such Candidate to be duly elected, and shall make a Return in the Form of similar Returns presently used (as nearly as may be) in Terms of the Writ, under his Hand and

Seal, to the Clerk of the Crown in England, and if the Votes be equal he shall make a double Return.

4. All the Provisions of an Act passed in the Twenty-fourth and Twenty-fifth Years of the Reign of Her present Majesty, intituled "An Act to provide that Votes at Elections for the Universities may be recorded by means of Voting Papers," except so much of the said Act as requires that the Person delivering the Voting Paper shall make Attestation of his personal Acquaintance with the Voter, shall apply to every Election of a Member for the Universities of Edinburgh and Saint Andrews, and for the Universities of Glasgow and Aberdeen, subject to the following Provisions :

The Words "recorded in the Manner heretofore used," in the Second Section of the recited Act, shall in this Act mean "recorded in the Manner herein-before directed."

The Word "Misdemeanor," in the Fifth Section of the recited Act, shall include Crime and Offence.

A Voting Paper may be signed by a Voter being in one of the Channel Islands in the Presence of the following Officers; that is to say,

1. In Jersey and Guernsey, of the Bailiffs, or any Lieutenant Bailiff, Jurat, or Juge d'Instruction :
2. In Alderney, of the Judge of Alderney, or any Jurat :
3. In Sark, of the Seneschal or Deputy Seneschal :

And for the Purpose of certifying and attesting the Signature of such Voting Paper, each of the said Officers shall have all the Powers of a Justice of the Peace under the recited Act; and a Statement of the official Quality of such Officer shall be a sufficient Statement of Quality in pursuance of the Provisions of the said Act.

In lieu of the Schedule annexed to the recited Act, the Schedule (G.) to this Act annexed shall be substituted in Elections for the Universities of Edinburgh and Saint Andrews, and for the Universities of Glasgow and Aberdeen.

40. Every Vice-Chancellor to whom a Writ for the Election of a Member to serve in Parliament shall, under the Provisions of this Act, be directed, shall be allowed in Exchequer such Payments for executing such Writ as are allowed to Sheriffs under the existing Law in the Case of Elections for Counties or Burghs; and in all

Cases where a Poll has been demanded the Candidates shall be bound to pay and contribute among them to each Pro-Vice-Chancellor appointed under this Act, for superintending the Poll, a Fee of Three Guineas for the First, and of One Guinea for each subsequent Day in which he shall have been so engaged; and the Candidates shall further be bound to pay and contribute among them to each Poll Clerk One Guinea per Day, and the Candidates shall in like Manner be bound to defray the necessary Expenses incurred by the Vice-Chancellors in the Transmission or Receipt of Poll Books or other Communications or in making any Advertisements required or enjoined by this Act; and if any Person shall be proposed as a Candidate without his Consent, the Person so proposing him shall be liable to pay his Share of all such Expenses in like Manner as if he had been himself a Candidate.

41. Where the Vice-Chancellor or Registrar of any University is absent, or is incapacitated by Illness for discharging any Duty required of him by this Act, or if the Office of Vice-Chancellor or of Registrar shall be vacant, the Duties herein imposed on the Vice-Chancellor or Registrar respectively shall be discharged by a Person appointed for that Purpose by the University Court of such University; and such Person shall in that respect, but in no other, act for the Time as and be deemed to be Vice-Chancellor or Registrar of such University.

Miscellaneous.

42. Where any County has been divided for the Purposes of this Act, the Commissioners of Supply of such County are hereby empowered to appoint the same Assessor to make up the Register of Voters in both Divisions of such County, or, if they shall think proper, to appoint separate Assessors to make up the said Register for each such Division; but, until they shall otherwise determine, the Assessor appointed for the Purpose of making up the Register for the undivided County shall continue to act as Assessor for both the Divisions of such County, and shall, as herein-before provided, make up a separate Register for each of such Divisions: Provided always, that such Assessors shall in all respects be deemed to be Assessors appointed in Terms of the Act Twenty-fourth and Twenty-fifth Victoria, Chapter Eighty-three: Provided also, that the Expenses of Registration shall be defrayed as at present by an Assessment levied on the whole Lands and Heritages within the County, and not by an Assessment levied separately on the Lands and Heritages within the Divisions thereof respectively.

43. Whereas, in order to provide for the Seats

herein-before distributed, it is expedient that certain Boroughs in England having small Populations should cease to return Members to serve in Parliament: Be it therefore enacted, That from and after the End of this present Parliament the Boroughs of Arundel, Ashburton, Dartmouth, Honiton, Lyme Regis, Thetford, and Wells shall respectively cease to return any Member to serve in Parliament.

44. Whereas it is expedient to shorten the Period for proceeding to Election in Cities, Burghs, and Towns, or Districts of Cities, Burghs, and Towns, in Scotland, provided by the Acts Fifth and Sixth William the Fourth, Chapter Seventy-eight, and Twenty-eight, and Twenty-nine Victoria, Chapter Ninety-two: Be it enacted, That, except in the Cases of the Districts comprehending Kirkwall, Wick, Dornoch, Dingwall, Tain, and Cromarty, the Day or Days to be announced by the Sheriff for the Election or Elections shall be not less than Three and not more than Six clear Days after the Day on which the Writ was received by such Sheriff.

45. In so far as regards the Registration of Voters, and generally for all Purposes connected with the Election of Members to serve in Parliament, the Burgh of Galashiels shall be dealt with as if it were locally situated wholly within the County of Selkirk.

46. In any Burgh on which the Right of contributing to return a Member to serve in Parliament is for the first Time conferred by this Act, and in which there are no Magistrates elected in Terms of the Act Third and Fourth William the Fourth, Chapter Seventy-six, or the Act Third and Fourth William the Fourth, Chapter Seventy-seven, the Commissioners of Police acting in such Burgh under any General or Local Police Act shall appoint a suitable Person to be the Assessor in such Burgh, and as such to make up a Valuation Roll of Lands and Heritages therein in Terms of the Valuation Acts, and also to perform with reference to the Registration of Voters in such Burgh all Duties which by the Registration Acts can be imposed on Assessors; and all Appeals against Valuations made by such Assessor shall be heard and determined by such Commissioners as the Case may be, and the Determination of such Commissioners shall be dealt with in the same Manner as the Determinations of Magistrates in existing Royal or Parliamentary Burghs.

47. If in any such Burgh there is no Town Clerk, it shall be the Duty of the aforesaid Commissioners of Police, as soon as may be after the passing of this Act, to nominate and appoint a fit and proper Person to perform the Duties of

Town Clerk in so far as regards the Registration of Voters, and the Election of Members to serve in Parliament; and on every Occasion of the Person so appointed ceasing to act, such Commissioners shall in like Manner, within the Period of Three Weeks thereafter, make a similar Appointment; and failing such Appointment being duly made by the said Commissioners, such Appointment shall be made by the Sheriff of the County; and every Person so nominated and appointed shall, so long as he continues to act, be subject to the same Disqualifications in regard to voting for or being elected a Member of Parliament, or acting as Agent for any Candidate, to which Town Clerks are now subject by Law; and every such Person shall be removable at the Pleasure of the said Commissioners or Sheriff respectively by whom he was appointed.

43. In every such Burgh on which the Right of contributing to return a Member to serve in Parliament is for the first Time conferred by this Act, an Account of the Costs and Expenses attending the Preparation of the Valuation Roll under the Valuation Acts, and also of the Costs and Expenses attending the annual Registration of Voters, shall be made up annually at the Sight of the Person or Persons by whom the Assessor for such Burgh was appointed; and such Person or Persons shall ascertain and fix the Amount of such Expenses, including therein the reasonable Remuneration of the Assessor, and of the Town Clerk, or of the Person appointed to perform the Duties of Town Clerk, where any such Appointment has been made; and the Amount of all such Expenses and Remuneration shall be assessed and levied on and recovered from the same Description of Persons and Property as the Police Rate within such Burgh; provided that no Person shall be liable to such Assessment who is not a Proprietor or Occupier of a Dwelling House or other Lands and Heritages within the Burgh.

49. Any Person, either directly or indirectly, corruptly paying any Rate on behalf of any Ratepayer for the Purpose of enabling him to be registered as a Voter, thereby to influence his Vote at any future Election, and any Candidate or other Person, either directly or indirectly, paying any Rate on behalf of any Voter for the Purpose of inducing him to vote or refrain from voting, shall be guilty of Bribery, and be punishable accordingly; and any Person on whose Behalf and with whose Privy any such Payment as in this Section mentioned is made shall also be guilty of Bribery, and punishable accordingly.

50. The Provision of the Eleventh Section of the Act of the Second and Third Years of King William the Fourth, Chapter Sixty-five, disqualifying Persons in receipt of Parochial Relief

from being registered as Voters, or voting for a Burgh, shall apply to a County also; and the said Provision of the said Section shall be construed as if the Word "County" were inserted therein before the Word "City."

51. Whereas it is expedient to amend the Law relating to Offices of Profit, the Acceptance of which from the Crown vacates the Seats of Members accepting the same, but does not render them incapable of being re-elected: Be it enacted, That where a Person has been returned as a Member to serve in Parliament since the Acceptance by him from the Crown of any Office described in Schedule (H.) to this Act annexed, the subsequent Acceptances by him from the Crown of any other Office or Offices described in such Schedule, in lieu of and in immediate Succession the one to the other, shall not vacate his Seat.

52. Where separate Registers of Voters have been directed to be made in any County divided by this Act, if a Vacancy take place in the Representation of the said County before the summoning of a future Parliament, and after the Completion of such separate Registers, such last-mentioned Registers shall, for the Purpose of any Election to fill up such Vacancy, be deemed together to form the Register for the County.

53. Nothing in this Act contained shall affect the Rights of Persons whose Names are for the Time being on the Register of Voters for any County in which the Burghs constituted by this Act are situate to vote in any Election for such County in respect of any Vacancy that may take place before the summoning of a future Parliament; but after such summoning no Person shall be entitled to be registered as a Voter or to vote in any Election for any County in respect of any Premises owned or occupied by him within any Burgh.

In the Case of a County within the Limits of which is situate a Burgh constituted by this Act, the Sheriff in revising at any Time before the summoning of a future Parliament the List of Voters for such County shall write the Word "Burgh" opposite to the Name of each Voter whose Qualification in respect of the Premises described in the List would not, after the summoning of a future Parliament, entitle such Voter to vote for the County; and at any Election for such County taking place after the summoning of a future Parliament the Vote of every Person against whose Name the Word "Burgh" is written, if tendered in respect of such Qualification, shall be rejected by the Polling Sheriff.

54. The Forty-second Section of the Act passed in the Twenty-fourth and Twenty-fifth Years of

the Reign of Her present Majesty, Chapter Eighty-three, is hereby repealed, and in lieu thereof it is enacted as follows : At every future Election of a Member to serve in Parliament for any County or Division of a County, the Register of Voters, made up in Terms of the Registration Acts, shall be deemed and taken to be conclusive Evidence that the Persons therein named continue to have the Qualifications which are annexed to their Names respectively in the Register in force at such Election ; and such Persons shall not be required to take the Oath of Possession.

55. The Right of Voting at any Election of a Member or Members to serve in Parliament for any County, Burgh, or University shall not be affected by any Appeal depending at the Time of issuing the Writ for such Election, and it shall be lawful for every Person whose Name has been entered on the Register of Voters to exercise the Right of voting at such Election as effectually, and every Vote tendered thereat shall be as good, as if no such Appeal were depending ; and the subsequent Decision in any Appeal which shall be depending at the Time of issuing the Writ for any such Election shall not in any way whatever alter or affect the Poll taken at such Election, or the Return made thereat by the Returning Officers.

56. The Franchises conferred by this Act shall be in addition to and not in substitution for any existing Franchises, but so that no Person shall be entitled to vote for the same Place in respect of more than One Qualification ; and, subject to the Provisions of this Act, all Laws, Customs, and Enactments now in force conferring any Right to vote, or otherwise relating to the Representation of the People in Scotland, and the Registration of Persons entitled to vote, shall remain in full Force, and shall apply, as nearly as Circumstances admit, to any Person hereby authorized to vote, and shall also apply to any Constituency hereby authorized to return or contribute to return a Member or Members to Parliament, as if it had heretofore returned or contribute to return such Members to Parliament, and to the Franchises hereby conferred and to the Registers of Voters hereby required to be formed.

57. All Writs to be issued for the Election of Members to serve in Parliament, and all Mandates, Precepts, Instruments, Proceedings, and Notices consequent upon such Writs, or relating to the Registration of Voters, shall be framed and expressed in such Manner and Form as may be necessary for the carrying the Provisions of this Act into effect.

58. This Act, so far as is consistent with the

Tenor thereof, shall be construed as One with the Enactments for the Time being in force relating to the Representation of the People in Scotland, and with the Registration and Valuation Acts.

59. The following Terms shall in this Act have the Meanings herein-after assigned to them, unless there is something in the Context repugnant to such Construction ; (that is to say,)

"Month" shall mean Calendar Month :

"County" shall not include a County of a City, but shall mean any County or Division of a County, or any Combination of Counties, or of Counties and Portions of Counties, returning a Member to serve in Parliament :

"Burgh" shall mean any City, Town, Burgh, or District of Cities, Towns, or Burghs, returning a Member or Members to serve in Parliament :

"Dwelling House" shall include any Part of a House occupied as a separate Dwelling, and (in any Parish in which Poor Rates are levied) the Occupier of which is separately rated to the Relief the Poor either in respect thereof or as an Inhabitant of such Parish :

"Premises" shall, in regard to Burghs, mean any Dwelling House ; and in regard to Counties shall mean Lands and Heritages :

"The Registration Acts" shall mean the Act of the Nineteenth and Twentieth Years of the Reign of Her present Majesty, Chapter Fifty-eight, and the Act of the Twenty-fourth and Twenty-fifth Years of the Reign of Her present Majesty, Chapter Eighty-three, and any other Acts or Parts of Acts relating to the Registration of Persons entitled to vote at, and Proceedings in, the Election of Members to serve in Parliament for Scotland :

"Proprietor" or "Owner" shall include any Person who shall hold under a Lease for a Period of not less than Fifty-seven Years, exclusive of Breaks :

"The Valuation Acts" shall mean the Act of the Seventeenth and Eighteenth Years of the Reign of Her present Majesty, Chapter Ninety-one, the Act of the Twentieth and Twenty-first Years of the said Reign, Chapter Fifty-eight, the Act of the Thirtieth and Thirty-first Years of the said Reign, Chapter Eighty, and any other Acts or Parts of Acts relating to the Valuation of Lands and Heritages in Scotland :

"Assessor" shall mean an Assessor appointed under the Valuation Acts or any of them, or under the Registration Acts or any of them, or under this Act, as the Case may be :

“Oath of Possession” shall mean and include
the Words “that I am still Proprietor (or
“Occupant) of the Property for which I

“am so registered, and hold the same for
“my own Benefit, and not in trust for or at
“the Pleasure of any other Person.”



SCHEDULES.

SCHEDULE (A.)

HAWICK DISTRICT.

Name of Burgh.	County in which Burgh is situated.	Place for proclaiming Writ.	Temporary Contents or Boundaries.	Sheriff to whom the Writ is to be addressed.
Hawick - -	Roxburgh - -	Hawick - -	The Boundaries of Hawick, as defined in “The Hawick Municipal Police and Improvement Act, 1861.”	} Sheriff of Roxburghshire.
Galaashiels - -	Selkirk - -	Ditto - -	The Limits of Galaashiels, as fixed and defined under “The General Police and Improvement (Scotland) Act, 1862.”	
Selkirk - -	Ditto - -	Ditto - -	The Boundaries of the Royal Burgh of Selkirk.	

SCHEDULE (B.)

Divisions of Counties.

Column 1. Name of County to be divided.	Column 2. Division.	Column 3. Parts temporarily comprised in such Division.	Column 4. Place for proclaiming Writ.
ABERDEENSHIRE -	East Aberdeenshire	Parishes of— Aberdour. Belhelvie. Bourtie. Crimond. Cruden. Daviot. Ellon. Fintray. Foveran. Fraserburgh. Fyvie. Keith-hall and Kinkell. King-Edward.	Peterhead.

Column 1. Name of County to be divided.	Column 2. Division.	Column 3. Parts temporarily comprised in such Division.	Column 4. Place for proclaiming Writ.
ABERDEENSHIRE —cont.	East Aberdeenshire —cont.	Parishes of— Logie-Buchan. Longside. Lommay. Methlic. Montquhitter. New Deer. New Machar. Old Deer. Old Meldrum. Peterhead. Pitsligo. Rathen. Slains. Strichen. Tarves. Turrieff. Tyrie. Udny. Together with so much of the Parish of Old Machar as is situ- ated to the North and East of the River Don, and the Parish of St. Fergus in Banff- shire.	Peterhead.
	West Aberdeen- shire.	Parishes of— Aboyne and Glentanner. Alford. Auchindoir and Kearn. Auchterless. Birse. Chapel-of-Garioch. Clatt. Cluny. Coull. Crathie and Braemar. Culsamond. Drumblade. Dyce. Echt. Forgue. Glenbucket. Glenmuick, Tullich, and Glen- gairn. Huntly. Insch. Inverurie. Keig. Kemnay. Kildrummy. Kincardine O'Neil. Kinnellar.	Aberdeen.

Column 1. Name of County to be divided.	Column 2. Division.	Column 3. Parts temporarily comprised in such Division.	Column 4. Place for proclaiming Writ.
ABERDEENSHIRE — <i>cont.</i>	West Aberdeen- shire— <i>cont.</i>	Parishes of— Kinnethmont. Kintore. Leochel-Cushnie. Leslie. Logie-Coldstone. Lumphanan. Midmar. Monymusk. Newhills. Oyne. Peter Culter. Prennuy. Rayne. Rhynie. Skene. Strathdon. Tarland and Migvie. Tough. Towie. Tullynessle and Forbes. Together with so much of the Parish of Old Machar as is situ- ated to the South and West of the River Don, and So much of the Parishes of Ban- chory-Devenick, Cabrach, Cairnie, Drumoak, and Glass as is situ- ated within the County of Aber- deen, and the Parish of Gartly in the County of Banff.	Aberdeen.
AYRSHIRE - -	North Ayrshire -	District of Cunningham, consisting of the Parishes of— Ardrossan. Dalry. Dreghorn. Fenwick. Irvine. Kilbirnie. Kilmarnock. Kilmaurs. Kilwinning. Largs. Loudoun. Stevenston. Stewartown. West Kilbride, and of Beith, and Dunlop, in so far as situated within the County of Ayr.	Kilmarnock.

Column 1. Name of County to be divided.	Column 2. Division.	Column 3. Parts temporarily comprised in such Division.	Column 4. Place for proclaiming Writ.
AYRSHIRE— <i>cont.</i> -	South Ayrshire -	Districts of Kyle and Carrick, con- sisting of the Parishes of— Auchinleck. Ayr. Ballantrae. Barr. Colmonell. Coylton. Craigie. Dailly. Dalmellington. Dalrymple. Dundonald. Galston. Girvan. Kirkmichael. Kirkoswald. Mauchline. Maybole. Monkton and Prestwick. Muirkirk. New Cumnock. Newton-on-Ayr. Ochiltree. Old Cumnock. Riccarton. St. Quivox. Sorn. Stair. Straiton. Symington. Tarbolton.	Ayr.
LANARKSHIRE -	North Lanarkshire	Parishes of— Avondale. Barony. Blantyre. Bothwell. Cadder. Cambuslang. Carmunnock. City Parish of Glasgow. Dalziel. East Kilbride. Glassford. Hamilton. New Monkland. Old Monkland. Rutherglen, and so much of the Parishes of Govan and of Cathcart as is situ- ated in Lanarkshire.	Hamilton.

Column 1. Name of County to be divided.	Column 2. Division.	Column 3. Parts temporarily comprised in such Division.	Column 4. Place for proclaiming Writ.
LANARKSHIRE —cont.	South Lanarkshire	Parishes of— Biggar. Cambusnethan. Carluke. Carmichael. Carnwath. Carstairs. Covington and Thankerton. Crawford. Crawfordjohn. Dalserf. Dolphington. Douglas. Dunsyre. Lanark. Lesmahagow. Libberton. Pitnain. Shotts. Stonehouse. Symington. Walston. Wandell and Lamington. Wiston and Robertson, and so much of the Parishes of Culter and Moffat as is situated within the County of Lanark.	Lanark.

SCHEDULE (C.)

To A.B.,
County [or Burgh] of }

Take Notice, that you will not be entitled to have your Name inserted in the List of Voters for this County [or Burgh] now about to be made in respect of the Premises in your Occupation in [Street or Place], unless you pay on or before the Day of next all the Poor Rates which have become due from you in respect of such Premises (or as the Case may be) up to the Fifteenth Day of May last, amounting to £ ; and if you omit to make such Payment you will be incapable of being entered on the next Register of Voters for this County [or Burgh].

Dated the Day of 18
C.D., Collector of Poor Rate for Parish of .

SCHEDULE (D.)

County [or Burgh] of
Parish of

I, Collector of Poor Rates for the Parish of do hereby
certify that the following Persons in the said Parish have been exempted from Poor Rates therein
o 2

SCHEDULE (G.)

UNIVERSITY OF [Name of University].

Universities of [Name the Universities], Election 18 .

I, A.B., [the Christian and Surnames of the Elector in full, and his Degree or other Qualification, to be here inserted,] do hereby declare that I have signed no other Voting Paper at this Election, and I do hereby give my Vote at this Election for

And I nominate

C.D.,
E.F.,
G.H.,

or One of them, to deliver this Voting Paper at the Poll.

Witness my Hand this

Day of 18 .
(Signed) A.B., of [the Elector's Place of Residence to be here inserted].

Signed in my Presence by the said A.B., who is personally known to me, on the above-mentioned Day of 18 , the Name of , as the Candidate voted for, having been previously filled in.

(Signed) J.N., of [the Justice's or other Officer's Place of Residence to be here inserted], a Justice of the Peace for (or as the Case may be).

SCHEDULE (H.)

Offices of Profit referred to in this Act.

Lord High Treasurer.

Commissioner for executing Offices of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland.

President of the Privy Council.

Vice-President of the Committee of Council for Education.

Comptroller of Her Majesty's Household.

Treasurer of Her Majesty's Household.

Vice-Chamberlain of Her Majesty's Household.

Equerry or Groom in Waiting on Her Majesty.

Any Principal Secretary of State.

Chancellor and Under Treasurer of Her Majesty's Exchequer.

Paymaster General.

Postmaster General.

Lord High Admiral.

Commissioner for executing the Office of Lord High Admiral.

Commissioner of Her Majesty's Works and Public Buildings.

President of the Committee of Privy Council for Trade and Plantations.

Chief Secretary for Ireland.

Commissioner for administering the Laws for the Relief of the Poor in England.

Chancellor of the Duchy of Lancaster.

Judge Advocate General.

Attorney General for England.

Solicitor General for England.

Lord Advocate for Scotland.

Solicitor General for Scotland.

Attorney General for Ireland.

Solicitor General for Ireland.

SCHEDULE (I.)

FORM No. 1.

Claim of Lodger.

Burgh of

To the Assessor of the Burgh of

I hereby claim to be inserted in the List of Voters in respect of the Occupation of the under-mentioned Lodgings, and the Particulars of my Qualification are stated in the Columns below.

Christian Name and Surname at full Length.	Profession, Trade, or Calling.	Description of Lodgings.	Description of House or Houses in which Lodgings situate, with Number, if any, and Name of Street.	Name, Description, and Residence of Persons or Person to whom Rent paid.

I, the above-named _____ hereby declare that I have been, during the Twelve Months immediately preceding the last Day of July in this Year, the Occupier as sole Tenant of the above-mentioned Lodgings, and that I have resided therein during the Twelve Months immediately preceding the said last Day of July; and that such Lodgings are of a clear yearly Value, if let unfurnished, of Ten Pounds or upwards.

Dated the

Day of

Signature of Claimant _____

Witness to the Signature of the said _____

And I certify my Belief in the Accuracy of
the above Claim.

Name of Witness _____

Residence and Calling _____

This Claim must bear Date the First Day of August, or some Day subsequent thereto, and must be delivered to the Assessor after the last Day of July, and on or before the Twenty-first Day of September.

FORM No. 2.

List of Claimants in respect of Lodgings to be published by the Assessors.

The following Persons claim to have their Names inserted in the List of Persons entitled to vote in the Election of a Member [or Members] for the City or Burgh of _____

Christian Name and Surname of each Claimant at full Length.	Profession, Trade, or Calling.	Description of Lodgings.	Description of House in which Lodgings situate, with Number, if any, and Name of Street.	Name, Description, and Residence of Landlord or other Person to whom Rent paid.

(Signed) A.B., Assessor of

CAP. XLIX.

The Representation of the People (Ireland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short Title.*
2. *Application of Act.*

PART I.

FRANCHISES.

3. *Occupation Franchise in Cities, Towns, and Boroughs.*
4. *Lodger Franchise for Voters in Cities, Towns, and Boroughs.*
5. *Registration of Persons occupying Lodgings.*
6. *As to Joint Occupation in Counties.*
7. *Provisions as to Premises occupied in succession in Counties.*
8. *No Elector who has been employed for Reward within Six Months of an Election to be entitled to vote.*

PART II.

9. *Boundaries of Parliamentary Boroughs.*

PART III.

MISCELLANEOUS.

10. *Rooms for taking Polls to be hired wherever they can be obtained.*
11. *Members holding Offices of Profit from the Crown, as in Schedule (E.), not to vacate their Seats on Acceptance of another Office.*
12. *Payment of Expenses of conveying Voters in Boroughs to the Poll illegal.*
13. *Returning Officer, &c. acting as Agent guilty of Misdemeanor.*
14. *Notice of Claim to vote in Cities, &c. to be signed by Claimant.*
15. *Sect. 72. of 1 & 2 Vict. c. 56. and Sect. 5. of 6 & 7 Vict. c. 92. repealed.*
16. *General Saving.*
17. *Precepts, &c. to be made conformable to this Act.*
18. *Construction of Act.*
19. *Where Value of Premises in certain Boroughs is not more than Four Pounds, the Rate is to be made on the immediate Lessors.*
20. *In certain Boroughs Occupiers of Lands, &c. where Owners now rated shall be entitled to be registered.*
21. *Collector General of Rates to make Lists of Voters for the City of Dublin.*
22. *Certain Provisions of 13 & 14 Vict. c. 69. to apply to Collector General of Rates.*
23. *Remuneration of Collector General of Rates.*
24. *Town Clerk.*
25. *Interpretation of Terms.*
Schedules.

An Act to amend the Representation of the People in Ireland. (13th July 1868.)

WHEREAS it is expedient to amend the Laws relating to the Representation of the People in Ireland:

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Com-

mons, in this present Parliament assembled, and by the Authority of the same, as follows:

Preliminary.

1. This Act may be cited for all Purposes as "The Representation of the People (Ireland) Act, 1868."

2. This Act shall apply to Ireland only, but shall not in anywise affect the Election of Members

to serve in Parliament for the Borough of the University of Dublin.

to be registered as a Voter at the next ensuing Registration of Voters.

PART. I.

FRANCHISES.

3. From and after the passing of this Act the Fifth Section of the Act of the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, Chapter Sixty-nine, and all other Sections or Parts of the same Act which relate to or affect the Franchise conferred by the said Fifth Section, or the Registration of Voters upon whom it is conferred, and in which are the Words "Eight Pounds" in reference to the said Franchise, shall be read and construed as if the Words "more than Four Pounds" had been used and were substituted in the said Fifth and other Sections instead of and for the Words "Eight Pounds," so and in such Manner that, subject to all the Provisions of the said Act, the Occupation of Lands, Tenements, or Hereditaments rated at the net annual Value of more than Four Pounds shall be as effectual to qualify any Man to be registered as a Voter, and when registered to vote at any Election of Members to serve in Parliament for any City, Town, or Borough in Ireland to be held after the passing of this Act as the Occupation of Lands, Tenements, and Hereditaments rated at the net annual Value of Eight Pounds and upwards was before the passing of this Act; and in all Provisions relating to such Occupation, Registration, or voting, and in all Lists, Returns, Precepts, Notices, or other Forms made or issued in pursuance of the Provisions of the Registration Acts, the Words "more than Four Pounds" shall, when necessary, be substituted for the Words "Eight Pounds."

4. Every Man shall be entitled to be registered as a Voter, and when registered to vote for a Member or Members to serve in Parliament for a City, Town, or Borough, who is qualified as follows; (that is to say,)

1. Is of full Age and not subject to any legal Incapacity; and
2. As a Lodger has occupied in such City, Town, or Borough, separately and as sole Tenant for the Twelve Months preceding the Twentieth Day of July in any Year, the same Lodgings, such Lodgings being Part of one and the same Dwelling House, and of a clear yearly Value, if let unfurnished, of Ten Pounds or upwards; and
3. Has resided in such Lodgings during the Twelve Months immediately preceding the Twentieth Day of July, and has claimed

5. The Claim of every Person desirous of being registered as a Voter for a Member or Members to serve for any City, Town, or Borough in respect of the Occupation of Lodgings shall be in the Form numbered 1. in Schedule (D.) to this Act annexed, or to the like Effect, and shall have annexed thereto a Declaration in Form and be certified in manner in the said Schedule mentioned, or as near thereto as Circumstances admit, and every such Claim shall after the Twentieth Day of July and on or before the Fourth Day of August in any Year be delivered to the Town Clerk in the City, Town, or Borough in which such Lodgings shall be situate, and the Particulars of such Claim shall be duly published by such Town Clerk on or before the Eleventh Day of August next ensuing, in a separate List, according to the Form numbered 2. in the said Schedule (D.); and all the Provisions of the Registration Acts with respect to the publishing of Lists of Claimants and to the Delivery of Copies thereof to Persons requiring the same by the said Town Clerk shall apply to every such Claim and List, and all the Provisions of the same Acts with respect to the Proof of Claims and to Objections thereto and to the hearing thereof shall, so far as the same are applicable, apply to Claims and Objections and to the hearing thereof under this Section.

6. In a County where Premises are in the Joint Occupation of several Persons as Owners or Tenants, and the aggregate rateable Value of such Premises is such as would, if divided amongst the several Occupiers, so far as the Value is concerned, confer on each of them a Vote, then each of such Joint Occupiers shall, if otherwise qualified, be entitled to be registered as a Voter, and when registered to vote at an Election for the County: Provided always, that not more than Two Persons, being such Joint Occupiers, shall be entitled to be registered in respect of such Premises, unless they shall have derived the same by Descent, Succession, Marriage, Marriage Settlement, or Devise, or unless they shall be bonâ fide engaged as Partners carrying on Trade or Business thereon.

7. The Premises in respect of the Occupation of which any Person shall be entitled to be registered in any Year, and to vote in the Election for any County, shall not be required to be the same Premises, but may be different Premises occupied in immediate Succession by such Person during the Twelve Calendar Months next previous to the Twentieth Day of July in such Year, such Person having paid on or before the First Day of July in such Year all the Poor's Rates which

shall, previously to the First Day of January in such Year, have become payable from him in respect of all such Premises so occupied by him in succession.

8. No Elector who, within Six Months before or during any Election for any County, City, Town, or Borough, shall have been retained, hired, or employed for all or any of the Purposes of the Election for Reward by or on behalf of any Candidate at such Election as Agent, Canvasser, Clerk, Messenger, or in any other like Employment, shall be entitled to vote at such Election, and if he shall so vote he shall be guilty of a Misdemeanor.

PART II.

9. Where at the Time of the passing of this Act the Boundary of any Municipal Borough does not coincide with the Parliamentary Borough, all that Part of such Borough situate beyond the Limits of the Parliamentary Borough, but within the Municipal Limits, shall form Part of the Borough for all Purposes connected with the Election of a Member or Members to serve in Parliament for said Borough.

PART III.

MISCELLANEOUS.

10. At every contested Election for any County, City, Town, or Borough, unless some Building or Place belonging to the County, City, Town, or Borough is provided for that Purpose, the Returning Officer shall, whenever it is practicable so to do, instead of erecting a Booth, hire a Building or Room for the Purpose of taking the Poll:

Where in any Place there is any Room the Expense of maintaining which is payable out of any Rates levied in such Place, such Room may, with the Consent of the Person or Corporation having the Control over the same, be used for the Purpose of taking the Poll at such Place.

11. Whereas it is expedient to amend the Law relating to Offices of Profit, the Acceptance of which from the Crown vacates the Seats of Members accepting the same, but does not render them incapable of being re-elected: Be it enacted, That where a Person has been returned as a Member to serve in Parliament since the Acceptance by him from the Crown of any Office described in Schedule (E.) to this Act annexed, the subsequent Acceptance by him from the Crown of any other Office or Offices described in such Schedule, in lieu of and in immediate Suc-

cession the one to the other, shall not vacate his Seat.

12. It shall not be lawful for any Candidate, or any one on his Behalf, at any Election for any City, Town, or Borough, except the several Boroughs of the County of the City of Cork, County of the Town of Galway, and County of the City of Limerick, to pay any Money on account of the Conveyance of any Voter to the Poll, either to the Voter himself or to any other Person; and if any such Candidate, or any Person on his Behalf, shall pay any Money on account of the Conveyance of any Voter to the Poll, such Payment shall be deemed to be an illegal Payment within the Meaning of "The Corrupt Practices Prevention Act, 1854."

13. No Returning Officer for any County, City, Town, or Borough, nor his Deputy, nor any Partner or Clerk of either of them, shall act as Agent for any Candidate in the Management or Conduct of his Election as a Member to serve in Parliament for such County, City, Town, or Borough; and if any Returning Officer, his Deputy, the Partner or Clerk of either of them, shall so act, he shall be guilty of a Misdemeanor.

14. Every Notice of Claim to be registered as a Voter for any City, Town, or Borough in Ireland shall be signed by the Person making such Claim.

15. From and after the passing of this Act, Section Seventy-two of the Act of the First and Second Years of the Reign of Her present Majesty, Chapter Fifty-six, and Section Five of the Act of the Sixth and Seventh Years of the Reign of Her present Majesty, Chapter Ninety-two, shall be and the same are hereby respectively repealed.

16. The Franchises conferred by this Act shall be in addition to and not in substitution for any existing Franchises, but so that no Person shall be entitled to vote for the same Place in respect of more than One Qualification; and, subject to the Provisions of this Act, all Laws, Customs, and Enactments now in force conferring any Right to vote, or otherwise relating to the Representation of the People in Ireland, and the Registration of Persons entitled to vote, shall remain in full Force, and shall apply, as nearly as Circumstances admit, to any Person hereby authorized to vote, and to the Franchises hereby conferred.

17. All Precepts, Instruments, Proceedings, and Notices relating to the Registration of Voters shall be framed and expressed in such Manner

and Form as may be necessary for the carrying the Provisions of this Act into effect.

18. This Act, so far as is consistent with the Tenor thereof, shall be construed as One with the Enactments for the Time being in force relating to the Representation of the People in Ireland, and with the Registration Acts.

19. From and after the passing of this Act, Section One hundred and sixteen of the said Act of the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, Chapter Sixty-nine, and so far as regards Poor Rate in respect of Lands, Tenements, and Hereditaments of which the net annual Value shall be more than Four Pounds, the Sixty-third Section of the Act of the Twelfth and Thirteenth Years of the Reign of Her present Majesty, Chapter Ninety-one, shall be and the same are hereby repealed; and whenever the net annual Value of the whole of the rateable Hereditaments in any Electoral Division situate wholly or in part in any of the Boroughs of Dublin, Cork, Limerick, Belfast, or Waterford, occupied by any Person or Persons having no greater Estate or Interest therein than a Tenancy from Year to Year, or holding under a Lease or Agreement, Leases or Agreements, made after the Twenty-fourth Day of August One thousand eight hundred and forty-three, shall not exceed Four Pounds, the Poor Rate in respect of such Property shall, after the passing of this Act, be made on the immediate Lessor or Lessors of such Person or Persons; and if at the Time of making any such Rate the Name of the immediate Lessor be not accurately known to the Persons making the Rate, it shall be sufficient to describe him therein as the "immediate Lessor," with or without any Name or further Addition, and such Rate shall be held to be duly made on him by such Description, and shall be recoverable from him accordingly, notwithstanding any Error or Defect in his Name or Description, or the entire Omission of his Name therein.

20. In the Boroughs of Dublin, Cork, Limerick, Belfast, and Waterford, every Man who would be entitled to be registered at the next Registration of Parliamentary Voters, under the Provisions of this Act, in respect of the Occupation of Lands, Tenements, or Hereditaments (for which the Owner or immediate Lessor at the Time of the passing of this Act is liable to be rated to the Poor Rate instead of the Occupier), if he had been rated to the Poor Rate in respect of the said Premises and had duly paid the said Poor Rate, shall, notwithstanding that he has not been so rated or paid any Rate, be entitled to be registered at the next Registration of Parliamentary Voters.

21. From and after the passing of this Act, the Clerk of each Poor Law Union comprising any Part or Parts of the City of Dublin shall exclude from the List or Lists to be made by him, in pursuance of the Thirty-second Section of the said Act of the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, Chapter Sixty-nine, every Person who shall be rated as the Occupier of any Lands, Tenements, or Hereditaments situate within the Municipal District of Dublin, as defined by an Act passed in the Third Year of the Reign of Her present Majesty, intituled "An Act for the Regulation of Municipal Corporations in Ireland," and the Collector General of Rates for the City of Dublin shall, on or before the Eighth Day of July in every Year, make out and transmit to the Town Clerk of the City of Dublin a List of every Man of full Age who shall be rated in the Books of the said Collector General of Rates for the said City in the then last Rate made under the Act of the Twelfth and Thirteenth Years of the Reign of Her present Majesty, intituled "An Act to provide for the Collection of Rates in the City of Dublin," as the Occupier of any Lands, Tenements, or Hereditaments situated within the Municipal District of Dublin, as defined as aforesaid, of a net annual Value of more than Four Pounds, and of every Person who shall be rated in the said Books in the then last Rate made as aforesaid jointly with any other Person or Persons as the Occupiers of any Lands, Tenements, or Hereditaments situated within the said Municipal District of a net annual Value of such an Amount as when divided by the Number of Occupiers would give to each such Occupier a net annual Value of more than Four Pounds; excluding nevertheless from such List every such Occupier and every such Joint Occupier who shall not on or before the First Day of July in such Year have paid all Poor Rates (if any) which shall have become payable by him in respect of such Premises previously to the First Day of January then last; and such Lists shall be in the Form and shall contain the Particulars mentioned on Form No. 6. in the Schedule B. annexed to the said Act of the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, Chapter Sixty-nine; and such List shall be signed by the said Collector General, and shall be verified by him as true, according to the best of his Belief, by an Oath or Declaration to be made by him before some Justice of the Peace acting in and for the City of Dublin, and which Oath or Declaration any such Justice is hereby authorized and required to take.

22. The Provisions of the Sixty-sixth and Sixty-seventh Sections of the said Act of the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, Chapter Sixty-nine, shall

apply to the said Collector General of Rates as fully as the same apply to the Clerk of any Union.

23. The Guardians of the Poor of each Union comprising any Parts of the City of Dublin shall, by an Order, make such annual Allowance out of the Rates to the said Collector General of Rates as a Compensation for the Duty by this Act imposed upon him as the said Guardians shall think proper; but no such Order shall be acted on, or any Payment made thereunder, until the same shall be approved of by the Poor Law Commissioners, and the Payments sanctioned by them.

24. For the Purposes of the Registration Acts and of this Act, in all Towns under the Towns Improvement (Ireland) Act, 1854, the Clerk of the Town Commissioners shall be the Town Clerk; and in all Towns under the Statute passed in the Ninth Year of the Reign of King George the Fourth, Chapter Eighty-two, the Clerk of the Paving, Lighting, and Cleansing Commissioners, and in Towns under Improvement or Municipal Commissioners the Clerk to such Commissioners, shall be the Town Clerk; and in Towns under none of the Authorities

before mentioned the Collector of the Grand Jury Cess shall act as Town Clerk.

25. The following Terms shall in this Act have the Meanings herein-after assigned to them, unless there is something in the Context repugnant to such Construction; (that is to say.)

"Month" shall mean Calendar Month:

"Member" shall include a Knight of the Shire:

The Word "County" shall include a Riding or Division of a County:

The Words "County of a City" or "County of a Town," or "City" or "Town" or "Borough," respectively, shall include all Places situate within the Parliamentary Boundaries of such City or Town or Borough, and none other:

The Words "City" or "Town" shall respectively include County of a City or County of a Town:

The "Registration Acts" shall mean the Act of the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, Chapter Sixty-nine, and all other Acts or Parts of Acts relating to the Registration or Qualification of Persons entitled to vote at the Election of Members to serve in Parliament for Ireland, as amended by this Act.

SCHEDULES to this Act.

SCHEDULE (D.)

FORM No. 1.

Claim of Lodger.

City, Town, or Borough of

To the Town Clerk of the City, Town, or Borough of

I hereby claim to be inserted in the List of Voters in respect of the Occupation of the under-mentioned Lodgings, and the Particulars of my Qualification are stated in the Columns below.

Christian Name and Surname at full Length.	Profession, Trade, or Calling.	Description of Lodgings.	Description of House in which Lodgings situate, with Number, if any, and Name of Street.	Name, Description, and Residence of Landlord or other Person to whom Rent paid.

I, the above named _____ hereby declare that I have been during the Twelve Months immediately preceding the Twentieth Day of July in this Year the Occupier as sole Tenant of the above-mentioned Lodgings, and that I have resided therein during the Twelve Months immediately preceding the said Twentieth Day of July, and that such Lodgings are of a clear yearly Value, if let unfurnished, of Ten Pounds or upwards.

Dated the _____ Day of _____
 Signature of Claimant _____
 Witness to the Signature of the said _____ }
 And I certify my Belief in the Accuracy }
 of the above Claim. }
 Name of Witness - - - - -
 Residence and Calling - - - - -

[This Claim must bear Date the Twenty-first Day of July, or some Day subsequent thereto, and must be delivered to the Town Clerk on or before the Fourth Day of August.]

FORM No. 2.

List of Claimants in respect of Lodgings to be published by the Town Clerk.

The following Persons claim to have their Names inserted in the List of Persons entitled to vote in the Election of a Member [or Members] for the City, Town, or Borough of _____.

Christian Name and Surname of each Claimant at full Length.	Profession, Trade, or Calling.	Description of Lodgings.	Description of House in which Lodgings situate, with Number, if any, and Name of Street.	Name, Description, and Residence of Landlord or other Person to whom Rent paid.

(Signed) _____ A.B., Town Clerk.

SCHEDULE (E.)

Offices of Profit referred to in this Act.

Lord High Treasurer.
 Commissioner for executing the Offices of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland.
 President of the Privy Council.
 Vice-President of the Committee of Council for Education.
 Comptroller of Her Majesty's Household.
 Treasurer of Her Majesty's Household.
 Vice-Chamberlain of Her Majesty's Household.
 Equerry or Groom in Waiting on Her Majesty.
 Any Principal Secretary of State.
 Chancellor and Under Treasurer of Her Majesty's Exchequer.
 Paymaster General.
 Postmaster General.
 Lord High Admiral.
 Commissioner for executing the Office of Lord High Admiral.

Commissioner of Her Majesty's Works and Public Buildings.
 President of the Committee of Privy Council for Trade and Plantations.
 Chief Secretary for Ireland.
 Commissioner for administering the Laws for the Relief of the Poor in England.
 Chancellor of the Duchy of Lancaster.
 Judge Advocate General.
 Attorney General for Ireland.
 Solicitor General for Ireland.
 Attorney General for England.
 Solicitor General for England.
 Lord Advocate for Scotland.
 Solicitor General for Scotland.

CAP. L.

The Prisons (Scotland) Administration Acts (Lanarkshire) Amendment Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Division into Districts.*
2. *District Boards.*
3. *Powers of District Boards.*
4. *Transfer of Property.*
5. *Procedure of Commissioners of Supply.*
6. *Contribution by Southern to Northern Districts.*
7. *Power to divide Lanarkshire into Districts corresponding with Prison Districts for Purposes of Lunacy Acts.*
8. *Commencement of Act.*
9. *Amendment of Acts.*
10. *Short Title.*
Schedule.

An Act to amend the Acts for the Administration of Prisons in Scotland in so far as regards the County of Lanark; and for other Purposes.

(13th July 1868.)

WHEREAS an Act was passed in the Twenty-third and Twenty-fourth Years of the Reign of Her present Majesty, Chapter One hundred and five, intituled "An Act to provide for the Management of the General Prison at Perth, and for the Administration of Local Prisons in Scotland;" and another Act was passed in the Twenty-eighth and Twenty-ninth Years of the Reign of Her present Majesty, Chapter Eighty-four, intituled "An Act to amend the Prisons (Scotland) Administration Act, 1860, and to explain the Fifty-second and Seventy-seventh Sections of the said Act:" And whereas it is necessary for the convenient and efficient Management of the Prisons in the County of Lanark, that the said County should be divided into Districts, for the Purposes of the recited Acts, and of such Provisions of any other Acts as are applicable to the Prisons and Prison Board of the said County:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. The County of Lanark shall be divided into Two Districts for the Purposes of the recited Acts, and of such Provisions of any other Acts as are applicable to the Prisons and Prison Board of the said County; viz., the Northern Prison District, comprehending the Lower Ward of the said County, with the Burghs situated therein, and the Southern Prison District, comprehending the Middle and Upper Wards of the said County, with the Burghs situated therein.

2. There shall be in each of the said Districts a District Prison Board; and each such District Board shall consist of the Number of Members set forth in the Schedule hereto annexed with respect to such District, who shall be chosen by the Commissioners of Supply of the said County, and by the Town Councils of the Burghs in each District, at the Times and in the Manner prescribed by the first-recited Act, as amended by this Act, and according to the Proportions set

forth in the said Schedule; provided that the Sheriff, or in his Absence One Sheriff Substitute of the County to be nominated by the Sheriff for that Purpose, shall, in addition to the Members so chosen, be an ex-officio Member of each District Board.

3. Except in so far as otherwise provided by this Act, each of the said Districts shall be held to be a separate County for the Purposes of the recited Acts, and of any other Acts already passed or which may hereafter be passed, containing Provisions applicable to the Prisons and Prison Board of the County of Lanark, in so far as such Provisions are concerned; and each of the said District Boards shall within its own District have all the Rights, Powers, Privileges, and Authorities, and be subject to all the Regulations, Duties, and Obligations, conferred or imposed on any County Board by the said Acts; and the whole Provisions of those Acts with reference to County Boards within and for their respective Counties shall be applicable to the said District Boards within and for their respective Districts.

4. The present County Prison Board of the said County shall cease and be abolished, as to each of the said Districts, upon the District Board thereof holding its First Meeting under this Act; and the Local Prison or Prisons, and whole other Property, Heritable and Moveable, within each of the said Districts, and Claims and Rights of Action connected therewith, belonging or competent to the present County Board, shall thereupon be transferred to and vested in the Board of such District without the Necessity of any Conveyance or Assignment; and all Appointments made by the said County Board shall remain in force until the same are legally revoked or altered by the District Boards respectively; and all Claims which have been created, and Obligations which have been incurred, by the said County Board connected with the Prison or Prisons of either of the said Districts at the Date when this Act shall come into operation, shall continue to be effectual as Claims and Obligations against the District Board of the District in which such Prison or Prisons respectively are situated.

5. The Election by the Commissioners of Supply of Members of the said District Boards may take place, and the Assessments made by the District Boards upon the Landward Part of the said Districts respectively may be assessed and levied thereon, and the Consent requisite in Terms of the second-recited Act on behalf of the Landward Part of either of the Districts to any Building Assessment beyond the Amount limited by this Act may be given, and any other Powers vested by the recited Acts in the Commissioners of Supply may be exercised by them as to either

of the said Districts, at General Meetings of the Commissioners of Supply of the whole County as heretofore: Provided always, that in case of a Division of Opinion no Commissioners shall be entitled to vote on any such Question excepting those having a Qualification as Commissioners within the District for which the Members are to be chosen or which is proposed to be assessed or affected, as the Case may be: Provided also, that the Amount of the Building Assessment which the said District Boards respectively may competently impose in any One Year without the Consent of the Commissioners of Supply and Town Councils of Burghs mentioned in the second-recited Act shall not exceed Nine hundred and twenty-eight Pounds Sixteen Shillings and Ninepence in the Case of the Northern District, and Four hundred and sixteen Pounds Four Shillings and One Penny in the Case of the Southern District, instead of the Amount referred to in the second-recited Act.

6. There shall be paid by the Board of the said Southern District to the Board of the said Northern District, to be applied towards the Improvement of the Prison of Glasgow, the Sum of Thirteen thousand nine hundred and twenty-six Pounds Eight Shillings by Two equal Instalments, payable respectively at the Terms of Whitsunday One thousand eight hundred and sixty-nine and Whitsunday One thousand eight hundred and seventy, with Interest at the Rate of Five per Centum per Annum upon each Instalment from the Time the same falls due till paid; which Sum shall be held to be and shall be assessed and levied upon the Lands and Heritages in the said Southern District as a Building Assessment upon the said Southern District duly consented to by the Commissioners of Supply and Town Councils of Burghs therein in Terms of the second-recited Act, and the Provisions of that Act, except as respects the Consent necessary for such Building Assessment, shall be applicable thereto accordingly.

7. And whereas by an Act passed in the Twentieth and Twenty-first Years of the Reign of Her present Majesty, Chapter Seventy-one, intituled "An Act for the Regulation of the Care and Treatment of Lunatics, and for the Provision, Maintenance, and Regulation of Lunatic Asylums in Scotland," Scotland is divided into Districts for the Purposes of that Act, and the County of Lanark is declared to be One of such Districts, but it is by the said Act provided that the General Board of Commissioners in Lunacy for Scotland thereby appointed shall have the Power, on the Application of the Prison Board of any County interested, to alter or vary the said Districts, either by combining Counties or Parts of Counties, or dividing Counties or other-

rise, as they may think fit: And whereas it may hereafter be expedient to divide the County of Lanark for the Purposes of the last-mentioned Act into the same Districts as those into which it is by this Act divided for Prison Purposes: It shall be lawful for either of the District Prison Boards by this Act constituted to apply at any time to the General Board of Commissioners in Lunacy to make such Division, and in that event the other of the said District Prison Boards shall not be entitled to object to such Application.

8. This Act shall come into operation as at the Term of Whitsunday next after the passing

thereof, except as to the Election of Members of the said District Boards, which shall take place in the Month of April immediately preceding the said Term, in manner provided by the first-recited Act and this Act.

9. The recited Acts are altered and amended so far as necessary to give Effect to this Act, but no further; and the recited Acts and this Act shall be read together as One Act.

10. This Act may be cited for all Purposes as "The Prisons (Scotland) Administration Acts (Lanarkshire) Amendment Act, 1868."

SCHEDULE referred to in the foregoing Act.

TABLE of District Prison Boards, containing the Number of Members to be appointed for the Landward Part of each District by the Commissioners of Supply, and for the Burghs therein by the Town Councils thereof.

1. NORTHERN DISTRICT.

	Number of Members.
Landward Part - -	3
Glasgow - -	14
Rutherglen - -	1
Total - -	18

2. SOUTHERN DISTRICT.

	Number of Members.
Landward Part - -	9
Lanark - -	1
Hamilton - -	1
Airdrie - -	1
Total - -	12

CAP. LI.

The Fairs Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Interpretation.*
3. *Secretary of State to have Power to alter Days for holding Fairs, on Representation made to him. Notice of Representation to be published in certain Newspapers.*
4. *Order of Secretary of State to be published in certain Newspapers. All Rights, &c. of Owner to remain good.*

An Act to amend the Law relating to Fairs in England and Wales.

(13th July 1868.)

WHEREAS it is expedient to make Provision to facilitate the Alteration of the Days upon which Fairs are now held in England and Wales: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in

this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited as "The Fairs Act, 1868."

2. In this Act the Term "Owner" means any Person or Persons or Body of Commissioners or Body Corporate, entitled to hold any Fair, whether in respect of the Ownership of any Lands or Tenements, or under any Charter Letters

Patent, or Act of Parliament, or otherwise howsoever.

3. In case it shall appear to the Secretary of State for the Home Department, upon Representation duly made to him by the Magistrates of any Petty Sessional District within which any Fair is held, or by the Owner of any Fair in England or Wales, that it would be for the Convenience and Advantage of the Public that any such Fair shall be held in each Year on some Day or Days other than that or those on which such Fair is used to be held, it shall be lawful for the said Secretary of State for the Home Department to order that such Fair shall be held on such other Day or Days as he shall think fit: Provided always, that Notice of such Representation, and of the Time when it shall please the Secretary of State for the Home Department to take the same into consideration, shall be published once in the *London Gazette* and in Three successive Weeks in some One and the same Newspaper published in the County, City, or Borough in which such Fair is held, or if there be no

Newspaper published therein, then in the Newspaper of some County adjoining or near thereto, before such Representation is so considered.

4. When and so soon as any such Order as aforesaid shall have been made by the Secretary of State for the Home Department, Notice of the making of the same shall be published in the *London Gazette* and in some one Newspaper of the County, City, or Borough in which such Fair is usually held, or if there be no Newspaper published therein, then in the Newspaper of some County adjoining or near thereto; and thereupon such Fair shall only be held on the Day or Days or at the Place mentioned in such Order; and it shall be lawful for the Owner of such Fair to take all such Toll or Tolls, and to do all such Act or Acts, and to enjoy all and the same Rights, Powers, and Privileges in respect thereof, and enforce the same by all and the like Remedies, as if the same were held on the Day or Days upon which or at the Place at which it was used to be held previous to the making of such Order.

CAP. LII.

The Vagrant Act Amendment Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Construction of Act.*
3. *Extending Provisions to gaming with Coin, &c.*
4. *Commencement of Act.*

An Act to amend the Act for punishing idle and disorderly Persons, and Rogues and Vagabonds, so far as relates to the Use of Instruments of Gaming. (13th July 1868.)

WHEREAS it is expedient to amend an Act passed in the Fifth Year of the Reign of His Majesty King George the Fourth, Chapter Eighty-three, intitled "An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that Part of Great Britain called England;"

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as "The Vagrant Act Amendment Act, 1868."

2. This Act and the recited Act shall be construed as One Act.

3. Every Person playing or betting by way of Wagering or Gaming in any Street, Road, Highway, or other open and public Place, or in any Place to which the Public have or are permitted to have Access, at or with any Table or Instrument of Gaming, or any Coin, Card, Token, or other Article used as an Instrument or Means of such Wagering on Gaming at any Game or pretended Game of Chance, shall be deemed a Rogue and Vagabond within the true Intent and Meaning of the recited Act, and as such may be convicted and punished under the Provisions of that Act.

4. This Act shall commence and take effect on and after the First Day of October One thousand eight hundred and sixty-eight.

CAP. LIII.

The Medway Regulation Continuance Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Continuance of 2 G. 2. c. 19.*

An Act to continue in force an Act of the Second Year of King George the Second, Chapter Nineteen, for the better Regulation of the Oyster Fishery in the River Medway.
(13th July 1868.)

WHEREAS an Act of the Second Year of King George the Second, Chapter Nineteen, intituled "An Act for well ordering, governing, and improving the Oyster Fishery in the River Medway and Waters thereof, under the Authority of the Mayor and Citizens of the City of Rochester in the County of Kent," was by Inadvertence included in the Second Schedule to

the Sea Fisheries Act, 1868, and thereby repealed; and it is expedient that the same should continue in force:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited as "The Medway Regulation Continuance Act, 1868."

2. The said Act of the Second Year of King George the Second shall continue and be deemed always to have continued in force, and so much of the Sea Fisheries Act, 1868, as repeals the same is hereby repealed.

CAP. LIV.

The Judgments Extension Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Where Judgment has been obtained in the Courts at Westminster, a Certificate thereof registered in Ireland, and vice versa, shall have the Effect of a Judgment of the Court in which it is so registered.*
2. *Where Judgment has been obtained in the Courts at Westminster or at Dublin, a Certificate thereof registered in Scotland shall have the Effect of a Decree of the Court of Session.*
3. *Where Decree has been obtained in the Court of Session, a Certificate of an Extract thereof registered in England or Ireland shall have the Effect of a Judgment of the Court in which it is so registered.*
4. *Courts herein named to have Control over registered Judgments or Decrees in so far as relates to Execution.*
5. *No Security for Costs where Plaintiff resides in a different Part of the Kingdom.*
6. *Costs not to be allowed in Actions on Judgments unless by Order of Court.*
7. *Judges to make Rules for Execution of this Act.*
8. *Act not to apply to certain Decrees.*
9. *Short Title.*
Schedule.

An Act to render Judgments or Decrees obtained in certain Courts in England, Scotland, and Ireland respectively effectual in any other Part of the United Kingdom. (13th July 1868.)

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of

the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. Where Judgment shall hereafter be obtained or entered up in any of the Courts of Queen's Bench, Common Pleas, or Exchequer at Westminster or Dublin respectively, for any Debt, Damages, or Costs, on Production to the Master of the Court of Common Pleas at Dublin where

such Judgment shall have been obtained or entered up in any of the said Courts in England, or to the Senior Master of the Court of Common Pleas at Westminster where such Judgment shall have been obtained or entered up in any of the said Courts in Ireland, of a Certificate of such Judgment, in one of the Forms contained in the Schedule hereto annexed, as the Case may be, purporting to be signed by the proper Officer of the Court where such Judgment has been obtained or entered up, such Certificate shall be registered by such Master in a Register to be kept in the Court of Common Pleas at Dublin and at Westminster respectively for that Purpose, and to be called in the Court of Common Pleas at Dublin "The Register for English Judgments," and to be called in the Court of Common Pleas at Westminster "The Register for Irish Judgments," and shall from the Date of such Registration be of the same Force and Effect, and all Proceedings shall and may be had and taken on such Certificate, as if the Judgment of which it is a Certificate had been a Judgment originally obtained or entered up on the Date of such Registration as aforesaid, in the Court in which it is so registered, and all the reasonable Costs and Charges attendant upon the obtaining and registering such Certificate shall be recovered in like Manner as if the same were Part of the original Judgment: Provided always, that no Certificate of any such Judgment shall be registered as aforesaid more than Twelve Months after the Date of such Judgment, unless Application shall have been first made to and Leave obtained from the Court or a Judge of the Court in which it is sought so to register such Certificate.

2. Where Judgment shall hereafter be obtained or entered up in any of the Courts of Queen's Bench, Common Pleas, or Exchequer at Westminster or Dublin respectively, for any Debt, Damages, or Costs, on Production at the Office kept in Edinburgh for the Registration of Deeds, Bonds, Protests, and other Writs registered in the Books of Council and Session of a Certificate of such Judgment, in one of the Forms contained in the Schedule hereto annexed, as the Case may be, purporting to be signed by the proper Officer of the Court where such Judgment has been obtained or entered up, such Certificate shall be registered in a Book to be kept for that Purpose, and to be called "The Register for English and Irish Judgments," in like Manner as a Bond executed according to the Law of Scotland, with a Clause of Registration for Execution therein contained; and every Certificate so registered shall, from the Date of such Registration, be of the same Force and Effect as a Decree of the Court of Session, and all Proceedings shall and may be had and taken on an Extract of such Certificate as if the Judgment

of which it is a Certificate had been a Decree originally pronounced in the Court of Session on the Date of such Registration as aforesaid, and all the reasonable Costs, Charges, and Expenses attendant upon the obtaining and registering such Certificate shall be recovered in like Manner as if the same were Part of the original Judgment: Provided always, that no Certificate of any such Judgment shall be registered as aforesaid more than Twelve Months after the Date of such Judgment, unless Application shall have been first made to and Leave obtained from the Lord Ordinary on the Bills.

3. On Production to the Senior Master of the Court of Common Pleas at Westminster, or to the Master of the Court of Common Pleas at Dublin, of the Certificate in One of the Forms contained in the Schedule hereto annexed, as the Case may be, of any extracted Decree of the Court of Session in Scotland which shall hereafter be obtained for the Payment of any Debt, Damages, or Expenses purporting to be signed by the Extractor of the Court of Session, or other Officer duly authorized to make and subscribe Extracts, or on Production of the Certificate of an extracted Decree of Registration in the Books of Council and Session purporting to be signed by the Keeper of the Register of Deeds, Bonds, Protests, and other Writs registered for Execution in the Books of Council and Session, which shall hereafter be obtained for the Payment of any Debt, Damages, or Expenses, such Certificate shall be registered by such Master in a Register to be kept in the Court of Common Pleas at Westminster and Dublin respectively for that Purpose, and to be called "The Register for Scotch Judgments," and such Certificate when so registered shall from the Date of such Registration be of the same Force and Effect as a Judgment obtained or entered up in the Court in which it is so registered, and all Proceedings shall and may be had and taken on such Certificate as if the Decree of which it is a Certificate had been a Judgment originally obtained or entered up on the Date of such Registration as aforesaid in the Court in which it is so registered, and all the reasonable Costs, Charges, and Expenses attendant upon the obtaining and registering such Certificate shall be recovered in like Manner as if the same were Part of the Decree of which it is a Certificate: Provided always, that no Certificate shall be registered as aforesaid more than Twelve Months after the Date of such Decree, unless Application shall have been first made to and Leave obtained from the Court or a Judge of the Court in which it is sought so to register such Certificate; provided that where a Note of Suspension of any such Decree shall have been passed or a Sist of Execution shall have been granted thereon by the said Court of

Session or any Judge thereof, on the Production of a Certificate under the Hand of the Clerk to the Bill Chamber of the Court of Session of the passing of such Note or the granting of such Sist, to a Judge of the Court in which such Certificate of such Decreet has been registered, Execution on such registered Certificate shall be stayed until a Certificate be produced under the Hand of the said Clerk that such Sist has been recalled or has expired, or where the Note of Suspension has been passed, until there be produced an Extract, under the Hand of the Extractor of the Court of Session or other Officer duly authorized to make and subscribe Extracts, of a Decreet of the said Court repelling the Reasons of Suspension.

4. The Courts of Common Pleas at Westminster and at Dublin and the Court of Session in Scotland shall have and exercise the same Control and Jurisdiction over any Judgment or Decreet, and over any Certificate of such Judgment or Decreet registered under this Act in such Courts respectively, as they now have and exercise over any Judgment or Decreet in their own Courts, but in so far only as relates to Execution under this Act.

5. It shall not be necessary for any Plaintiff in any of the aforesaid Courts in England resident in Ireland or Scotland, or any Plaintiff in any of the aforesaid Courts in Ireland resident in England or Scotland, in any Proceeding had and taken on such Certificate, to find Security for Costs in respect of such Residence, unless, on special Grounds, a Judge or the Court shall otherwise order; nor shall it be necessary for any Party to such Proceeding in Scotland resident in England or Ireland, to sist a Mandatory, or otherwise to find Security for Expenses in respect of such Residence, unless, on special Grounds, the Court shall otherwise order.

6. In any Action brought in any Court in England, Scotland, or Ireland, on any Judgment

or Decreet which might be registered under this Act in the Country in which such Action is brought, the Party bringing such Action shall not recover, or be entitled to any Costs or Expenses of Suit, unless the Court in which such Action shall be brought, or some Judge of the same Court, shall otherwise order.

7. It shall be lawful for the Judges of the Court of Queen's Bench, Common Pleas, and Exchequer at Westminster and Dublin respectively, or any Eight or more of them respectively, of whom the Chiefs of the said Courts respectively shall be Three, and they are hereby required, from Time to Time to make all such General Rules and Orders to regulate the Practice to be observed in the Execution of this Act, or in any Matter relating thereto, including the Scale of Fees to be charged, in the Courts of Common Law in England and Ireland respectively, as they may deem to be necessary and proper; and it shall be lawful for the Court of Session in Scotland, and the said Court is hereby required, from Time to Time to make such Acts of Sederunt to regulate the Practice to be observed in the Execution of this Act or in any Matter relating thereto, including the Scale of Fees to be charged in Scotland, as such Court may deem to be necessary and proper: Provided always, that such Rules, Orders, and Acts of Sederunt respectively shall be laid before both Houses of Parliament within One Month from the making thereof, if Parliament be then sitting, or if Parliament be not then sitting, within One Month from the Commencement of the then next Session of Parliament.

8. This Act shall not apply to any Decreet pronounced in absence in an Action proceeding on an Arrestment used to found Jurisdiction in Scotland.

9. In citing this Act in any Instrument, Document, or Proceeding it shall be sufficient to use the Expression "The Judgments Extension Act, 1868."

SCHEDULE.

CERTIFICATE issued in Terms of "THE JUDGMENTS EXTENSION ACT, 1868."

FORM I.—Where Party applying is Plaintiff or Pursuer.

I, _____, certify that [here state Name, Title, Trade or Profession, and usual or last known Place of Abode of Plaintiff or Pursuer] on the _____ Day of _____ 18____, obtained Judgment against [here state Name and Title, Trade or Profession, and usual or last known Place of Abode of Defendant] before the Court of _____, for Payment of the Sum of _____ on account of [state shortly Nature of Claim or Ground of Action, with the Sum of Costs, if any, and in case of a Judgment obtained in an Action state whether it was obtained after

Appearance made by the Defendant, or after Service (personal or otherwise) of the Action on the Defendant, as the Case may be].

(Signed by the proper Officer of the Court from which the Certificate issues.)

FORM II.—Where Party applying is Defendant or Defender.

I, _____, certify that [here state Name, Title, Trade or Profession, and usual or last known Place of Abode of Defendant or Defender] on the _____ Day of _____ 18__ obtained Judgment against [state Name, Title, Trade or Profession, and usual or last known Place of Abode of Plaintiff or Pursuer] before the Court of _____ for Judgment of the Sum of £ _____, as Costs of Suit.

(Signed by the proper Officer of the Court from which the Certificate issues.)

Minute of Presentation to be appended to either Form.

Presented for Registration in Terms of "The Judgments Extension Act, 1868."

Signature of (Attorney, Law Agent, or Creditor) presenting for Registration.

CAP. LV.

The Courts of Law Fees (Scotland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. Short Title.
 2. From and after Time appointed by Treasury. Fees payable in Courts of Law in Scotland to be collected by Stamps.
 3. Stamps to be impressed or adhesive.
 4. General Rules to be made by Treasury.
 5. Documents not properly stamped to be invalid.
 6. Nothing to interfere with Powers of Treasury, &c. for Alteration of Fees.
 7. Provision for Abolition of Fee Fund of Court of Session.
 8. Separate Account to be kept of Money received for Stamps.
 9. Accounts to be laid before Parliament.
 10. Repeal of Enactments inconsistent with this Act.
- Schedule.*

An Act to provide for the Collection by means of Stamps of Fees payable in the Supreme and Inferior Courts of Law in Scotland, and in the Offices belonging thereto; and for other Purposes relative thereto.

(13th July 1868.)

WHEREAS it is expedient to provide for the Collection by means of Stamps of Fees payable in the Supreme and Inferior Courts of Law in Scotland, and in the Offices belonging thereto: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Courts of Law Fees (Scotland) Act, 1868."

2. It shall be lawful for the Commissioners of Her Majesty's Treasury, by Notice published in the *Edinburgh Gazette*, to declare and direct that from and after the Time specified in such Notice all or any of the Fees for the Time being payable in Money in any of the Supreme or Inferior Courts of Law in Scotland, or the Offices connected therewith, or to the Officers thereof, in so far as such Fees are payable into or accountable for to Her Majesty's Exchequer, shall be collected by means of Stamps; and every such Notice shall be in accordance with the Form given in the Schedule to this Act, with such Variations as Circumstances may require; and from and after the Time specified in any such

Notice the Fees therein mentioned shall be received by Stamps denoting the Amount of Fees payable, and not in Money.

3. All or any Stamps to be used under this Act shall be impressed or adhesive, as the Commissioners of Her Majesty's Treasury from Time to Time direct.

4. The Commissioners of Her Majesty's Treasury, with the Concurrence of the Court of Session, may from Time to Time make such Rules as seem fit for regulating the Use of Stamps under this Act, and particularly for prescribing the Application thereof to Documents from Time to Time in use or required to be used for the Purposes of such Stamps, and for insuring the proper Cancellation of adhesive Stamps, and keeping Accounts of such Stamps.

5. Any Document which ought to bear a Stamp under this Act shall not be of any Validity unless and until it is properly stamped; but if any such Document is through Mistake or Inadvertence received, lodged, recorded, or used without being properly stamped, it shall be competent for the Court or Judge before whom the Cause depends to which such Document relates to order that the same be stamped, as in such Order may be directed, and on such Document being stamped accordingly the same and every Proceeding relative thereto shall be as valid as if such Document had been properly stamped in the first instance.

6. Nothing in this Act shall interfere with the Exercise by any Authority of any Power of altering or otherwise regulating the Amount of any Fees for the Time being payable in any Court of Law in Scotland, or in any Office connected therewith, or to the Officers thereof, or of any Salaries or other Charges for the Time being payable thereout or charged thereon: And the Commissioners of Her Majesty's Treasury shall have Power from Time to Time to prepare amended Tables of Fees in place of the Fees now payable as aforesaid, and shall lay such amended Tables before the Court of Session, and any Alteration in the Amount of such Fees shall be subject to the Approval of the said Commissioners, and the Fees payable in the Court of Session and Offices thereof shall be paid into the Fee Fund of the Court of Session till the Commissioners of Her Majesty's Treasury shall direct that they shall be collected by means of Stamps.

7. So soon as the Commissioners of Her Majesty's Treasury, in pursuance of the Powers of this Act, shall direct that the Fees payable

into the Fee Fund of the Court of Session shall be collected by means of Stamps, the Offices of Collector and Accountant of the said Fee Fund shall be and the same are hereby in that event abolished; and the said Commissioners are hereby authorized, on Proof of the average Amount of the Emoluments received by the Holders of said Offices respectively, after defraying the Expenses of the Establishment, to award to such Holders such annual Allowance as the said Commissioners shall deem just, having regard to the Tenure by which such Holders respectively hold their Offices; and such Compensation, by way of annual Allowance, shall be payable out of Funds to be provided by Parliament for that Purpose: Provided also, that the Compensation so granted, in the event of the Appointment thereafter of any of the said Persons to any Office of Profit or Emolument under the Crown, shall abate or wholly cease during the Period in which such Person shall hold such Office, so as that the Compensation and the Emolument thereof taken together shall not exceed the Emoluments of the Office in respect of which Compensation has been granted.

8. The Commissioners of Inland Revenue shall keep a separate Account of the Money received for Stamps under this Act; and, subject to the Deduction out of the Money so received of any Expenses incurred by the Commissioners of Inland Revenue in the Execution of this Act, the Money so received shall, under the Direction of the said Commissioners, be carried to and shall form Part of the Consolidated Fund of the United Kingdom.

9. Each Account so kept by the Commissioners of Inland Revenue for every Year ending the Thirty-first Day of March, together with an Account for every such Year, prepared under the Directions of the Commissioners of Her Majesty's Treasury, showing the Salaries and other Charges for the Time being charged on or payable out of any Fees comprised in this Act, and also showing all other Charges in respect of the said Courts and their several Offices for the Time being paid out of the said Consolidated Fund, or out of Money provided by Parliament, by way of Salary, Compensation, or otherwise, shall be laid before both Houses of Parliament within One Month after the Termination of such Year of Account, if Parliament is then sitting, or if not, then within One Month after the next Meeting of Parliament; and the Second of such yearly Accounts, and every subsequent Account, shall show the Items for Two consecutive Years, and the Increase or Decrease of any of those Items in the Second of those Years as compared with the First.

10. All Acts of Parliament or Acts of Sederunt shall be and the same are hereby repealed, in so far only as they may be in any way inconsistent

with the Provisions of this Act, but in all other respects they shall remain in full Force and Effect.

The SCHEDULE.

COURT OF SESSION OFFICES
(or as the Case may be).

NOTICE under the "Courts of Law Fees
(Scotland) Act, 1868."

The Commissioners of Her Majesty's Treasury, in pursuance of the Provisions of the said

Act, hereby declare and direct that from and after the Day of the Fees for the Time being payable in the Office of the Court of Session (or as the Case may be) or to the Officers thereof, shall be collected by means of Stamps.

CAP. LVI.

The Petroleum Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Act to be construed with 25 & 26 Vict. c. 66.*
3. *Definition of "Petroleum."*
4. *Sect. 3. of 25 & 26 Vict. c. 66. repealed. Regulations as to Storage of Petroleum.*
5. *Prohibition of Sale of Petroleum for Purpose of Illumination.*
6. *Inspector of Weights, &c. may test Petroleum.*
7. *Trial of Offences under Petroleum Acts, 1862 and 1868.*
8. *Mode of testing Petroleum.*
Schedule.

An Act to amend the Act Twenty-fifth and Twenty-sixth Victoria, Chapter Sixty-six, for the safe keeping of Petroleum. (13th July 1868.)

WHEREAS it is expedient to make further Provisions for the safe keeping of Petroleum and other Substances of like Nature:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as "The Petroleum Act, 1868."

2. This Act, so far as is consistent with the Tenor thereof, shall be read as One with the Act of the Session holden in the Twenty-fifth and Twenty-sixth Years of the Reign of Her present Majesty, Chapter Sixty-six, intituled "An Act for the safe keeping of Petroleum," and the said Act may be cited for all Purposes as "The Petroleum Act, 1862," and this Act and the

said Act may be cited together as "The Petroleum Acts, 1862, 1868."

3. For the Purposes of the Petroleum Acts, 1862, 1868, including all Local Acts and Byelaws relating to Petroleum or the Produce thereof, "Petroleum" shall include all such Rock Oil, Rangoon Oil, Burmah Oil, any Product of them, and any Oil made from Petroleum, Coal, Schist, Shale, Peat, or other Bituminous Substance, and any Product of them, as gives off an inflammable Vapour at a Temperature of less than One hundred Degrees of Fahrenheit's Thermometer.

4. From and after the First Day of February One thousand eight hundred and sixty-nine, the Third Section of the Petroleum Act, 1862, shall be repealed; provided that such Repeal shall not affect any Liability or Penalty incurred in respect of any Offence committed before the passing of this Act, or any legal Remedy for enforcing or recovering such Liability or Penalty.

From and after the First Day of February One thousand eight hundred and sixty-nine, no

Petroleum shall be kept, otherwise than for private Use, within Fifty Yards of a Dwelling House or of a Building in which Goods are stored, except in pursuance of a Licence given in accordance with the Petroleum Act, 1862.

There may be annexed to any such Licence such Conditions as to the Mode of Storage, as to the Nature of the Goods with which Petroleum may be stored, as to the testing such Petroleum from Time to Time, and generally as to the safe keeping of Petroleum, as may seem expedient to the Local Authority.

Any Petroleum kept in contravention of this Section shall be forfeited, and in addition thereto the Occupier of the Place in which such Petroleum is kept shall be liable to a Penalty not exceeding Twenty Pounds a Day for each Day during which Petroleum is kept in contravention of the Petroleum Acts, 1862 and 1868, or either of such Acts.

5. No Person shall sell or expose for Sale for Use within the United Kingdom any Description of Petroleum from and after the First Day of February One thousand eight hundred and sixty-nine which gives off an inflammable Vapour at a Temperature of less than One hundred Degrees of Fahrenheit's Thermometer, unless the Bottle or Vessel containing such Petroleum have attached thereto a Label in legible Characters stating as follows: "Great Care must be taken in bringing any Light near to the Contents of this Vessel, as they give off an inflammable Vapour at a Temperature of less than One hundred Degrees of Fahrenheit's Thermometer." Any Person acting in contravention of this Section shall for each Offence be subject to a Penalty not exceeding five Pounds.

6. It shall be lawful for any Inspector of Weights and Measures, or other Person or Persons duly appointed to inspect Weights and Measures under the Act Twenty-second and Twenty-third Victoria, Chapter Fifty-six, and the Acts therein recited, at all reasonable Times to inspect and test all Petroleum kept, offered, or exposed for Sale; and if upon such Inspection

and Test any Description of Petroleum shall be found kept or offered or exposed for Sale as aforesaid contrary to the Provisions of this Act or of the Petroleum Act, 1862, the same shall be liable to be seized and, upon Conviction, forfeited, and such Person so examining the same shall retain a Sample thereof, and the Person or Persons so offending shall be liable for any such Offence to any Penalty not exceeding Five Pounds: Provided always, that if the Person or Persons in whose Possession such Petroleum shall be found as aforesaid shall claim to have a further Test made on their Behalf, the Magistrate before whom Complaint of the said Offence may be laid shall call before him the Public Analyst provided by the Second Section of the Act Twenty-third and Twenty-fourth Victoria, Chapter Eighty-four, or, if no such Analyst has been provided, some other Person having competent Chemical Knowledge, who shall test a Portion of the Sample so retained as aforesaid in the Manner herein-after provided, and shall give Evidence of the Result of such Test; and the Magistrate shall direct Payment to be made to the Analyst of a Sum not less than Two Shillings and Sixpence nor more than Ten Shillings and Sixpence; and in case of Conviction the Person convicted shall pay the Cost of such Analysis, and in case of Acquittal such Cost shall be paid in the Manner provided for the Payment of Expenses by Section Twelve of the said Act of the Twenty-third and Twenty-fourth Victoria.

7. All Offences under the Petroleum Acts, 1862, 1868, may be tried as Police Offences by any Magistrate acting under any General or Local Police Act, and all Forfeitures and Penalties incurred under the Petroleum Acts, 1862, 1868, may be disposed of, recovered, and applied in the Manner authorized by such General or Local Police Act.

8. The Temperature at which Petroleum gives off an inflammable Vapour shall, for the Purposes of the Petroleum Acts, be tested in manner set forth in the Schedule hereto.

SCHEDULE.

DIRECTIONS FOR APPLYING THE FLASHING TEST TO SAMPLES OF PETROLEUM OIL.

The Vessel which is to hold the Oil shall be of thin Sheet Iron; it shall be Two Inches deep and Two Inches wide at the Opening, tapering slightly towards the Bottom; it shall have a flat Rim, with a raised Edge One Quarter of an Inch high

round the Top; it shall be supported by this Rim in a Tin Vessel Four Inches and a Half deep and Four and a Half Inches in Diameter; it shall also have a thin Wire stretched across the Opening, which Wire shall be so fixed to the Edge of the Vessel that it shall be a Quarter of an Inch above the Surface of the flat Rim. The Thermometer to be used shall have a round Bulb

about Half an Inch in Diameter, and is to be graduated upon the Scale of Fahrenheit, every Ten Degrees occupying not less than Half an Inch upon the Scale.

The inner Vessel shall be filled with the Petroleum to be tested, but Care must be taken that the Liquid does not cover the flat Rim. The Outer Vessel shall be filled with cold, or nearly cold, Water; a small Flame shall be applied to the Bottom of the outer Vessel, and the Thermometer shall be inserted into the Oil so that the Bulb shall be immersed about One and a Half Inches beneath the Surface. A Screen of Pasteboard or Wood shall be placed round the Apparatus, and shall be of such Dimensions as to surround it about Two Thirds and to reach several Inches above the Level of the Vessels.

When Heat has been applied to the Water until the Thermometer has risen to about 90° Fahrenheit, a very small Flame shall be quickly passed across the Surface of the Oil on a Level with the Wire. If no pale Blue Flicker or Flash is produced, the Application of the Flame is to be repeated for every Rise of Two or Three Degrees in the Thermometer. When the Flashing Point has been noted, the Test shall be repeated with a fresh Sample of the Oil, using cold, or nearly cold, Water as before; withdrawing the Source of Heat from the outer Vessel when the Temperature approaches that noted in the First Experiment, and applying the Flame Test at every Rise of Two Degrees in the Thermometer.

CAP. LVII.

New Zealand (Legislative Council).

ABSTRACT OF THE ENACTMENTS.

1. *Part of recited Act repealed.*
2. *Governor empowered to summon such Persons as he may think fit to the Legislative Council.*
3. *All Summonses to Legislative Council declared valid.*
4. *"Governor."*

An Act to make Provision for the Appointment of Members of the Legislative Council of New Zealand, and to remove Doubts in respect of past Appointments.

(13th July 1868.)

WHEREAS by an Act passed in the Session of Parliament holden in the Fifteenth and Sixteenth Years of Her Majesty's Reign, Chapter Seventy-two, intituled "An Act to grant a Representative Constitution to the Colony of New Zealand," it is (amongst other things) enacted, that it shall be lawful for Her Majesty, from Time to Time, by any Instrument under Her Royal Sign Manual, to authorize the Governor to summon to the Legislative Council of the said Colony such Person or Persons as Her Majesty shall think fit, being qualified as therein is mentioned:

And whereas Her Majesty has, by divers Instruments under Her Royal Sign Manual, authorized successive Governors of the said Colony to summon to the said Legislative Council, from Time to Time, such Person or Persons, being qualified as aforesaid, as the said Governors respectively should deem to be prudent and discreet Men:

And whereas, in pursuance of the said In-

structions, Persons have, from Time to Time, been summoned to the said Legislative Council by the Governors of the said Colony:

And whereas Doubts have arisen whether such Persons, not having been, previously to their being so summoned, expressly named or appointed by Her Majesty in any Instrument under the Royal Sign Manual, or otherwise, have been legally summoned to the said Legislative Council, and become Members thereof; and it is expedient that such Doubts should be removed, and that fresh Provision should be made for the future Appointment of Legislative Councillors in the said Colony:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. So much of the said recited Act as is inconsistent with this Act is hereby repealed.

2. From and after the Proclamation of this Act in the said Colony of New Zealand, it shall be lawful for the Governor of the said Colony, from Time to Time, in Her Majesty's Name, by an Instrument or Instruments under the Public Seal of the said Colony, to summon to the said Legislative Council such Person or Persons as

he said Governor shall think fit, either in addition to the present Members of the said Council, or for supplying any Vacancies which may take place therein by Death or otherwise; and every Person who shall be so summoned shall thereby become a Member of the Legislative Council: Provided always, that, unless otherwise determined by the Legislature of New Zealand, no Person shall be summoned to such Legislative Council who shall not be of the full Age of Twenty-one Years, and either a natural-born Subject of Her Majesty, or a Subject of Her Majesty naturalized by Act of Parliament or by an Act of the Legislature of New Zealand.

3. All Persons who, before the Proclamation of this Act in the said Colony, shall have been summoned to the Legislative Council of the said

Colony by the Governor, without having been so previously named or appointed by Her Majesty as aforesaid, shall be deemed and taken to have been legally summoned, and to be and to have been and become Members of the said Legislative Council from the respective Periods when they were so summoned; and no Matter or Thing done by any such Person so summoned as aforesaid, as such Member as aforesaid, shall be deemed or taken to be or to have been invalid by reason of such Person not having been previously duly named or appointed by Her Majesty in pursuance of the said recited Act.

4. In the Construction of this Act the Term "Governor" shall mean the Person for the Time being lawfully administering the Government of New Zealand.

CAP. LVIII.

The Parliamentary Electors Registration Act, 1868.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

- Definition of Principal Act (6 & 7 Vict. c. 18.)
- This and Principal Act construed as One.
- Application of Act.

PART I.

Provisions as to Registration in the Year 1868.

- Number of Revising Barristers to be appointed for 1868.
- Additional Barristers how to be appointed.
- Revision of Lists in Counties.
- Revision of Lists in Boroughs.
- Delivery of Lists to Returning Officer.
- Extension in certain Cases of Time for making Claims to vote for County Members.
- Sect. 60. of 30 & 31 Vict. c. 102. to be construed as herein stated.
- Shortening Time for assembling Parliament.
- Saving of Registration Acts.
- Provision as to Return of Member for Orkney.
- Provision in case of Parish severed by the Boundary Act from its proper Polling District.

PART II.

AMENDMENT OF LAW AS TO REGISTRATION.

Alterations of Times.

- Amendment of 16 & 17 Vict. c. 68. s. 2. as to Elections in Counties.
- Amendment of Act of 5 & 6 W. 4. c. 36. s. 2. as to Time of polling in the Welsh Contributory Boroughs.

Amendment of the Representation of the People Act, 1867.

- Amendment of Sect. 30. of 30 & 31 Vict. c. 102.
- Amendment of Sect. 34. of 30 & 31 Vict. c. 102.

19. *Provision as to 12l. Occupiers.*
 20. *Amendment of Law respecting the Registration of Lodgers.*
 21. *As to Issue of Writs to the County Palatine of Durham.*

Miscellaneous Amendments.

22. *Parish situate in more than One Polling District.*
 23. *Recovery of Expenses by Town Clerks and Returning Officers.*
 24. *Amendment of Law as to Numbers in Polling Booths.*
 25. *Provision when Borough situate partly in one Circuit and partly in another.*
 26. *Power of Clerk of Peace in case of Alteration of Boundaries.*
 27. *Appointment of Returning Officer for Borough of Thirsk.*
 28. *Production of Rate Books by Overseers.*
 29. *Power of Revising Barrister to summon Overseers, &c.*
 30. *Application of certain Rating Sections to Counties.*
 31. *Expenses of Overseers and Relieving Officers.*
 32. *Certificate of Revising Barrister to be conclusive.*
 33. *Provision as to Returning Officer in case of Parliamentary Borough becoming a Municipal Borough.*
 34. *Provision as to Issue of Precepts, &c. in case of altered or disfranchised Boroughs.*
 35. *Provision as to Officers in case of altered Boundaries of Counties and Boroughs.*
 36. *Provision with respect to Boroughs disfranchised by Sootch Representation of the People Act.*
 37. *Copies of Registers to be transmitted to Secretary of State.*

An Act to amend the Law of Registration so far as relates to the Year One thousand eight hundred and sixty-eight, and for other Purposes relating thereto.
 (16th July 1868.)

WHEREAS it is expedient to make Provision for expediting the Completion of the Registration of Parliamentary Electors during the present Year, and to make certain Amendments in the Law relating to Elections:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Preliminary.

1. "Principal Act" in this Act shall mean the Act passed in the Session of the Sixth and Seventh Years of the Reign of Her present Majesty, Chapter Eighteen, intituled, "An Act to amend the Law for the Registration of Persons entitled to vote, and to define certain Rights of voting, and to regulate certain Proceedings in the Election of Members to serve in Parliament for England and Wales," as amended by "The County Voters Registration Act, 1865."

2. This Act shall be construed as One with the Principal Act, and may be cited for all Purposes as "The Parliamentary Electors Registration Act, 1868."

3. This Act shall not apply to Scotland or Ireland, except that so much thereof as relates to

the Time to be appointed for the First Meeting of Parliament after the Dissolution thereof shall apply both to Scotland and Ireland, and that so much thereof as relates to an Election for the County of Orkney and Shetland shall apply to Scotland.

PART I.

Provisions as to Registration in the Year 1868.

4. The Number of Revising Barristers to be appointed in the Year One thousand eight hundred and sixty-eight, in pursuance of the Twenty-eighth Section of the Principal Act, may be as follows; that is to say,

For the County of Middlesex, and for the City of London, the City of Westminster, and the Boroughs in the County of Middlesex	6
For the Counties, Cities, Boroughs, and Places within the Home Circuit	15
For the Counties, Cities, Boroughs, and Places within the Western Circuit	21
For the Counties, Cities, Boroughs, and Places within the Oxford Circuit	18
For the Counties, Cities, Boroughs, and Places within the Midland Circuit	20
For the Counties, Cities, Boroughs, and Places within the Norfolk Circuit	15
For the Counties, Cities, Boroughs, and Places within the Northern Circuit	20
For the Counties, Cities, Boroughs, and Places within the North Wales Circuit	8
For the Counties, Cities, Boroughs, and Places within the South Wales Circuit	9

5. The Power of appointing additional Revising Barristers in pursuance of Section Twenty-

line of the Principal Act shall, in the Case of any Event in which the said Power arises occurring after the Fifth Day of September in the Year One thousand eight hundred and sixty-eight, be exercised by any Judge of Her Majesty's Superior Courts of Common Law at Westminster sitting in Chambers, on the like Representations being made to him as would justify an Appointment under the said Section.

6. The following Provisions shall be enacted with respect to the Revision of the Lists and Completion of the Register of Voters in Counties in the Year One thousand eight hundred and sixty-eight:

1. The Lists of Voters for each County shall be revised by the Barrister or Barristers appointed to revise the same between the Fourteenth Day of September inclusive and the Eighth Day of October inclusive, and the Barrister appointed to revise the Lists shall, Seven Days at the least before holding any Court of Revision, give Notice to the Clerk of the Peace of the Time and Place at which such Court will be holden, and of the several Parishes and Townships the Lists of and for which will be revised at such Court, which last-mentioned Lists are herein-after referred to as the Parochial Lists.
2. The Revising Barrister shall, if practicable, complete the Revision of the Lists of one Polling District before proceeding to revise the Lists of another Polling District.
3. The Revising Barrister, on completing the Revision of the Lists of any Polling District, shall forthwith transmit the same to the Clerk of the Peace of the County in which the District is situate.
4. The Clerk of the Peace shall keep the original Lists amongst the Records of the Session, but shall, as soon as possible after the Receipt thereof, cause Copies of such Lists to be printed, with the Names in each Parish or Township in the District arranged in alphabetical Order, and numbered consecutively throughout the whole of the Lists belonging to the Polling District, beginning in each Polling District with the Number One.
5. The Clerk of the Peace shall, as soon as possible after the Receipt of all the revised Lists of his County, cause to be made out and printed a separate supplemental List for each Polling District, containing in alphabetical Order the Names of all Persons whose Names do not appear in any of the Parochial Lists of such District, but who have been registered by the Revising Barrister to vote at the Polling Place of such District; and such supplemental

List shall be placed at the End of the Parochial Lists of each Polling District.

6. All the Lists of a County, including the said supplemental Lists, shall be printed uniformly, and shall be capable of forming One Book, or of being detached each List by itself, so that the List of any Parish or Township, or all the Lists of any Polling District or Polling Districts, may be had separately.
7. The Clerk of the Peace shall, on or before the First Day of November One thousand eight hundred and sixty-eight, sign a printed Copy of every Parochial List and supplemental List as aforesaid belonging to the several Polling Districts in his County, and deliver the Book containing such Lists, arranged according to the alphabetical Order of the Polling Districts, to the Sheriff of the County, to be by him and his Successors in Office safely kept; and such Book shall be the Register of Persons entitled to vote at any Election of a Member or Members to serve in Parliament which may take place in and for the same County between the First Day of November One thousand eight hundred and sixty-eight and the First Day of January One thousand eight hundred and seventy.
7. The following Provisions shall be enacted with respect to the Revision of the Lists and Completion of the Register of Voters in Cities and Boroughs in the Year One thousand eight hundred and sixty-eight:
 1. The Revision of the Lists of Voters for a City or Borough for the Year One thousand eight hundred and sixty-eight shall be begun and completed in the same Interval, and, so far as is convenient, in the same Manner, as is in this Act provided with respect to the Lists of Voters for a County, but it shall be lawful for the Revising Barrister to conduct the Revision by Parishes, Townships, Polling Districts, or otherwise as he thinks will most conduce to Despatch, and to send to the Town Clerk from Time to Time such Parts of the revised Lists as he thinks convenient.
 8. The Town Clerk of every City or Borough returning a Member or Members to serve in Parliament shall, on or before the First Day of November One thousand eight hundred and sixty-eight, sign and deliver the printed Book containing all the Lists of the Voters in his City or Borough, to the Returning Officer of such City or Borough, to be by him and his Successors, as Returning Officer, safely kept, and

such Book shall be the Register of Persons entitled to vote at any Election of a Member or Members to serve in Parliament which may take place in and for the said City or Borough between the First Day of November One thousand eight hundred and sixty-eight and the First Day of January One thousand eight hundred and seventy.

9. Where, by reason of the Disfranchisement or the Alteration of the Boundaries of any Borough during the present Session of Parliament, any Person who would not otherwise be so entitled becomes entitled to vote for the Member or Members to serve in Parliament for any County, the Time for making a Claim shall in such Case in this present Year extend to the Twenty-fifth instead of the Twentieth of July.

10. Whereas it is provided by the Sixtieth Section of the Representation of the People Act, 1867, that "notwithstanding anything in this Act contained, in the event of a Vacancy in the Representation of any Constituency or of a Dissolution of Parliament taking place, and a Writ or Writs being issued before the First Day of January One thousand eight hundred and sixty-nine for the Election of Members to serve in the present or any new Parliament, each Election shall take place in the same Manner in all respects as if no Alteration had been made by this Act in the Franchises of Electors, or in the Places authorized to return a Member or Members to serve in Parliament, with this Exception, that the Boroughs by this Act disfranchised shall not be entitled to return Members to serve in any such new Parliament:" Be it enacted, That the said Section shall be construed as if the Words "the First Day of November One thousand eight hundred and sixty-eight" were substituted for the Words "the First Day of January One thousand eight hundred and sixty-nine."

11. If the next Dissolution of Parliament take place in the Year One thousand eight hundred and sixty-eight, the Time to be appointed for the First Meeting of the Parliament of the United Kingdom of Great Britain and Ireland after such Dissolution may be any Time not less than Twenty-eight Days after the Date of such Proclamation, any Act, Law, or Usage to the contrary notwithstanding.

12. The Forty-seventh and Forty-eighth Sections of the Principal Act, and so much of the Forty-ninth Section of the Principal Act as relates to the Time during which the Register is to be in force, and all other Provisions of any Act of Parliament inconsistent with the Provisions herein-before contained, shall not apply to

the Lists or Register of Voters to be made in the Year One thousand eight hundred and sixty-eight; but, save as aforesaid, all the Provisions of the Acts relating to the Registration of Parliamentary Voters shall remain in full Force.

13. Section Thirty-one of the Act of Second and Third William Fourth, Chapter Sixty-five, shall not apply to any Election which may take place for the County of Orkney in the Year One thousand eight hundred and sixty-eight, and in place thereof, so far as respects such Election, the following Provisions shall be substituted: that is to say,

"The Sheriff of Orkney to whom the Writ for the Election of a Member for the County of Orkney and Shetland shall be addressed: Kirkwall shall within Twenty-four Hours after receiving the same issue a Precept to the Sheriff Substitute in Shetland, fixing a Day for the Election for the said County, which Day shall not be less than Eight nor more than Twelve Days after that on which the Writ was received, and shall forward or transmit the said Precept with the least possible Delay directly to the said Sheriff Substitute in Shetland, who immediately on Receipt thereof shall announce the Day of Election by Notices on the Church Doors; and if on the Day of Election more Candidates than One shall be put in Nomination and a Poll shall be demanded, the Sheriff shall then fix a convenient Day for such Election, not being less than Six nor more than Ten Days after the Day of Nomination, and shall forthwith despatch Notice of such Day to the Sheriff Substitute of Shetland, and the Polling shall be held accordingly on the Day so fixed, and continue during the Time permitted by Law."

14. Where any Parish or Township is in consequence of the Provisions of any Act passed during the present Session of Parliament placed for Parliamentary Purposes in a different Division of a County from that in which it was previously situate, or where for any Reason a Doubt exists as to the Polling District to which any Parish or Township belongs, the Clerk of the Peace of the County in which such Parish or Township is situate may for the Purposes of Revision of the List of Voters during the present Year, and also (subject to any Alteration that may be made by the Authority having Power to alter Polling Districts) for the Purpose of voting at an Election during the present Year, annex such Parish or Township to such Polling District as he may think most convenient.

Where a Parish or Township has been annexed to any Polling District in pursuance of this Section, the Clerk of the Peace shall give Notice to the Overseers of such Parish or Township of

the Polling District to which the same is annexed, and of the Polling Place at which the Voters of each Parish or Township are to poll.

PART II.

AMENDMENT OF LAW AS TO REGISTRATION.

Alterations of Times.

15. Whereas by the Act of the Session of the fifteenth and Seventeenth Years of the Reign of Her present Majesty, Chapter Sixty-eight; Section Two, it is enacted, "that after the passing of that Act any such special Court as is therein mentioned for the Purpose of the Election of a Knight or Knights to serve in Parliament for any County, Riding, Parts, or Division of any County in England or Wales, shall be holden on any Day (Sunday, Good Friday, and Christmas Day excepted) not later from the Day of making the Proclamation than the Twelfth Day nor sooner than the Sixth Day:" It is enacted, That the said Section shall be construed as if the Words Fourth Day were substituted for Sixth Day.

16. Whereas by the Act of the Session of the fifth and Sixth Years of the Reign of King William the Fourth, Chapter Thirty-six, Section Two, it is enacted, "that at every contested Election of a Member or Members to serve in Parliament for any City, Borough, or Town, or County of City or County of a Town, the polling shall commence at Eight of the Clock in the Forenoon of the Day next following the Day fixed for the Election, and the polling shall continue during such One Day only, and no Poll shall be kept open later than Four of the Clock in the Afternoon; provided always, that when such Day next following the Day fixed for the Election shall be Sunday, Good Friday, or Christmas Day, then in the Case it be Sunday the Poll shall be on the Monday next following, and in the Case it be Good Friday then on the Saturday next following, and in the Case it be Christmas Day then on the next following Day, if the same shall not be Sunday, and if it be Sunday on the next following Monday:" And whereas a longer Time is required in the Case of the said Contributory Boroughs in Wales specified in the said Schedule marked (E.) annexed to the said Act of the Session of the Second Year of King William the Fourth, Chapter Forty-five: Be it enacted, That the said recited Section shall be repealed so far as respects the said Contributory Boroughs, and in lieu thereof be it enacted, that at every contested Election of a Member or Members to serve in Parliament for any of the said Contributory Boroughs the polling shall com-

mence at Eight of the Clock of the Forenoon of the First or Second Day next following the Day fixed for the Election, and the polling shall continue during One such Day only, and no Poll shall be kept open later than Four of the Clock in the Afternoon: Provided always, that Sunday, Good Friday, or Christmas Day shall not, for the Purposes of this Section, be reckoned as a Day.

Amendment of the Representation of the People Act, 1867.

17. Whereas by the First Enactment contained in the Thirtieth Section of the Representation of the People Act, 1867, it is enacted, that "the Overseers of every Parish or Township shall make out or cause to be made out a List of all Persons on whom a Right to vote for a County in respect of the Occupation of Premises is conferred by this Act, in the same Manner and subject to the same Regulations, as nearly as Circumstances admit, in and subject to which the Overseers of Parishes and Townships in Boroughs are required by the Registration Acts to make out or cause to be made out a List of all Persons entitled to vote for a Member or Members for a Borough in respect of the Occupation of Premises of a clear yearly Value of not less than Ten Pounds:" And whereas by the Fifty-ninth Section of the same Act it is further provided that the said Representation of the People Act, 1867, so far as is consistent with the Tenor thereof, shall be construed as One with the Registration Acts: And whereas Doubts are entertained, notwithstanding the said Provisions, whether the Fifteenth Section of the Principal Act, relating to the Claims of Persons omitted from Borough Lists of Voters, or desirous of being registered in respect of a different Qualification from that appearing in such Lists, does or does not apply with the necessary Variations to the Rectification of the Lists of County Voters to be made in pursuance of the said Enactment: It is hereby declared that the said Fifteenth Section of the Principal Act shall apply to the List of Persons on whom a Right to vote for a County in respect of the Occupation of Premises is conferred by the Representation of the People Act, 1867, in the same Manner as if the List of Voters in the said Fifteenth Section referred to were the List of Voters made in pursuance of the Enactment contained in the Thirtieth Section of the Representation of the People Act instead of the List of Voters for a City or Borough as specified in the said Fifteenth Section.

18. Where a Municipal Borough forms Part of a Parliamentary Borough the Town Clerk of such Municipal Borough shall be deemed to be the Town Clerk within the Meaning of the

Thirty-fourth Section of the Representation of the People Act, 1867, and the Acts relating to Registration.

The Local Authority within the Meaning of the same Section, in Boroughs where the Town Council is not the Local Authority, shall be the Justices of the Peace of the Petty Sessional Division in which such Borough is situate, or if such Borough be situate in or comprise more than One Petty Sessional Division then the Justices in General or Quarter Sessions having Jurisdiction over such Borough or the greater Part thereof in Area.

The Power of dividing their County into Polling Districts, and assigning to each District a Polling Place, vested in the Justices of the Peace by the said Thirty-fourth Section of the Representation of the People Act, 1867, may be exercised by such Justices from Time to Time and as often as they think fit; and the said Power of dividing a County into Polling Districts shall be deemed to include the Power of altering any Polling District or Polling Districts.

19. In the Lists and Register of Voters for a County the Names of the Persons in any Parish or Township on whom a Right to vote for a County in respect of the Occupation of Premises in such Parish or Township is conferred by the Representation of the People Act, 1867, shall appear in a separate list after the List of Voters in such Parish or Township otherwise qualified, and such separate List shall be deemed to be Part of the Lists of County Voters of such Parish or Township, and shall be annually made anew by the Overseers of such Parish or Township, subject to this Proviso, that the Revising Barrister shall erase from the separate List of such Occupiers as aforesaid all Persons who appear to him from the accompanying Lists to be entitled to vote in the same Polling District in respect of some other Qualification to which no Objection is made, except in Cases where any Person whose Name is about to be erased object to the Erasure, in which Case such Person shall be deemed to have given due Notice of his Claim to have his Name inserted in the List of Occupiers, and shall be dealt with accordingly.

20. Notwithstanding anything contained in the Thirtieth Section of the Representation of the People Act, 1867, and the Thirty-eighth Section of the Principal Act therein referred to, the Names of the Persons in any Parish or Township on whom a Right to vote for a Member or Members to serve for any Borough in respect of the Occupation of Lodgings is conferred by the Representation of the People Act, 1867, shall, in the Lists and Register of Voters for such Boroughs, appear in a separate List.

21. Section Fifty-seven of the Representation of the People Act, 1867, with respect to the County Palatine of Lancaster, and the Issue, Direction, and Transmission of Writs for the Election of Members to serve in Parliament for any Division of the said County or for any Borough situate therein, shall be construed to extend to and include the County Palatine of Durham.

Miscellaneous Amendments.

22. Where any Parish in a County, City, or Borough forms Part of more than One Polling District, the Part of such Parish situate in each Polling District shall be deemed to be a separate Parish for the Purposes of the Revision of Voters and the Lists and Register of Voters, and may be designated by some distinguishing Addition in the List of Voters for such Part of a Parish.

23. Whereas it is expedient to provide a summary Remedy for the Recovery by Town Clerks and Returning Officers of Sums of Money due to them in respect of Expenses incurred in pursuance of the Registration Acts: Be it enacted, That if the Overseers of any Parish or Township refuse or neglect to pay to the Town Clerk or Returning Officer of any Borough, out of the first Monies to be collected for the Relief of the Poor, any Contribution or Sum required to be paid to him by the Fifty-fifth Section of the Principal Act, or any Act amending the same, or any Part of such Contribution or Sum, it shall be lawful for any Justice of the Peace for the County or Place within which such Parish or Township is wholly or in part situate, upon Information and Complaint in Writing, and after Seven Days Notice in Writing to be served upon such Overseers or One of them, by Warrant under his Hand to levy such Contribution or Sum by Distress and Sale of the Goods of the Offender or Offenders, together with all Costs occasioned by the making of such Complaint Service of such Summons, and the obtaining and executing such Warrant.

24. The Third Section of the said Act of the Session of the Fifth and Sixth Years of King William the Fourth, Chapter 36, shall be repealed, and instead thereof be it enacted, "that the Polling Booths at each Polling Place shall be so divided and arranged in Compartments by the Sheriff or other Returning Officer that not more than Five hundred Electors shall be allotted to poll in each Compartment."

25. Where a Borough is situated partly in one Circuit and partly in another the Judge of the Circuit in which the greater Part is situate shall

such Borough is situate shall appoint the Revising Barrister for such Borough.

26. If, in pursuance of any Act passed during the last or present Session of Parliament, any Alteration is made affecting the Divisions of any County, the Clerk of the Peace of such County or the Revising Barrister shall amend any Copies of Registers, Lists, Claims, or Objections submitted to him in such Manner as to make the same conformable to the Alterations so made by Act of Parliament.

If the Justices of the Peace in any County save by any Order of Session made before such Act was passed divided such County into Polling Districts, and assigned to each District a Polling Place, and named the Polling Places at which the Revising Barristers are to hold their Courts, such Order shall be as valid to all intents and Purposes as if it had been made after the passing of such Act.

27. From and after the passing of this Act, a Returning Officer shall be annually appointed for the Borough of Thirsk in the Manner provided by the Eleventh Section of the Act of the Second Year of the Reign of His late Majesty King William the Fourth, Chapter Forty-five, in the Case of the Boroughs mentioned in Schedules C. and D. annexed to the said Act, for which no Persons are mentioned in such Schedules as Returning Officers, and the Person so appointed shall perform all the Duties and be entitled to the Remuneration which a Returning Officer is, by the Registration Acts, required to perform and is entitled to in Boroughs where there is no Town Clerk.

28. The Overseers of every Parish or Township shall produce to the Barrister appointed to revise the Lists of Voters of any County, whilst holding his Court for revising the Lists relating to their Parish or Township, all Rates made for the Relief of the Poor of their Parish or Township between the Fifth Day of January in the Year then last past and the last Day of July in the then present Year; and any Overseer wilfully refusing or neglecting to produce any such Rates shall be deemed wilfully guilty of a Breach of Duty in the Execution of the Principal Act, and be punishable accordingly.

29. The Barrister appointed to revise the Lists of Voters of any County, whilst holding his Court for revising the Lists relating to a Parish or Township, may require any Overseer or Overseers of a past Year, or other Person having the Custody of any Poor Rate of the then current or any past Year, or any Relieving Officer, to attend before him at any such Court, and they shall attend accordingly, and answer all such

Questions as may be put to them by the Barrister; and any Overseer or Relieving Officer wilfully refusing or neglecting to comply with the Requirements authorized to be made by the Revising Barrister in pursuance of this Section shall be punishable in the same Manner in which an Overseer wilfully guilty of a Breach of Duty in the Execution of the Principal Act is punishable under the Principal Act.

30. The Thirtieth Section of the Act of the Session of the Second Year of King William the Fourth, Chapter Forty-five, and the Seventy-fifth Section of the Principal Act, shall apply to all Occupiers of Premises capable of conferring the Franchise for a County under the Representation of the People Act, 1867.

31. All Expenses properly incurred by an Overseer in pursuance of this Act shall be deemed to be Expenses properly incurred by him in carrying into effect the Provisions of the Principal Act, and any Expense incurred by any Relieving Officer in attending a Revising Barrister in pursuance of this Act (the Amount to be certified by the Revising Barrister) shall be deemed to be Expenses properly incurred by him in the Execution of his Duty as Relieving Officer, and shall be defrayed accordingly.

32. The Certificate given to the Overseers by the Revising Barrister under Section Fifty-seven of the Principal Act for the Expenses incurred by them in carrying into effect the Provisions of the Registration Acts shall be final and conclusive; provided nevertheless, that such Certificate shall be signed by the Revising Barrister in open Court, and any Ratepayer present shall have a Right to inspect the Account of Expenses delivered in by the Overseers, and to object to any Item or Items included therein, before such Account is allowed by the Revising Barrister, who shall hear any such Objection and make a Decision respecting the same.

33. Whenever a Borough returning a Member or Members to serve in Parliament becomes a Municipal Borough the Authority of the Person who may for the Time being be acting as Returning Officer shall cease, and the Mayor shall take his place, subject nevertheless to the Repayment to such first-mentioned Returning Officer of any Expenses properly incurred by him in the Execution of the Duties of his Office.

34. In case the Boundary of any Borough shall have been extended or altered, or any Borough shall have been disfranchised, by any Act passed or to be passed in the present Session of Parliament, the Town Clerk or Clerk of the Peace respectively shall forthwith, after the passing of

such Act and of this Act, send to the Overseers of every Parish or Township in which any Part of such extended or altered Boundary shall be situate, or which or any Part of which was within any such disfranchised Borough, the Forms of Precepts and Lists required by the Principal Act to be sent to Overseers, with such Modifications therein, if any, as may be necessary to meet the Provisions of any of such Acts.

35. Where the Boundary of any County or Borough is altered in pursuance of any Act passed during the present Session of Parliament, any Clerk of the Peace, Town Clerk, Returning Officer, or other Officer who would have Jurisdiction in relation to the Registration of Voters, or in relation to the Election of Members to serve in Parliament, within such County or Borough if it had remained unaltered, shall have Jurisdiction over the Area constituting such County or Borough as altered by the said Act.

36. Whereas by an Act passed in the present Session of Parliament for the Amendment of the Representation of the People of Scotland certain

Boroughs in England are disfranchised from after the Close of the present Session of Parliament, and it is desirable to provide with regard to such Boroughs for the Case of a Vacancy in the Representation of any of them during the present Session of Parliament, and with regard to the Counties in which such Boroughs are situated for any Registration of Voters which may be made during the present Session of Parliament: Be it enacted, That in respect of any Vacancy in the Representation of any of such Boroughs, and for the Purposes of any Registration of Voters for such Counties, during the present Session of Parliament, such Borough shall be deemed to be disfranchised from after the passing of this Act.

37. The Clerk of the Peace of every County and the Town Clerk or other Officer having charge of the Register of every City or Borough respectively, shall in each and every Year within Twenty-one Days after the First Day of February transmit to One of Her Majesty's Principal Secretaries of State a printed Copy of the Register of Voters then in force for such County, City, or Borough.

CAP. LIX.

The Irish Reformatory Schools Act, 1868.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short Title.*
2. *To apply to Ireland only.*
3. *Definition of Terms.*
4. *Mode of certifying Reformatory Schools.*
5. *When Reformatory School is certified by Lord Lieutenant, Notice to be published in the Dublin Gazette.*
6. *Power to appoint Assistant to Inspector.*
7. *Disposal of Inmates on Withdrawal or Resignation of Certificate.*
8. *Power to Grand Jury of a County or Council of a Borough to grant Money in aid of Maintenance of Offenders in Reformatory Schools.*
9. *No Money to be granted to Schools unless certified by Chief Secretary.*
10. *Grand Jury or Council may contract with the Managers for the Reception of Offenders from the County or Borough.*
11. *Monies granted under this Act, how to be raised.*
12. *Juvenile Offenders, how to be dealt with. Juvenile Offenders to be sent only to Schools managed by Persons of same Religious Belief as Parents of such Juveniles.*
13. *School to which Offender committed need not be named in the Sentence.*
14. *Supplemental Orders may be made.*
15. *Expenses of Conveyance how to be paid.*
16. *Governor of Prison, &c. to send Duplicate or Copy of Warrant of Commitment with Offender to Reformatory.*
17. *What shall be deemed sufficient Evidence as to Identity of Juvenile Offenders.*
18. *Power to Treasury to defray Cost of Maintenance at Reformatory School.*

9. *Absconding or refractory Conduct at Reformatory School, how to be punished.*
10. *Penalty for harbouring any young Person absconding from a Reformatory School.*
11. *Officers to have Privileges, &c. of Constables.*
12. *Power to Treasury to repay Half Cost of Recapture.*
13. *Contribution by Parents to the Maintenance of Offenders in a Reformatory School, how to be enforced.*
14. *Power to remit, reduce, or increase the weekly Payments. Payment not to exceed Five Shillings weekly.*
15. *Provisions in case of Default in Payment by Parents.*
16. *Provision for Care of Offenders when discharged from Reformatory Schools.*
17. *Power to apprentice Offenders.*
18. *Offenders may be removed from one School to another.*
19. *Rules respecting Evidence under this Act.*
20. *Service of Notice on Managers of Schools.*

Forms.

11. *Use of Forms in Schedule.*

Repeal of Enactments.

12. *Enactments herein named repealed.*
13. *Application of Act to existing Certified Schools.*

Schedule.

An Act to amend the Law relating to Reformatory Schools in Ireland. (16th July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

Preliminary.

1. This Act may be cited as The Irish Reformatory Schools Act, 1868.

2. This Act shall extend to Ireland only.

3. "Managers" shall include any Person or Persons having the Management or Control of any School to which this Act applies :

"Justice" shall mean a Justice of the Peace having Jurisdiction in the Place where the Matter requiring the Cognizance of a Justice arises :

"Justices" shall mean Two or more Justices in Petty Sessions, or a Police or Stipendiary Magistrate or other Justice having by Law Authority to act alone for any Purpose with the Power of Two Justices.

4. It shall and may be lawful for the Chief Secretary of the Lord Lieutenant of Ireland, upon Application made to him by the Directors or Managers of any such Institution, to direct One of Her Majesty's Directors of Convict Prisons in Ireland, or One of Her Majesty's Inspectors General of Prisons in Ireland, who shall be styled Inspector of Reformatory Schools in Ireland, or such special Inspector of Reforma-

tories as may be hereafter appointed by the Lord Lieutenant of Ireland, who is hereby authorized and empowered to appoint a fit and proper Person to be Inspector of Reformatory Schools in Ireland, who shall be styled Inspector of Reformatory Schools in Ireland, to examine and report to him upon its Condition and Regulations; and any such Institution as shall appear to the Satisfaction of the said Chief Secretary, and shall be certified under his Hand and Seal to be useful and efficient for its Purpose, shall be held to be a Reformatory School under the Provisions of this Act : Provided always, that it shall be lawful for any of Her Majesty's Inspectors of Reformatories as aforesaid to visit from Time to Time any Reformatory School which shall have been so certified as aforesaid; and if upon the Report of the Inspector the said Chief Secretary for the Time being shall think proper to withdraw his said Certificate, and shall notify such Withdrawal under his Hand to the Managers of the said Institution, the same shall forthwith cease to be a Reformatory School within the Meaning of this Act; and annual Reports of the Inspector as touching the Reformatory Schools under this Act shall be annually laid before both Houses of Parliament, accompanied by Accounts showing the Receipts and Expenditure of each such School, and the Certificates granted and withdrawn.

5. Whenever the Chief Secretary shall at any Time grant a Certificate under this Act to any Reformatory School, he shall within One Calendar Month cause a Notice thereof to be published in the *Dublin Gazette*, and such Publication shall be a sufficient Evidence of the Fact of such Reformatory School having been certified to

justify the Judge or the Justices before whom any such Juvenile Offender shall have been convicted to commit such Juvenile Offender thereto, subject to the Provisions of this Act; and whenever the Chief Secretary shall withdraw the Certificate granted to any Reformatory School, he shall within One Calendar Month give Notice of such Withdrawal in the said Gazette.

6. The Lord Lieutenant may from Time to Time appoint a fit Person to assist the Inspector of Reformatory Schools; and every Person so appointed shall have such of the Powers and Duties of the Inspector as the Chief Secretary from Time to Time prescribes, but shall act under the Direction of the Inspector.

7. When the Withdrawal of the Certificate of a Reformatory School takes effect, the youthful Offenders detained therein shall be, by the Order of the Chief Secretary, either discharged or transferred to some other Certified Reformatory School.

8. It shall be lawful for the Grand Jury of any County, County of a City, or County of a Town, if they shall think fit, at any Assizes, and for the Town Councils of the Boroughs of Dublin, Cork, and Limerick, upon the Application of the Directors or Managers of any Reformatory School for youthful Offenders which has been or which may hereafter be certified under this Act, supported in whole or in part by voluntary Contributions in such County or Borough respectively, to present a Sum of Money in aid of the Maintenance of such Offenders from such County or Borough respectively, sentenced to or detained in such Reformatory School, to be raised off the said County or Borough, subject to such Conditions as may be agreed upon between such Grand Jury or Council and such Directors, Managers, or Promoters.

9. Provided, That no Money shall be presented or ordered to be raised as aforesaid under this Act in aid of any Reformatory School unless the Institution has been certified by the Chief Secretary as aforesaid, nor shall any Money be paid under any such Presentment or Order in aid of any School which shall have been so certified in case such Certificate shall have been withdrawn.

10. It shall be lawful for the Grand Jury of any County, County of a City or County of a Town, and for the Council of such Borough as aforesaid, at a Special Meeting of such Council called for the Purpose, to appoint and empower a Committee of such Grand Jury or Council to enter into an Agreement with the Directors or Managers of any Reformatory School certified as aforesaid, for the Reception and keeping in such

School from Time to Time of Offenders from such County or Borough sentenced to be detained in a Reformatory School, in consideration of such periodical Payments as may be agreed upon with such Managers or Directors; and such Grand Jury or Council shall present the Payments of the Money which may from Time to Time become payable under such Agreement without any previous Application to a Presentment Sessions.

11. All Monies presented to be raised and paid for the Reception and keeping of such Offenders in such School shall be presented and raised in the same Manner in all respects and subject to the same Conditions as Money to be presented and raised by the Grand Jury of any such County or by the Council of such Borough as aforesaid respectively for defraying the ordinary current Expenditure of their several Gaols.

12. Whenever after the passing of this Act any Person shall be convicted of any Offence punishable with Penal Servitude or Imprisonment before any Judge of Assize or Judge sitting under a Commission of Oyer and Terminer, or before any Court of Quarter Sessions, or before the Divisional Justices of the Dublin Metropolitan Police District, or before any Justice or Justices of the Peace at Petty Sessions, whose Age shall not, in the Opinion of such Judge or Court, exceed the Age of Sixteen Years, then and in every such Case it shall be lawful for the Judge or Court, or the Divisional Justices, or the Justices at Petty Sessions as aforesaid, before or by whom such Offender shall be so convicted, in addition to the Sentence then and there passed as a Punishment for his or her Offence, to direct such Offender to be sent, at the Expiration of such Sentence, to some One of the aforesaid Reformatory Schools the Directors or Managers of which shall be willing to receive such Offender, and to be there detained for a Period not less than Two Years and not exceeding Five Years; and such Offender shall be liable to be detained pursuant to such Direction: Provided always, that no Offender shall be directed to be so sent and detained as aforesaid unless the Sentence passed as a Punishment for his Offence at the Expiration of which he is directed to be so sent and detained shall be one of Imprisonment for Fourteen Days at the least; and provided also, that no such Offender shall be liable or directed to be sent to any such Reformatory, except to some one Reformatory under the exclusive Management of Persons of the same Religious Persuasion as that professed by the Parents or Guardians of such Juvenile Offender; and in all Cases in which the Religion of the Parents or Guardians of such Juvenile Offender is unknown, the said Juvenile Offender shall be considered as

elonging to that Religious Persuasion in which he or she shall appear to have been baptized, or of which he or she shall profess to be a Follower : provided also, that in case the Court which shall order such Offender to be so sent and detained as aforesaid shall think it right to sentence such Offender to a previous Term of Imprisonment to which such Offender shall have been sentenced as Punishment for his or her Offence, such Term of Imprisonment shall be directed to be carried out and spent, as far as is practicable, in strict separation : Provided also, that the Chief Secretary may at any Time order any such Offender to be discharged from any such School : Provided also, that whenever any Order shall be made under this Act by any Divisional Justice, or by any Justices of Petty Sessions, for sending any juvenile Offender to any Reformatory School, it shall and may be lawful for such Juvenile Offender, or any Parent or Guardian of him or her, to appeal against any such Order, in case the same be made by any Divisional Justice, to the Recorder of the City of Dublin at his next sessions, and in case such Order be made by any Justices at Petty Sessions, to the next Quarter Sessions of the Division within which the Petty Sessions at which such Order shall be made shall be situate, but in case there shall not be Fifteen clear Days between the making of the Order and the next Sessions of the said Recorder or the next Quarter Sessions of such Division as aforesaid, then to the next following Sessions of the said Recorder, or the next following Quarter Sessions of such Division as aforesaid ; and every such Appellant shall give or cause to be given to the Divisional Justice whose Order is appealed from, or to the Clerk of the Petty Sessions at which the Order appealed from has been made, Notice in Writing of his Intention to appeal, at least Seven Days before the Commencement of the Sessions or Quarter Sessions to which such appeal shall be made ; and whenever any such appeal shall have been so made, and such last-mentioned Notice shall have been duly given, it shall be lawful for the Recorder, or for the said Court of Quarter Sessions, as the Case may be, to entertain the same, and to confirm, reverse, or vary the Order complained of, or to order that such Juvenile Offender shall be sent to some other Reformatory School established under this Act, and such Appeal shall not be dismissed upon any Point of Form.

13. It shall not be necessary, at the Time of passing Sentence, for any such Judge or Court to name the particular School to which such Offender is to be sent, but it shall be sufficient for such Judge or Court to direct that such Offender be sent to such School (being a School duly certified under the Act, and the Directors or Managers of which may be willing to receive him,) as may

thereafter, and before the Expiration of the Term of Imprisonment to which such Offender has been sentenced, be directed by One of the Judges or by the Justices of the Court before whom such Offender shall be so convicted.

14. Any such Court, having made an Order under the Authority of this Act for sending any Offender to any Reformatory, may make a supplemental Order, if the Court shall so think fit, at any Time thereafter, and before the Expiration of the Term of Imprisonment to which such Offender has been sentenced, exchanging the Name of such Reformatory for the Name of any other Reformatory to which such Offender might in the first instance legally have been sent, provided the Directors or Managers of such Reformatory be willing to receive such Offender, and such Offender shall be sent to such last-mentioned School accordingly.

15. The Expense of conveying any Juvenile Offender sentenced under this Act to the Reformatory School to which he has been committed under an original or supplemental Order shall be charged and chargeable upon the County, County of a City, or County of a Town from which he shall have been first removed, and such Expenses shall in the first instance be paid as follows ; that is to say, by the Governor of the Prison of such County, County of a City, or County of a Town, when such Expenses shall have been incurred by the Governor or any Officer of any Prison therein respectively having the Custody under Sentence of such Offender, other than a Bridewell, and by the local Inspector of Constabulary when such Expenses shall have been incurred by the Keeper or other Officer of any Bridewell therein respectively having the Custody under Sentence of such Offender ; and such Governor and local Inspector respectively shall from Time to Time lay before the Board of Superintendence of the said Prison Accounts duly vouched of the Expenses so incurred ; and the said Board shall examine such Accounts, and upon being satisfied of their Reasonableness and Accuracy shall pay the same out of any Funds under their Control, in like Manner as if such Expenses had been incurred for the Removal of Prisoners under the Provisions of an Act passed in the Fourteenth and Fifteenth Years of the Reign Her Majesty, Chapter Eighty-five, and the said Act shall extend to and include such Expenses.

16. It shall be the Duty of the Governor of any Prison, or the Keeper or other Officer of any Bridewell having the Custody under Sentence of any Juvenile Offender who is ordered to be sent to any Reformatory, to forward, with such Offender, to such Reformatory, an original Duplicate, if any such Duplicate exists, of the

Warrant of Commitment under which such Offender has been imprisoned, and if no such Duplicate exists, to forward with such Offender a Copy of such Warrant, and at the Foot of such Duplicate or Copy to make a Memorandum stating that the Juvenile Offender named therein, and sent therewith, is identical with the Person delivered with the Warrant of which the Instrument is a Duplicate or a Copy to such Prison or Bridewell, and such Memorandum shall be signed by such Governor or Keeper or other Officer aforesaid, and the Possession of such Warrant or Copy of a Warrant, with such Memorandum so signed, shall be a sufficient Authority for the Detention of such Juvenile Offender in such Reformatory.

17. The Production of an original Duplicate of the Warrant of Commitment or a Copy of the Warrant of Commitment of such young Person, with a Memorandum as aforesaid, signed or purporting to be signed by the Governor or Keeper of the Gaol or Bridewell from which such young Person was sent as herein-before provided, accompanied by a Statement signed or purporting to be signed by the Manager or Superintendent of any Reformatory School, that the young Person named in such Warrant or Copy was duly received into and is at the signing thereof detained in such School, or has been otherwise disposed of according to Law, shall in all Proceedings whatsoever be sufficient Evidence of the due Conviction and Imprisonment and subsequent Detention and Identity of the young Person named in such Warrant.

18. It shall be lawful for the Commissioners of Her Majesty's Treasury, upon the Representation of the Chief Secretary of the Lord Lieutenant of Ireland, to defray, out of any Funds which shall be provided by Parliament for that Purpose, either the whole Cost of the Care and Maintenance of any Juvenile Offender so detained in any Reformatory School as aforesaid, at such Rate per Head as shall be determined by them, or such Portion of such Cost as shall be recommended by the said Chief Secretary.

19. And whereas it is expedient that some Provisions should be made for the Punishment of any Juvenile Offender so directed to be detained as aforesaid in any such Reformatory School who shall abscond therefrom, or wilfully neglect or refuse to abide by and conform to the Rules thereof: Be it enacted, That it shall and may be lawful to and for any Justice of the Peace or Magistrate in Petty Sessions, or Police Magistrate, acting in and for the County, City, Borough, Riding, or Division wherein the said Offender shall actually be or be recaptured, at the Time he or she shall so abscond, or neglect or refuse as

aforesaid, upon the Proof thereof made before him upon the Oath of One credible Witness, by Warrant under his Hand and Seal to commit the Party so offending for every such Offence to any Gaol or House of Correction for the said County, City, Borough, Riding, or Division, with or without Hard Labour, for any Period not exceeding Six Calendar Months, such Period of Imprisonment to be passed, as far as is practicable, in strict Separation; and such Offender shall at the Termination of such Imprisonment be transmitted to the same Reformatory to which he or she was originally sentenced, if the Directors or Managers shall be then willing to receive such Offender, there to complete the full Term of his or her original Sentence.

20. Any Person who shall directly or indirectly wilfully withdraw any young Person from any such Reformatory School or Institution as aforesaid to which he or she has been so sent, or induce him or her to abscond therefrom, or who, knowing any young Person to have been withdrawn or to have absconded from any such School or Institution as aforesaid, shall harbour or conceal or assist in concealing such young Person, or prevent him or her from returning to such School or Institution, shall be liable for any such Offence to a Penalty not exceeding Five Pounds, to be recovered and enforced by summary Conviction in the same Manner, and subject to the same Provisions and Orders, and under the same Powers, as any penal or other Sum may be enforced by summary Conviction under the Petty Sessions, Ireland, Act, 1851.

21. Every Officer of a Certified Reformatory School authorized by the Managers of the School, in Writing under their Hands or the Hand of their Secretary, to take charge of any youthful Offender sentenced to Detention under this Act for the Purpose of conveying him to or from the School, or of bringing him back to the School in case of his Escape or Refusal to return, shall, for such Purpose and while engaged in such Duty, have all such Powers, Authorities, Protection, and Privileges for the Purpose of the Execution of his Duty as a Reformatory Officer as any Constable has while acting within his Jurisdiction.

22. Whenever the Inspector of Reformatory Schools shall certify under Hand in Writing that in his Opinion the absconding of any young Offender from any Reformatory School was not the Result of Negligence or Want of due Precaution upon the Part of the Manager, Half the Expenses of Recapture shall be paid to the Manager by the Treasury.

23. In every Case in which any Juvenile Offender shall be sentenced to be detained in a

Reformatory School under this Act, the Court by which he or she shall be so sentenced shall direct the proper Officer of the Court to issue his Certificate of the said Sentence, which shall be conclusive Evidence thereof; and in every Case of such Sentence as aforesaid the Parent or Step Parent of such Offender shall, if of sufficient Ability, be liable to contribute to his or her Support and Maintenance a Sum not exceeding Five Shillings a Week; and it shall be lawful for any Justice or Justices of the Peace sitting at Petty Sessions for the District in which such Parent or Step Parent shall reside, or for any Divisional Police Magistrate in any City or Borough in which such Parent or Step Parent shall reside, upon the Complaint of any Person authorized by the Chief or Under Secretary of the Lord Lieutenant for Ireland to take Proceedings in that Behalf, to summon the Parent or Step Parent, as the Case may be, and on the Hearing of such Summons, whether the Party summoned shall appear or not, to examine into his or her Ability to contribute to such Offender's Support or Maintenance, and to make an Order upon him or her for such weekly Payment, not exceeding Five Shillings per Week, as shall seem reasonable, during the whole or any Part of the Detention of such Juvenile Offender in such Reformatory School, such Payment to be made, at such Times as by such Order may be directed, to the Person so authorized to take Proceedings as aforesaid, or to such Person as such Chief or Under Secretary may from Time to Time appoint to receive the same, and by him to be accounted for and paid as the said Chief or Under Secretary may direct.

24. The Parent or Step Parent, or the Person authorized by the Chief or Under Secretary of the Lord Lieutenant of Ireland to take Proceedings as aforesaid, may respectively at any Time apply to any Justice or Justices of the Peace sitting at Petty Sessions for the District in which such Parent or Step Parent resides, or before any Divisional Police Magistrate for any City or Borough in which such Parent or Step Parent resides or in which such Reformatory is situated, for an Order to diminish the weekly Sum payable by said Parent or Step Parent under such Order as aforesaid, or to increase it to an Amount not exceeding Five Shillings per Week; and the Justices or Stipendiary or Divisional Police Magistrate as aforesaid, on Proof that the said Parent or Step Parent, or the said Person so authorized to take Proceedings as aforesaid, have given to each other, as the Case may be, not less than One Week's Notice in Writing of the intended Application, and of the Time and Place of hearing the same, shall make full Inquiry into the Matter and into the then Circumstances and Ability of such Parent or Step Parent, and may

diminish or increase the Amount of the weekly Sum payable by such Parent or Step Parent as they think fit, or may release him from such Payment altogether, such Order to be without Prejudice to any future Order which on any further Inquiry into the Circumstances and Ability of the said Parent or Step Parent may appear to be just and reasonable.

25. In case Default be made for the Space of Fourteen Days in Payment of any Sum of Money which may have become payable by such Parent or Step Parent under any such Order, such Sum of Money shall in every such Case be levied upon the Goods and Chattels of the Defendant by Distress and Sale thereof; and if it shall appear to the said Justices, on Confession of the Defendant or otherwise, or if it shall be returned to the Warrant of Distress, in any such Case, that no sufficient Goods of the Party against whom such Warrant shall have been issued can be found, it shall be lawful to the Justices or Magistrate to whom such Return is made, or for any other Justice of the Peace for the same County, Riding, Division, Liberty, City, Borough, or Place, by his Warrant as aforesaid, to commit the Defendant to the House of Correction or Common Gaol for any Term not exceeding Ten Days, unless the Sum to be paid, and all Costs and Charges of the Distress, and of the Commitment and conveying of the Defendant to Prison, (the Amount thereof being ascertained and stated in such Commitment,) shall be sooner paid.

26. Whereas it is expedient to make further Provision for the due Care and Protection of Juvenile Offenders discharged from Reformatory Schools: It shall be lawful for the Managers of any Reformatory School, previous to making Application for the Discharge of any Juvenile Offender committed to such School, to place such Offender on Trial with some Person to be named in the Licence herein-after mentioned, who shall be willing to receive and take charge of and qualified to provide for and take care of such Offender, and to grant to such Offender a Licence under their Hands, or the Hand of any One of them appointed for that Purpose, to reside with such Person for any Term not exceeding Twelve Months, unless sooner called upon by the said Managers to return to the said School, and to require such Offender to return to the said School at any Time during the same; and any Offender who shall abscond from such Person during such Term, or shall refuse to return to the Reformatory School at the End of such Term or before the End of the Time, when so required, shall be held to have absconded from the School, and shall be liable to the Penalties in that Case made and provided: Provided always, that no such Offender shall be so placed out before the Expiration of

One Half of the Term of Detention to which he was originally sentenced.

27. The Managers of a Certified Reformatory School may, at any Time after an Offender has been placed out on Licence as aforesaid, if he conducted himself well during his Absence from the School, bind him, with his own Consent, Apprentice to any Trade, Calling, or Service, notwithstanding that his Period of Detention has not expired; and every such Binding shall be valid and effectual to all Intents.

28. It shall and may be lawful for the Chief Secretary of the Lord Lieutenant of Ireland, if he shall think fit to do so, to remove any such youthful Offender from one Reformatory School to another: Provided always, that such Removal shall not increase the Period for which such Offender was sentenced to remain in a Reformatory School, and that the same shall only be to some Reformatory under the Management of Persons of the same Religious Profession as that to which he or she might have been originally committed.

29. The following Rules shall be enacted with respect to Evidence under this Act:

- (1.) The Production of the *Dublin Gazette*, containing a Notice of the Grant or Withdrawal of a Certificate by the Chief Secretary to or from a Reformatory School, or of the Resignation of any such Certificate, shall be sufficient Evidence of the Fact of the Publication of such Notice, and also of the Fact of a Certificate having been duly granted to or withdrawn from the School named in the Notice, or resigned by the Managers thereof.
- (2.) The Grant of a Certificate to a certified School may also be proved by the Production of the Certificate itself, or of a Copy of the same purporting to be signed by the Inspector of Reformatory Schools.
- (3.) The Production of the Warrant or other Document in pursuance of which a youthful Offender is directed to be sent to a Certified Reformatory School, with a Statement indorsed thereon or annexed thereto, purporting to be signed by the Superintendent or other Person in charge of the School, to the Effect that the Offender therein named was duly received into and is at the Date of the signing thereof detained in the School, or has been otherwise dealt with according to Law, shall in all Proceedings relating to such Offender be Evidence of the Identity of and of the due

Conviction and Imprisonment of and subsequent Detention of the Offender named in the Warrant or other Document.

- (4.) A Copy of the Rules of a Certified Reformatory School, purporting to be signed by the Inspector of Reformatory Schools, shall be Evidence of such Rules in a legal Proceedings whatever.
- (5.) A School to which any youthful Offender is directed to be sent in pursuance of this Act shall, until the contrary is proved, be deemed to be a Certified Reformatory School within the Meaning of this Act.

30. Any Notice may be served on the Managers of a Certified Reformatory School by delivering the same personally to any One of them or by sending it, by Post or otherwise, in a Letter addressed to them or any of them at the School or at the usual or last known Place of Abode of any Manager, or of their Secretary.

Forms.

31. No Summons, Notice, or Order made for the Purpose of carrying into effect the Provisions of this Act shall be invalidated for Want of Form only; and the Forms in the Schedule to this Act annexed, or Forms to the like Effect, may be used in the Cases to which they refer, with such Variations as Circumstances require, and when used shall be deemed sufficient.

Repeal of Enactments.

32. There shall be repealed the Enactment herein-after mentioned; that is to say,

The Act of the Session of the Twenty-first and Twenty-second Years of Her present Majesty Chapter One hundred and three, intituled "An Act to promote and regulate Reformatory Schools in Ireland."

Provided that such Repeal shall not affect—

1. Any Certificate given or anything duly done under any Act hereby repealed;
2. Any Penalty, Forfeiture, or other Punishment incurred under any Act hereby repealed, or any Remedy for recovering or enforcing the same.

33. This Act shall apply to all Reformatory Schools certified under the Act hereby repealed; and to all Offenders sent to any Reformatory School under the Act hereby repealed, in the same Manner in all respects as if such School had been certified and such Offenders had been sent thereto under this Act, with this Qualification, that no youthful Offender shall be detained in any Reformatory School in pursuance of any Order made under the repealed Act for a longer Period than he would have been liable to be detained therein if this Act had not been passed.

SCHEDULE.

FORMS.

(A.)

Conviction.

Be it remembered, That on the
Day of at
the said [County] of A.B.,
nder the Age of Sixteen Years, to wit, of the
ge of [Thirteen] Years, is convicted before us,
wo of Her Majesty's Justices of the Peace for
he said [County], for that [&c., state Offence in
sual Manner]; and we adjudge the said A.B. for
is said Offence to be imprisoned in the [Prison]
t in the said [County], [and
o be there kept to Hard Labour] for the Space
f
And that, in pursuance of The Irish Reforma-
ory Schools Act, 1868, we also sentence the said
B. (whose Religious Persuasion appears to us
o be) to be sent, at the Expira-
ion of the Term of Imprisonment aforesaid, to
Reformatory School at
the County of (the Managers
hereof are willing to receive him), [or to some
ertified Reformatory School to be hereafter, and
efore the Expiration of the Term of Imprison-
ment aforesaid, named in this Behalf], and to be
here detained for the Period of
ommencing from and after the
Day of [the Date of the Expira-
ion of the Sentence].

Given under our Hands and Seals, the Day and
Year first above mentioned, at
n the [County] aforesaid.

J.S. (L.S.)
L.M. (L.S.)

(B.)

Order of Detention.

To the Constable of
and to the Governor of the [Prison]
it in the said [County] of

WHEREAS A.B., late of [Labourer],
under the Age of Sixteen Years, to wit, of the
Age of [Thirteen] Years, was this Day duly
convicted before the undersigned, Two of Her Ma-
esty's Justices of the Peace in and for the said
County] of , for that [&c.,
stating the Offence as in the Conviction], and it
was thereby adjudged that the said A.B. for his
said Offence should be imprisoned in the [Prison]
it in the said [County], [and
be there kept to Hard Labour] for the Space of
; and in pursuance of The Irish

Reformatory Schools Act, 1868, the said A.B.
(whose Religious Persuasion appeared to us to
be) was thereby sentenced to
be sent, at the Expiration of the Term of Imprisonment aforesaid, to the Reformatory School at in the County of (the Managers whereof are willing to receive him therein), [or to some Certified Reformatory School to be before the Expiration of the said Term named in that Behalf,] and to be there detained for the Period of commencing from and after the Day of [the Date of the Expiration of the Sentence]:

These are therefore to command you, the said Constable of , to take the said A.B., and him safely convey to the [Prison] at aforesaid, and there to deliver him to the Governor thereof, together with this Precept: And we do hereby command you, the said Governor of the said [Prison], to receive the said A.B. into your Custody in the said [Prison], there to imprison him [and keep him to Hard Labour] for the Space of : [And we further command you, the said Governor, to send the said A.B. at the Expiration of his Term of Imprisonment aforesaid, as and in the Manner directed by The Irish Reformatory Schools Act, 1868, to the Reformatory School at

aforesaid [or to the Reformatory School named by an Order indorsed hereon under the Hands and Seals of us, or under the Hand and Seal of One other of Her Majesty's Justices of the Peace for the said County, being a Visiting Justice of the said Prison], together with this Order:] And for so doing this shall be your sufficient Warrant.

Given under our Hands and Seals, this
Day of in the Year of our Lord
at in the
[County] aforesaid.

J.S. (L.S.)
L.M. (L.S.)

(C.)

Nomination of School indorsed on the Order of Detention.

IN pursuance of The Irish Reformatory Schools Act, 1868, I, the undersigned, One of Her Majesty's Justices of the Peace for the [County] of hereby name the

Reformatory School at in the County of as the School to which the within-named A.B. (whose Religious Persuasion appears to me to be) is to

be sent as within provided [add where required in lieu of the School within (or above) named].

Given under my Hand and Seal, this
Day of _____ at _____ in the
County of _____

B.F. (L.S.)

(D.)

*Complaint for enforcing Contribution from
Parent, &c.*

THE Complaint of the Inspector of
to wit. } Reformatory Schools [or as the Case
may be] made to us, the undersigned, Two of Her
Majesty's Justices of the Peace for the said
County of _____, this
Day of _____ at _____ in the
same County, who says, That one A.B. of (*) the
Age of _____ Years, or thereabouts, is
now detained in the _____ Refor-
matory School at _____ in the County
of _____, under The Irish Reformatory
Schools Act, 1868, and has been duly ordered
and directed to be detained therein until the
Day of _____ : That one
C.B., dwelling in the Parish of _____
in the County of _____, is the Parent
[or Step Parent, &c.] of the said A.B., and is of
sufficient Ability to contribute to the Support and
Maintenance of the said A.B., his Son : (*) The
said Complainant therefore prays that the said
C.B. may be summoned to show Cause why an
Order should not be made on him so to con-
tribute.

Exhibited before us,

J.S.
L.M.

C.D.

(E.)

Summons to Parent, &c.

To C.B. of [Labourer].

WHEREAS Information hath this Day been
laid [or Complaint hath this Day been made]
before the undersigned [One, or as the Case may
be,] of Her Majesty's Justices of the Peace in and
for the said [County] of _____, for that
you [here state shortly the Matter of the Infor-
mation or Complaint] : These are therefore to
command you, in Her Majesty's Name, to be and
appear on _____ at _____ o'Clock in
the Forenoon at _____ before such Justices
of the Peace for the said County [or as the Case
may be] as may then be there, to answer to the
said Information [or Complaint], and to be
further dealt with according to Law.

Given under my [or our] Hand and Seal,
this _____ Day of _____ in the

Year of our Lord _____, at
in the [County] aforesaid.

J.S. (L.S.)

Warrant where the Summons is disobeyed.

To the [Head or other] Constable of
and to all other Peace Officers in the said [County]
of _____

WHEREAS on _____ last past Infor-
mation was laid [or Complaint was made] before
the undersigned [One] of Her Majesty's Justice
of the Peace in and for the said [County], of
_____ for that A.B. [&c., as in the
Summons] : And whereas [I] then issued my
Summons unto the said C.B., commanding him
in Her Majesty's Name to be and appear
on _____ at _____ o'Clock in the
Forenoon at _____ before such Justice
of the Peace for the said [County] as might then
be there, to answer to the said Information [or
Complaint], and to be further dealt with ac-
cording to Law : And whereas the said C.B. hath
neglected to be or appear at the Time and Place
so appointed in and by the said Summons,
although it hath now been proved to me on Oath
that the said Summons hath been duly served upon
the said C.B. : These are therefore to command
you, in Her Majesty's Name, forthwith to ap-
prehend the said C.B., and to bring him before
some One or more of Her Majesty's Justices of
the Peace in and for the said [County], to answer
to the said Information [or Complaint], and to be
further dealt with according to Law.

Given under my Hand and Seal, this
Day of _____ in the Year of our Lord
aforesaid. _____, at _____ in the [County]
aforesaid.

J.S. (L.S.)

(F.)

*Order on Parent, &c. to contribute a weekly
Sum.*

BE it remembered, that on this
to wit. } Day of _____ at _____ in
the said [County] of _____ a certain Com-
plaint of the Inspector of Reformatory Schools
[or as the Case may be], for that one A.B. of, &c.
[stating the Cause of Complaint, as in the Form (D.)
between the Asterisks (*) (*)] was duly heard by
and before us, the undersigned, Two of Her
Majesty's Justices of the Peace in and for the
said [County] of _____ (in the Presence
and Hearing of the said C.B., if so, or the said
C.B. not appearing to the Summons duly issued
and served in this Behalf); and we, having duly
examined into the Ability of the said C.B., and
on consideration of all the Circumstances of the
Case, do order the said C.B. to pay to the said
Inspector [or to an Agent of the said Inspector]

the Sum of Shillings per Week from
of the Date of this Order until the Day
of , the same to be paid at the Ex-
piration of each [Fourteen, or as the Case may be,
Days].

Given under our Hands and Seals, the Day
and Year first above mentioned, at in
the [County] aforesaid.

J.S. (L.S.)
L.M. (L.S.)

(G.)

Distress Warrant for Amount in arrear.

To the Constable of ,
and to all other Peace Officers in
the said [County] of

WHEREAS on the Hearing of a Complaint
made by the Inspector of Reformatory Schools,
[or as the Case may be,] that A.B. of, &c. [stating
the Cause of Complaint as in the Form (D.) be-
tween the Asterisks (*) (*)], an Order was made
on the Day of by us,
he undersigned [or by L.M. and J.H.], Two
of Her Majesty's Justices of the Peace in and for
the said [County] of against the said
C.B., to pay to the said Inspector [or as the Case
may be] the Sum of per Week from
the Date of the said Order until the
Day of , the same to be paid at the
Expiration of each [Twenty-eight] Days [or as the
Case may be] (*): And whereas there is due upon
the said Order the Sum of , being for
[Three] Periods of [Fourteen] Days each, and
Default has been made therein for the Space of
fourteen Days:

These are therefore to command you, in Her
Majesty's Name, forthwith to make Distress of
the Goods and Chattels of the said C.B., and
within the Space of [Five] Days next after the
making of such Distress the said last-mentioned
Sum, together with the reasonable Charges of
taking and keeping the said Distress, is not paid,
that then you do sell the said Goods and Chattels
or by you distrained, and do pay the Money
arising from such Sale to the Clerk
of the Petty Sessions for the District of ,
that he may pay and apply the same as
by Law directed, and may render the Overplus
(if any), on Demand, to the said C.B.; and
if no such Distress can be found, then that you
certify the same to us, to the end that such

Proceedings may be had therein as the Law
requires.

Given under our Hands and Seals, this
Day of at
in the [County] aforesaid.

J.S. (L.S.)
L.M. (L.S.)

(H.)

Commitment in default of Distress.

To the Constable of and
to wit. } to the Governor of the [Prison]
at in the said [County] of

WHEREAS [&c., as in the Form (G.) to the
single Asterisk (*), and then thus]: And whereas
afterwards, on the Day of
last, I, the undersigned, together with L.M.,
Esquire, [or J.S. and L.M., Esquires,] Two of
Her Majesty's Justices of the Peace in and for
the said [County] of , issued a
Warrant to the Constable of afore-
said, commanding him to levy the Sum of
due upon the said recited Order,
being for [Three] Periods of [Fourteen] Days,
by Distress and Sale of the Goods and Chattels
of the said C.B.: And whereas a Return has this
Day been made to me the said Justice [or the
undersigned, One of Her Majesty's Justices of
the Peace in and for the said [County] of
], that no sufficient Goods of the
said C.B. can be found:

These are therefore to command you, the said
Constable of , to take the said C.B.,
and him safely to convey to the [Prison] at
 aforesaid, and there deliver him to
the Governor thereof, together with this Pre-
cept: And I do hereby command you, the said
Governor of the said [Prison], to receive the said
C.D. into your Custody in the said [Prison],
there to imprison him for the Term of ,
unless the said Sum, and all Costs and Charges
of the said Distress, and of the Commitment and
conveying of the said C.D. to the said [Prison],
amounting to the further Sum of ,
shall be sooner paid unto you the said Governor;
and for your so doing this shall be your suffi-
cient Warrant.

Given under my Hand and Seal, this
Day of in the Year of our Lord
 at in the [County]
aforesaid.

J.S. (L.S.)

CAP. LX.

The Curragh of Kildare Act, 1868.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short Title.*
2. *Interpretation of Terms.*

General Management.

3. *Management of Curragh by Ranger.*

Ranger.

4. *Office of Ranger.*
5. *Office of Deputy Ranger.*
6. *Abolition of Ranger's Fees.*

Three Divisions of Curragh, and their Use.

7. *Division of Curragh into Three Parts.*
8. *Control of Site of Camp by War Department.*
9. *Use of Rifle Ground.*
10. *Use of Green Lands.*

Powers and Duties of War Department.

11. *Power for War Department to add to Site of Camp.*
12. *Power for War Department to drain Camp.*
13. *Actions and Suits by and against War Department.*
14. *When Site of Camp and Use of Rifle Ground no longer required for Military Purposes, same to become subject to Control of Ranger.*
15. *Power for War Department to dig Gravel.*
16. *Diversion of Road from Ballysax to Athgarvan.*
17. *Use of Curragh for Racing Purposes.*

Rights of Common, &c.

18. *Continuance of Rights of Common.*

The Curragh Commissioners.

19. *Curragh Commissioners constituted.*
20. *Qualification and Appointment of Commissioners.*
21. *Vacancies among Commissioners.*
22. *Power of Two Commissioners.*
23. *Clerk to Commissioners.*
24. *Remuneration, &c. of Commissioners and Clerk.*
25. *Power to employ Surveyors, &c.*
26. *Expenses of Commissioners to be provided by Parliament.*
27. *Mode of Publication of Notices by Commissioners.*
28. *Signature of Notice, &c.*
29. *Forms in Third Schedule.*
30. *Power for Commissioners to make Rules.*
31. *Protection of Commissioners.*
32. *Penalty for disturbing Commissioners.*
33. *Constables, &c. to aid.*

Inquiries of Commissioners.

34. *Commissioners to ascertain Rights of Common, &c.*
35. *Commissioners to ascertain public Rights of Way.*

Proceedings by and before Commissioners.

36. *Commissioners to publish Notice of Act, Time for Claims, &c.*
37. *Claims to be made within Time fixed.*

- 18. *Form of Claim.*
- 19. *Power to enlarge Time.*
- 20. *Claimant under Disability.*
- 21. *Amendment of Claim.*
- 22. *Hearing of Claims.*
- 23. *Decision on Claims.*
- 24. *Power to send for Persons and Papers.*
- 25. *Person summoned bound to attend.*
- 26. *Penalty for Non-attendance or refusing to give Evidence.*
- 27. *Power for Commissioners to examine on Oath, &c.*
- 28. *Penalty for false Evidence.*

Appeal.

- 29. *Appeal on Points of Law to Court of Common Pleas.*
- 30. *Special Case to be signed, &c.*
- 31. *Recognizance by Appellant.*
- 32. *Transmission of Special Case.*
- 33. *Hearing and Determination of Appeal.*
- 34. *Amendment of Case.*
- 35. *Forfeiture of Appellant's Recognisance.*

Award.

- 36. *Time for Award.*
- 37. *Contents of Award.*
- 38. *Setting out of private Ways and stopping up of unnecessary Ways.*
- 39. *Commissioners to ascertain and state in Award Amount of Compensation (if any) to be awarded in respect of Rights of Common, &c.*
- 40. *Form, Deposit, &c. of Award.*
- 41. *Chief Secretary to obtain Confirmation of Award.*

Pasture.

- 42. *Regulation of Rights of Pasture over Curragh.*

Byelaws for Regulation of Curragh.

- 43. *Power to make Byelaws.*
- 44. *Penalties in Byelaws.*
- 45. *Recovery of Penalties.*
- 46. *Previous Publication of proposed Byelaws.*
- 47. *Sale of Copies of Byelaws.*
- 48. *Proof of Byelaws.*

Miscellaneous.

- 49. *Fees to be received by Irish Turf Club.*
- 50. *Rents of Lands in Schedule.*
- 51. *Power for County Surveyor to take Gravel.*

Custody of Map, Award, &c.

- 52. *Clerk of Peace to retain Map, Award, &c.*
- 53. *Copy of a deposited Map to be deposited at the Record and Writ Office.*
- 54. *Deputy Ranger to have Power to bring and defend Actions in respect of Green Lands.*

Exceptions and Savings.

- 55. *Exemption of Closes and Roads in Second Schedule.*
 - 56. *Nothing in Act to confer Right, &c.*
 - 57. *Saving for Rights of Crown and Individuals.*
- Schedules.*

An Act to make better Provision for the Management and Use of the Curragh of Kildare.
(16th July 1868.)

WHEREAS there is in the County of Kildare a Tract of Land known as the Curragh of Kildare (in this Act called the Curragh):

And whereas Part of the Curragh is occupied by an Encampment of some of Her Majesty's Forces:

And whereas, with a view to the better Management of the Curragh and the more beneficial User thereof, and the ascertaining and settling the Rights of Common of Pasture (if any) and other Rights (if any) which legally exist, either by Grant, Charter, or User, over the Curragh, and the ascertaining of the Claims for Compensation to those (if any) whose Rights may be interfered with by the Provisions of this Act, and for preserving the Use of the Curragh for the Purpose of Horse Racing and the Training of Race Horses, it is expedient that such Provisions be made as are in this Act expressed:

And whereas for the Purposes of this Act a Map has been deposited with the Clerk of the Peace for the County of Kildare, on which the Curragh is delineated (in this Act referred to as the deposited Map):

And whereas there are on the Curragh divers Closes or Parcels of Land and Buildings held under Grant or Lease or otherwise from the Crown, and divers Roads being public Highways (all which are described in the Second Schedule to this Act); and it is expedient that the same be exempted from the Operation of this Act:

May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Preliminary.

1. This Act may be cited as The Curragh of Kildare Act, 1868.

2. In this Act—

The Term "the Secretary of State for War" means such One of Her Majesty's Principal Secretaries of State for the Time being as Her Majesty thinks fit to intrust with the Seals of the War Department:

The Term "the Lord Lieutenant" means the Lord Lieutenant or other the Chief Governor or Governors of Ireland for the Time being:

The Term "Person" includes a Corporation Aggregate or Sole:

The Term "Justice" means a Justice of the Peace acting for the County of Kildare,

not being interested in the Matter requiring the Cognizance of a Justice:

The Term "Two Justices" means Two Justices assembled and acting together, and includes any resident Magistrate, or any Magistrate or Justice having by Law Authority to act for any Purpose with the Powers of Two Justices.

General Management.

3. Subject to the Provisions of this Act, the Care, Management, and Preservation of the Curragh shall be vested in the Ranger of the Curragh from and after the passing of this Act.

Ranger.

4. The Ranger of the Curragh shall be from Time to Time appointed by the Lord Lieutenant, and shall hold Office during the Pleasure of the Lord Lieutenant, and shall have such Powers and perform such Duties in relation to the Management and Preservation of the Curragh as the Lord Lieutenant from Time to Time thinks fit to direct, but there shall not be any Salary, Fees, or other pecuniary Remuneration paid to or received by the Ranger.

5. The Lord Lieutenant shall from Time to Time appoint a fit Person to be Deputy Ranger of the Curragh, who shall hold Office by the same Tenure as a Person serving in an established Capacity in the permanent Civil Service of the State, but shall be removable by the Lord Lieutenant; and the Deputy Ranger shall have such Powers and perform such Duties as the Lord Lieutenant, with the Advice of the Ranger, from Time to Time thinks fit to direct. The Ranger shall also from Time to Time appoint Two Bailiffs to assist the Deputy Ranger in the Discharge of his Duties, and such Bailiffs may be removed at any Time by the Ranger. The Deputy Ranger and Bailiffs shall receive such Salaries respectively as the Commissioners of Her Majesty's Treasury think fit, which, together with any other incidental Expenses incurred in the Execution of this Act, shall be defrayed out of any Money that may be provided by Parliament for the Purpose.

6. The Fees stated in the First Schedule to this Act, Part I., heretofore received by the Ranger for his own Use, shall cease to be paid or demanded.

Three Divisions of Curragh, and their Use.

7. From and after the passing of this Act, the Curragh shall, for the Purposes of the User thereof, be deemed to be divided into Three Parts as follows:

1. A Part lying to the Eastward, coloured Brown on the deposited Map, occupied by or adjoining to the Encampment, which

Part is in this Act referred to as the Site of the Camp :

2. A Part lying to the South and South-east of the Site of the Camp, coloured Blue on the deposited Map, used as a Ground for Rifle Practice, which Part is in this Act referred to as the Rifle Ground :
3. The Residue of the Curragh, coloured Green on the deposited Map, which Part is in this Act referred to as the Green Lands.

8. The Secretary of State for War shall have the exclusive Use and Control of the Site of the Camp while the same shall be occupied by a Camp, and during such Time all Rights of Common of Pasture, Rights of Way, or other Rights (except the Rights of the Crown) in, over, or affecting the Site of the Camp or any Part hereof shall be and the same are hereby suspended until the Site of the Camp shall be freed and discharged from such Rights of Common and other Rights as provided by this Act; provided that nothing herein shall authorize the Secretary of State to erect on the outer Boundary thereof any Wall of Brick or Stone, or any other Erection or the Purpose of enclosing the Site of the Camp, or restrict the public Right of Way on, over, and along the Road crossing the Site of the Camp, marked on the deposited Map and thereon distinguished by the Letters X, Y, save that the Officer in Command at the Camp may in any Case of Riot or Disturbance of the Peace, existing or apprehended, and on the Request or with the Consent of a Justice in Writing under his Hand, temporarily close that Road or any Part thereof against public Traffic.

9. The Secretary of State for War shall have the Use and Control of the Rifle Ground for Purposes of Rifle and Musketry Practice, and for Instruction in Field Works, with Power to erect and maintain Butts and other necessary or proper Works for such Practice, and to use such Rifle Ground for the Purposes of Drill, Exercise, and Recreation of Her Majesty's Troops, and for the Purposes of temporary Encampment thereon, when required in the Judgment of the Secretary of State.

10. The Secretary of State for War shall continue to have the Use of the Green Lands, subject to the Provisions herein-after contained, as to a Portion thereof, for Reviews, Drills, and other Military Purposes, and for the Exercise and Recreation of Her Majesty's Troops, and also, with the previous Assent in Writing of the Lord Lieutenant from Time to Time, the Use of a Portion thereof for the Purposes of temporary Encampment thereon in Cases of temporary Emergency.

Powers and Duties of War Department.

11. The Secretary of State for War may at any Time and from Time to Time, by Certificate under his Hand with Map annexed deposited with the Clerk of the Peace for the County of Kildare, take in and add to the Site of the Camp any Portion of the Green Lands, not exceeding in the whole One hundred Acres, and the Land comprised in any such Certificate shall, from and after the Deposit thereof, be deemed to be Part of the Site of the Camp within the Meaning and for the Purposes of this Act; and every such Certificate shall be in Duplicate, and one Part of it shall be deposited in the Record and Writ Office, Dublin, within One Month after the Deposit of the other Part with the Clerk of the Peace.

12. The Secretary of State for War may from Time to Time cause to be made such Sewers and Drains as are necessary for the effectual sewerage and draining of the Site of the Camp, and may carry such Sewers and Drains in, under, through, and across any Part of the Curragh, doing as little Damage as may be.

13. The Secretary of State for War may bring and may defend any Action, Suit, Prosecution, or Proceeding relative to the Site of the Camp or to the Rifle Ground in respect of any Trespass or Encroachment committed thereon or Damage done thereto, or in respect of any other Matter connected therewith; and in every such Action, Suit, Prosecution, or Proceeding the Secretary of State for War may be so styled, without more; and any such Action, Suit, Prosecution, or Proceeding shall not be affected by any Change in the Person holding the Office of Secretary of State for War; and in any such Action, Suit, Prosecution, or Proceeding the Secretary of State for War shall be liable and entitled to pay or receive Costs according to the ordinary Rules observed in Actions, Suits, Prosecutions, or Proceedings between Subject and Subject; and the same Right of Appeal is hereby given to the Secretary of State for War to which a Party proceeded against is now entitled, and upon the same Terms and Conditions, save as to the Necessity of the Secretary of State for War being required to enter into a Recognizance.

14. Whenever the Secretary of State for War shall no longer require the Use and Occupation of the Camp and the Use and Control of the Rifle Ground, and shall give Notice in Writing to the Under Secretary of the Lord Lieutenant of his Intention to withdraw from the Use and Occupation thereof, then One Month after such Notice the Site of the Camp shall become and be subject to the Power, Authority, and Control

of the Ranger of the Curragh, acting under the Provisions of this Act.

15. The Secretary of State for War may from Time to Time cause Gravel, Sand, or other Substances to be dug and raised on any Part of the Curragh, for the Purposes of the Maintenance and Repair of the Roads on the Curragh under his Control, and for other Purposes connected with the Encampment of Her Majesty's Troops on the Curragh; provided that no such Power shall be exercised in the Portion described as the Green Lands without the Consent of the Ranger for the Time being.

16. The Secretary of State for War may, if he thinks fit, make a new Road from the Point where the proposed new Road, shown on the deposited Map and coloured Red, diverges from the Road thereon shown and coloured Brown, and described as the present Road from Ballysax to Athgarvan, to the Point where the proposed new Road joins that present Road, as nearly as conveniently may be in the Line of the proposed new Road as shown on the deposited Map, and a Plan and Section of the said Road shall be deposited with the Surveyor for the County of Kildare previous to the Construction of same; and on the Completion of the new Road hereby authorized the Secretary of State may permanently stop up against Traffic and lay into the Curragh the Site of so much of the said present Road as lies between the Point where the proposed new Road diverges from that present Road and the Point where the proposed new Road joins that present Road; and on the Completion of the proposed new Road (whereof a Certificate under the Hands of Two Justices shall be conclusive Evidence) the same shall be deemed to be to all Intents a public Road in substitution for that Portion of the said present Road which is hereby authorized to be stopped up.

17. Subject to the Provisions of this Act, it shall be lawful for Her Majesty, Her Heirs and Successors, with the Advice of the Commissioners of Her Majesty's Treasury, to grant and permit the Society known as the Irish Turf Club, or, failing the same, any other like Society or Person, for the Purpose of Horse Racing and Training of Horses only, to use that Portion of the Green Lands bounded on the South by the Limerick Road, and on the West by a Line drawn from the said Limerick Road through the Police Barrack, and terminating at the Rathbride Post, and on the North and East by so much of the outer Boundary of the Curragh as lies between the Entrance of the said Limerick Road on the Curragh and the Rathbride Post aforesaid, for such Time, at such Rent, and subject to such Conditions as Her Majesty, Her Heirs and Successors,

may think proper; and also, with such Advice as aforesaid, by Warrant, under Seal or otherwise, to grant and demise to the said Society or other Person for any Term not exceeding Ninety-nine Years a Part of the said Portion of the Green Lands (not exceeding Ten Acres) for the Purpose of Buildings in connexion with and necessary for such Races, such Grant and Demise to be subject to such Rent and on such Terms and Conditions as may by Her Majesty, Her Heirs and Successors, be thought proper; and when any such Grant or Permission shall have been given, it shall not be lawful for the Secretary of State for War or the Commanding Officer of the Camp or any other Officer to use for Review, Drill, or Exercise of Her Majesty's Troops any Part of that Portion of the said Green Lands herein-before described, without the Leave in Writing of the Lord Lieutenant.

Rights of Common, &c.

18. Subject to the Provisions of this Act, all Rights of Common of Pasture, Rights of Way, and other Rights existing in, over, or affecting the Curragh at the passing of this Act, shall continue and be as if this Act had not been passed.

The Curragh Commissioners.

19. There shall be Three Commissioners, who shall be called the Curragh Commissioners (and to whom the Term "the Commissioners," where used in this Act, refers).

20. One of the Commissioners shall be a practising Barrister at Law of at least Ten Years standing who at the Time of his Appointment has actually practised Ten Years in Her Majesty's Superior Courts of Law at Dublin, and has not retired from Practice.

That Commissioner and One other of the Commissioners shall be appointed by the Lord Lieutenant. The remaining Commissioner shall be appointed by the Commissioners of Her Majesty's Treasury.

21. Any Vacancy happening by Death, Resignation, or otherwise in the Office of any of the Commissioners (appointed either originally or on a Vacancy) shall be filled up by the Appointment of another qualified Person to be One of the Commissioners by the Authority by whom the vacating Commissioner was appointed.

22. The Three Commissioners shall sit and hear each Case, but the Acts and Decisions of Two of the Commissioners shall be deemed to be Acts and Decisions of the Commissioners.

23. The Commissioners shall from Time to Time appoint by Writing a Clerk, who shall hold his Office during their Pleasure.

24. Each of the Commissioners and their Clerk shall receive, as Remuneration for his Services, such Sum (not exceeding as to a Commissioner six hundred Pounds) as the Commissioners of Her Majesty's Treasury think reasonable, and shall be allowed all Expenses properly incurred by him in executing this Act.

25. The Commissioners may from Time to Time employ Land Surveyors and Valuers in such Manner as they think fit.

26. The Remuneration of the Commissioners and of their Clerk, and all Expenses allowed to them, and the Expenses of the Employment of Land Surveyors and Valuers, shall be paid and defrayed under the Direction of the Commissioners out of Her Majesty's Treasury out of Money provided by Parliament.

27. Notices by this Act required to be published by the Commissioners shall be published by insertion in the *Dublin Gazette*, and in a Newspaper printed or usually circulating in the County of Kildare, and by Bills posted in conspicuous places on or near the Curragh.

28. Notices, Summonses, and other Instruments issued by the Commissioners for Service or Delivery shall be under the Hand of their Clerk.

29. The Form given in the Third Schedule to this Act, or a Form to the like Effect, shall be used for the Purpose therein indicated, subject and according to the Directions therein contained, and with such Variations as Circumstances require, in every Instrument made under this Section may be in Writing or Print, or partly in Writing and partly in Print.

30. The Commissioners may, from Time to Time, if they think fit, make and publish such Rules as seem fit (not being inconsistent with the Provisions of this Act) for regulating Proceedings by and before the Commissioners.

31. The Commissioners shall have the like Protection and Privileges in respect of any Act done or omitted to be done in execution or intended Execution of their Duties under this Act as Justices of the Peace acting in execution of their Office have by Law.

32. If any Person wilfully disturbs or obstructs the Commissioners in the Execution of their Duties, he shall for every such Offence be liable, on summary Conviction, to a Penalty not exceeding Five Pounds.

33. All Constables, Bailiffs, and other Officers shall give their Aid to the Commissioners in the execution of their Duties.

Inquiries of Commissioners,

34. The Commissioners shall ascertain and decide the following Things; namely,

What (if any) Rights of Common of Pasture, Rights of Way, or other Rights (except the Rights of the Crown and public Rights of Way) exist in, over, or affecting the Curragh or any Part thereof, either by Grant, Charter, or Prescription:

To what Persons, and for what Terms, Estates, or Interests, the Rights aforesaid respectively belong:

What (if any) are the Lands in respect of which the Rights aforesaid respectively are exercisable:

What (if any) Compensation should be given to any Party whose Rights are or may be injuriously affected by this Act.

35. The Commissioners shall also ascertain and decide what (if any) public Right of Way exists in, over, or affecting the Curragh or any Part thereof.

Proceedings by and before Commissioners.

36. The Commissioners shall, within One Month after their Appointment, publish a Notice appointing a Time and Place within and at which all Persons desiring to claim under this Act, on their own respective Behalf, any Right of Common of Pasture, Right of Way, or other Right in, over, or affecting the Curragh or any Part thereof, and all Persons desiring to claim under this Act, on behalf of the Public, any Right of Way or other Right in, over, or affecting the Curragh or any Part thereof, are to lodge their respective Claims, the Time not being less than One Month or more than Three Months after the Insertion of the Notice in the *Dublin Gazette*, and the Place being some convenient Place on or near the Curragh; and the Commissioners shall hold their Meetings at such Place and at such Times as they may consider most convenient for the Accommodation of Claimants and Suitors, and shall hold such a Number of Meetings in the Neighbourhood of the Curragh as shall be sufficient for hearing local Claimants.

37. All Persons desiring to claim as aforesaid shall lodge their Claims within and at the Time and Place aforesaid.

38. Every Claim shall be signed by the Claimant or his Attorney or Agent authorized in that Behalf.

39. A Claim shall not be received after the Expiration of the Time aforesaid, save that the Commissioners, on good Cause shown, may give Leave to any Person to lodge a Claim within such Time after the Expiration of the Time

aforesaid as they think fit, but not in any Case after the Expiration of Six Months from the Insertion of the Notice aforesaid in the *Dublin Gazette*.

40. Where any Person entitled to make a Claim is under the Disability of Infancy, Lunacy, or Coverture, or other legal Disability, his or her Guardian, Trustee, Committee of the Estate, Husband, or Attorney (as the Case requires) may in his or her Stead sign, lodge, and prosecute the Claim.

41. The Commissioners may, if they think fit, from Time to Time authorize or require the Amendment of a Claim.

42. As soon as conveniently may be after the Expiration of the Time appointed as aforesaid for the lodging of Claims, but not less than One Month thereafter, the Commissioners shall consider the Claims lodged, and hear the Claimants appearing by themselves, their Counsel, Attorneys, or Agents, and take Evidence, and hear any Objector to any Claim appearing by himself, his Counsel, Attorney, or Agent, and being in the Opinion of the Commissioners entitled to be heard (with Power nevertheless to the Commissioners to refuse to hear any Objector unless his Objection is put in Writing, or unless he complies with such other Conditions as the Commissioners think reasonable).

43. The Commissioners shall decide on each Claim, allowing or disallowing the same, in whole or in part, and make and sign a Memorandum stating their Decision thereon, a certified Copy whereof shall, if required, be delivered to the Claimant.

44. The Commissioners, on the Application of any Claimant, or of any Objector admitted to be heard, shall by Summons require the Attendance before the Commissioners of any Claimant, or of any Person to be examined as a Witness before them, and shall, on the like Application, by Summons require any Claimant or other Person to bring before the Commissioners all Books, Papers, and Writings in his Possession, Custody, or Control relating to any Matter to be inquired into by them.

45. Every Claimant or other Person so summoned shall attend the Commissioners, and answer all Questions touching the Matter to be inquired into, and bring and produce all Papers, Books, and Writings required, according to the Tenour of the Summons; provided that any Person so summoned, other than a Claimant in his own Case, shall not be bound to obey the Summons

unless a reasonable Sum is first paid or tendered to him for his Expenses.

46. If any Claimant or other Person on whom a Summons of the Commissioners is served, either personally or by Delivery at his last known or usual Place of Abode or Business, fails to appear before the Commissioners at the Time and Place therein specified, without reasonable Excuse, or if any Claimant or other Person appearing before the Commissioners refuses to be sworn or to make Affirmation (as the Case may be), or to make answer to any Question put to him touching any Matter being inquired into by the Commissioners, or if any Claimant or other Person fails to produce and show to the Commissioners any Book, Paper, or Writing in his Possession, Custody, or Control which the Commissioners require to be produced, every such Claimant or other Person shall for every such Offence be liable, on summary Conviction, to a Penalty not exceeding Twenty Pounds, without Prejudice to any other Remedy against him.

47. The Commissioners, or any One of them, may administer an Oath or an Affirmation (where an Affirmation in lieu of an Oath would be admitted in a Court of Justice) to any Claimant or other Person examined before them, and may take the Affidavit or Declaration of any Claimant or other Person.

48. If any Claimant or other Person on Examination on Oath or Affirmation before the Commissioners, or in any Affidavit or Declaration used before the Commissioners, wilfully gives false Evidence, he shall be deemed guilty of Perjury.

Appeal.

49. If any Claimant or any Objector admitted to be heard (including the Ranger and the Commissioners of Woods and Forests on behalf of the Crown) thinks himself aggrieved by any Decision of the Commissioners, as being erroneous in point of Law, he may appeal against the Decision, as follows:

- (1.) The Appeal shall be to Her Majesty's Court of Common Pleas in Dublin:
- (2.) The Appeal shall be by Special Case, stating the Facts and the Grounds of the Decision:
- (3.) The Special Case shall be settled by the Commissioners, on the Application of the Appellant made in Writing within Fourteen Days after the Delivery of the Decision, and not afterwards; and if the Appellant is dissatisfied with the Special Case as settled by the Commissioners, he shall be entitled to have it settled by a

Judge of the Court of Common Pleas in Dublin, on Summons, in Chambers.

50. A Special Case (except when settled by a Judge in Chambers) shall be signed by the Commissioners, and shall be delivered by them to the Appellant.

51. Before the Delivery of a Special Case to an Appellant (other than the Ranger and the Commissioners of Woods and Forests) he shall enter into a Recognizance before the Commissioners (with or without Sureties, and in such Sum as to the Commissioners seems fit), conditioned to prosecute without Delay the Appeal, and to submit to the Judgment of the Appellate Court, and to pay any Costs awarded by that Court.

52. On Receipt of a Special Case the Appellant shall, within Fourteen Days, transmit the original Case, by Post or otherwise, to the proper Officer of the Appellate Court.

53. The Appellate Court shall hear and determine the Question or Questions of Law arising on a Special Case, and may thereupon reverse, affirm, or amend the Decision in respect of which the Special Case is stated, or remit the Matter to the Commissioners, with the Opinion of the Appellate Court thereon, or may make such other Order in relation to the Matter, and may make such Order as to Costs, as to the Court seem it; and all such Orders shall be final and conclusive on all Parties, and shall be adopted and acted on by the Commissioners.

54. The Appellate Court may, if they think it, before delivering Judgment, cause a Special Case to be amended.

55. If the Condition of the Recognizance entered into by an Appellant is not complied with, a Justice shall certify on the Back thereof the Fact and Nature of the Non-compliance, and shall transmit the Recognizance to the Clerk of the Peace for the County of Kildare, and the same shall be proceeded on in like Manner as a Recognizance forfeited at Quarter Sessions may or the Time being by Law be proceeded on; and the Certificate of the Justice shall be Evidence of the Recognizance having been forfeited.

Award.

56. The Commissioners shall make their Award hereafter in this Act referred to as the Award) not later than the Thirty-first Day of December One thousand eight hundred and sixty-nine, or such further Time as the Lord Lieutenant in Council shall direct, unless prevented from so doing by the Pendency of any Appeal, and in

that Case as soon after that Day as the Determination of the Appeal permits.

57. The Award shall state the Substance of every Claim lodged, the Amount of Compensation claimed, if any, and the Commissioners Decision, allowing or disallowing the same in whole or in part.

58. The Award shall prescribe and shall make Provision for the setting out of specific Ways in respect of Rights of Way (other than public Rights of Way) in, over, or affecting the Curragh, or any Part thereof, in such Directions and Lines as the Commissioners determine to be necessary or proper for the Convenience of the Owners and Occupiers of Lands in respect of which those Rights respectively are exercisable; and all Rights of Way (other than public Rights of Way) in, over, or affecting the Curragh shall, after the Award, be exercisable only in, along, or across the specific Ways in the Award prescribed; and the Award shall prescribe and shall make Provision for the stopping up of all Ways (other than public Ways) in, over, or affecting the Curragh, except the specific Ways in the Award prescribed.

59. The Commissioners shall inquire into, ascertain, and state in their Award the Amount of Compensation (if any) to which, in their Opinion, any Person shall be entitled in respect of any Right of Common of Pasture, Right of Way, or other Right on, over, or affecting the Curragh or any Part thereof which is in any way whatsoever injuriously affected, varied, or altered by any of the Provisions of this Act other than those relating to Horse Racing and the Training of Horses, and the Amount of such Compensation (if any) shall be ascertained and stated separately with respect to the Site of the Camp and the Rifle Ground.

60. The Award shall be in Duplicate, one Part of it shall be presented to the Chief Secretary to the Lord Lieutenant, and the other Part shall be deposited with the Clerk of the Peace for the County of Kildare, and the Copy of the said Award shall be published once in each of Three consecutive Weeks next after the making thereof in some Newspaper circulating in the County of Kildare and in the *Dublin Gazette*.

61. The Chief Secretary to the Lord Lieutenant shall, as soon as conveniently may be after the Publication of the said Award, take all necessary Steps for the Confirmation of the same by Act of Parliament, but previously to such Confirmation the said Award shall not be of any Validity whatever, and the Act of Parliament confirming the said Award shall be deemed a Public General

Act. In case any Petition shall be presented to either House of Parliament against the said Award or any Part thereof in the Progress through Parliament of the Bill confirming the same, the Bill may be referred to a Select Committee, and the Petitioner shall be allowed to appear and oppose as in the Case of Private Bills.

Pasture.

62. Subject to the Provisions of this Act, the Curragh may be stocked and depastured in common by the Persons to whom Rights of Common of Pasture in, over, or affecting the same or any Part thereof are allowed by the Award, according to their respective Rights so awarded, and subject and according to such Regulations as the Ranger, with the Approval of the Lord Lieutenant, from Time to Time thinks fit to make.

Byelaws for Regulation of Curragh.

63. The Lord Lieutenant, by and with the Advice and Consent of Her Majesty's Privy Council in Ireland, may from Time to Time (subject to the Provisions of this Act) make Byelaws for all or any of the following Purposes; namely,

For preventing unauthorized Persons from turning out or knowingly permitting Sheep, Pigs, or other Animals to graze or feed or remain on the Curragh;

For preventing unauthorized Persons from taking from the Curragh any Gravel, Sand, Stone, Earth, Turf, Sod, or other Substance, or digging for the same on or in or otherwise disturbing the Surface or Soil of the Curragh;

For prohibiting Persons from placing Heaps of Manure or Rubbish on any Part of the Curragh;

For prohibiting or restricting unauthorized Persons from passing over the Curragh or any specified Part thereof with Vehicles;

For prohibiting Persons from removing from the Curragh the Dung of Sheep or other Animals;

For prohibiting Persons from injuring, defacing, or removing Notices put up on the Curragh, or the Posts, Railings, Chains, or Fences placed thereon; and

Generally for preventing Encroachments or Trespasses on or Injuries to or Nuisances on the Curragh, or any unauthorized User thereof, or any Interference with or Obstruction to the authorized User thereof.

64. Any such Byelaws may impose reasonable Penalties for Offences against the same, not exceeding Five Pounds for each Offence, with or without further Penalties for continuing Offences, not exceeding for any continuing Offence Forty Shillings for every Day during which the Offence

continues; but all Byelaws shall be so framed as to allow in every Case Part only of the maximum Penalty being ordered to be paid.

65. Penalties under any such Byelaws shall be recovered by summary Proceedings before a Justice or Justices.

66. Where the Lord Lieutenant proposes to make any such Byelaws, the Chief Secretary to the Lord Lieutenant shall publish the same, by the Insertion thereof as an Advertisement in a Newspaper printed or usually circulating in the County of Kildare, and by Notices posted in conspicuous Places on or near the Curragh; and the said Chief Secretary shall, during One Month at least after the Publication thereof, afford to all Persons the Opportunity of making, in Writing or otherwise, as in the Advertisement stated, Objections to or Representations respecting the proposed Byelaws; and he shall submit all such Objections and Representations to the Lord Lieutenant for his Consideration, and, if the Lord Lieutenant thinks fit, he may abstain from making or may alter or add to the proposed Byelaws.

67. All Byelaws under this Act shall be printed, and the Ranger shall cause a printed Copy thereof to be delivered to every Person applying for the same at the Place mentioned in that Behalf in the Byelaws, on Payment of such reasonable Price as he from Time to Time directs, and the Commissioners of Her Majesty's Treasury approve, not exceeding Sixpence for each Copy.

68. A printed Copy of Byelaws under this Act, purporting to be signed by the Chief Secretary to the Lord Lieutenant, shall be conclusive Evidence of the Existence and due making of those Byelaws, without Proof of the Signature.

Miscellaneous.

69. The Fees stated in the First Schedule to this Act, Part II., shall be paid to the Society known as the Irish Turf Club or any Person authorized to collect the same on their Behalf, and the Amount so received shall be expended by the Society in or about the Preservation and Improvement of the Racecourses and Training Grounds on the Curragh, and otherwise for the Encouragement of Horse Racing there; and such Receipt and Expenditure shall be from Time to Time accounted for as the Commissioners of Her Majesty's Treasury direct.

70. All Rents receivable in respect of the Holdings described in the Second Schedule to this Act, and any other Revenue from Time to Time to accrue to the Crown from the Curragh, shall be received and accounted for by such

Person and in such Manner as the Commissioners of Her Majesty's Treasury may appoint and direct, and be carried to the Consolidated Fund of the United Kingdom in such Manner as the Commissioners of Her Majesty's Treasury from Time to Time direct, and after the Decease of Her Majesty shall be paid to Her Majesty's Heirs and Successors.

71. The County Surveyor for the County of Kildare, or any Contractor authorized by the County Surveyor for the Time being, may from Time to Time dig up and take Gravel from the Green Lands, at such Places as the Ranger shall approve, without Payment, for the Purposes of the Maintenance and Repair of the County Roads immediately leading to, on, from, or across the Curragh, subject to such Byelaws and Regulations as herein-before are authorized to be made.

Custody of Map, Award, &c.

72. The Clerk of the Peace for the County of Kildare shall retain the Map deposited for the Purposes of this Act, and the Award, and any other Document deposited with him under this Act, and shall permit all Persons interested to inspect the same, and make Extracts or Copies therefrom or thereof, in the like Manner, and on the like Terms, and under the like Penalty for Default, as are provided in relation to certain Plans and Sections by an Act passed in the First Year of Her Majesty's Reign, intituled "An Act to compel the Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

73. A Duplicate or Copy of the deposited Map shall, as soon as conveniently may be after the passing of this Act, be deposited at the Record and Writ Office, Dublin, such Duplicate or Copy

being certified to be correct by the Clerk of the Peace for the County of Kildare, and the said Duplicate or Copy so deposited, or any certified Copy thereof, shall be admissible as Evidence in all Courts of Justice.

74. It shall be lawful for the Deputy Ranger for the Time being in his own Name to bring or defend any Action, Suit, Prosecution, or Proceedings in respect of any Trespass, Injury, Encroachment, or Nuisance on the Green Lands or any Part thereof, or in respect of any other Matter connected therewith. Any such Action, Suit, Prosecution, or Proceeding shall not be affected by any Change in the Person holding the Office of Deputy Ranger, and the Deputy Ranger shall have the same Right of Appeal as given by this Act to the Secretary of State for War.

Exceptions and Savings.

75. Except as in this Act expressly otherwise provided, nothing in this Act shall in any Manner apply to or affect the Closes or Parcels of Land and Buildings or the Roads respectively described in the Second Schedule to this Act, and, except as aforesaid, the same respectively shall to all Intents remain and be as if this Act had not been passed.

76. Nothing in this Act shall confer on or confirm to any Person any Estate, Right, or Interest in or over the Curragh or any Part thereof.

77. Save as in this Act expressly provided, nothing in this Act shall take away or prejudicially affect any Estate, Right, or Interest of Her Majesty in right of Her Crown or otherwise, or of any Person, in, to, or over the Curragh or any Part thereof.

The SCHEDULES to which the foregoing Act refers.

THE FIRST SCHEDULE.

PART I.

Ranger's Fees abolished.

1. For every Horse entered for a Royal or Vice-Regal Plate	-	-	-	£	s.	d.
2. For every Horse winning a Royal or Vice-Regal Plate	-	-	-	1	1	0
				5	5	0
				R 2		

PART II.

Fees to be received by Irish Turf Club.

	£	s.	d.
1. For every Horse trained on the Curragh	-	1	1 0
2. For every Horse winning a Stake above 50 <i>l.</i>	-	4	4 0
3. For every Horse winning a Stake of or below 50 <i>l.</i>	-	2	2 0
4. For every Horse winning a Royal or Vice-Royal Plate	-	2	2 0

THE SECOND SCHEDULE.

CLOSES OR PARCELS OF LAND AND BUILDINGS AND ROADS EXEMPTED FROM OPERATION OF ACT.

Closes or Parcels of Land and Buildings.

No. on Map referred to in Act.	Description of Lands and Buildings.	Names of Grantees, Lessees, &c.	Dates of subsisting Grants, Leases, &c.	Particulars of Holdings.
1	The New Stand House.	The Representatives of the late Marquis of Waterford as Trustees for the Irish Turf Club.	21 April 1852	Annual Tenancy from 5 April 1852, determinable by Three Months Notice, at Rent of One Shilling per Annum to Crown.
2	Stables, erected on Site of Old Stand House.	The Most Honourable Nathaniel Francis Nathaniel Marquis of Conyngham, as a Trustee for the Irish Turf Club.	24 March 1864	Annual Tenancy from 25 March 1864, determinable by Three Months Notice, at Rent of 1 <i>l.</i> per Annum to Crown.
3	Police Barrack	Arthur Beresford Cane, Receiver of the Constabulary Force in Ireland.	31 December 1860	Lease for 99 Years from 25 December 1845, at Rent of 14 <i>l.</i> per Annum to Crown.
4	Two Cottages	William Quinn and B. McDonough.	29 February 1856 - 30 June 1864.	Weekly Tenancies at Rent of Two Shillings and Sixpence per Week for each Cottage to Crown.
5	Land, with Stables thereon.	Patrick Connolly	3 June 1863	Lease for 31 Years from 25 March 1860, at Rent of 1 <i>l.</i> per Annum to Crown.
6	Police Barrack	The Secretary of State for War.	13 January 1859	Erected under Authority from Secretary of State for War.
7	The Hare Park or Covert of Rathbride. (8 <i>a.</i> 1 <i>r.</i> 30 <i>p.</i>)	Henry Baron de Ro-beck on behalf of the Kildare Hunt Club.	23 February 1866	Lease for 21 Years from 29 September 1856, determinable at End of first 7 or 14 Years at Rent of 1 <i>l.</i> per Annum to Crown.
8	Land near the Race Stand.	William Taylor, Secretary to the Great Southern and Western Railway Company.	20 March 1863	Annual Tenancy from 25 September 1862 at Rent of One Shilling per Annum to Crown.
9	The Camp Inn	Mrs. Hilton	29 January 1857	Weekly Tenancy at Rent of Two Shillings and Sixpence per Week to Crown.
10	Cottage	Patrick Fahy	-	Residence for One of the Constables employed on behalf of Crown in Protection of Curragh.

No. on Map referred to in Act.	Description of Lands and Buildings.	Names of Grantees, Lessees, &c.	Dates of subsisting Grants, Leases, &c.	Particulars of Holdings.
11	Land at Strawhall -	Mr. Davies - -	18 November 1856	Sold by Commissioner of Woods to Mr. Davies.
12	Police Barrack and Garden.	Sub-Inspector of Police at Lumville.	5 October 1861 -	Barrack erected under Authority from Secretary of State for War. For Garden Rent of 1 <i>l.</i> per Annum payable to Crown.
13	Land with a Chapel erected thereon. (About 1 <i>A.</i>)	The Reverend John Frayer Matthews and others as Trustees for the Society of People called Methodists.	4 January 1861 -	Lease for 99 Years from 29 September 1860, at Rent of 1 <i>l.</i> per Annum to Crown.
"	"(About 1 <i>A.</i>)"	The same - -	16 October 1862 -	Lease for 31 Years from 25 March 1862, at Rent of 1 <i>l.</i> per Annum to Crown.
14	Constabulary Court House.	The Secretary of State for War.	13 January 1859 -	See No. 6 above.
15	Part of the Line of the Great Southern and Western Railway. (18 <i>A.</i> 3 <i>R.</i> 12 <i>P.</i>)	The Great Southern and Western Railway Company.	16 December 1863	Conveyed by Commissioner of Woods to the Railway Company in consideration of Payment by them to Crown of 435 <i>l.</i> 13 <i>s.</i> 7 <i>d.</i>
16	Land near Lumville	Late in the Occupation of Ponsonby Moore.	- - -	Lease granted by Commissioner of Woods to Mr. Ponsonby Moore, 25 August 1859, but surrendered 31 July 1865; Reletting not yet made.

Roads.

All Roads or Parts of Roads at the passing of this Act maintained and repaired by or at the Expense of the County of Kildare, and such Portions of the Green Lands as are now set apart or appropriated for Burial or Drainage Purposes.

THE THIRD SCHEDULE.

Claim.

THE CURRAGH OF KILDARE ACT, 1868.

The Claim of *A.B.* under the above-mentioned Act.

Name of Claimant - - - -	
Description of Claimant - - -	
Address of Claimant at which all Notices to Claimant respecting this Claim may be delivered.	

Name of Agent for Claimant, and Address of that Agent, at which all Notices to Claimant respecting this Claim may be delivered.*	
Nature, Extent, and other Particulars of Claim	
Situation and Quantity of Lands in respect of which Claim is made.	
Nature, Extent, and other Particulars of Claimant's Estate or Interest in those Lands.	
Dated this _____ Day of _____	(Signed) <i>A.B.</i> [or <i>C.D.</i> , Attorney or Agent for the above-named <i>A.B.</i>]
Witness <i>X.Y.</i>	

* This Part of the Form to be filled up only when the Claimant desires to appoint an Agent.

CAP. LXI.

The Consular Marriage Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Certain past Marriages herein specified confirmed.*
3. *Acting Consuls to have Power to solemnize Marriages.*

An Act for removing Doubts as to the Validity of certain Marriages between British Subjects in China and elsewhere, and for amending the Law relating to the Marriage of British Subjects in Foreign Countries.

(16th July 1868.)

WHEREAS by an Act of the Session of the Twelfth and Thirteenth Years of the Reign of Her present Majesty, Chapter Sixty-eight, intituled "An Act for facilitating the Marriage of British Subjects resident in Foreign Countries," Provision is made for the Solemnization of Marriages in Foreign Countries, or Places where there may be a British Consul duly authorized in that Behalf, between Persons, both or One of whom is or are a British Subject or British Subjects, and it is thereby enacted, that every British Consul General and Consul appointed or to be appointed to reside in any Foreign Country or Place, who shall be directed

or authorized in Writing under the Hand of One of Her Majesty's Principal Secretaries of State to solemnize and register Marriages, and any Persons duly authorized to act in the Absence of such Consul, shall, in the Country or Place in which he is so appointed to reside, or in which he is directed or authorized to solemnize or register Marriages as aforesaid, be a Consul duly authorized for all the Purposes of the said Act:

And whereas Marriages have been from Time to Time solemnized at certain Places in China and elsewhere between Persons, being both or One of them Subjects or a Subject of this Realm, by Persons acting temporarily as Consuls in such Places:

And whereas Doubts are entertained as to the Validity of the said Marriages, owing to a Question having arisen whether the Persons by whom the same were solemnized were duly authorized in that Behalf, and it is expedient to remove such Doubts as to the said Marriages, and as to any Marriages which may be celebrated in like Manner after the passing of this Act:

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited for all Purposes as "The Consular Marriage Act, 1868."

2. All Marriages solemnized before the passing of this Act (both or One of the Parties thereto being Subjects or a Subject of this Realm) by or in the Presence of any Person acting or purporting to act in the Place of a British Consul, such Consul being duly authorized to solemnize and

register Marriages according to the Provisions of the said recited Act, shall be as valid in Law as if the same had been solemnized by or in the Presence of such British Consul.

3. From and after the passing of this Act, every Person acting or legally authorized to act in the Place of a British Consul, such Consul being duly authorized to solemnize and register Marriages between Persons (both or one of them being a Subject or Subjects of this Realm), shall be deemed to be a British Consul duly authorized for all the Purposes of the said recited Act.

CAP. LXII.

Renewable Leasehold Conversion (Ireland) Act Extension.

ABSTRACT OF THE ENACTMENTS.

1. *Owner of Lease may require Fee-farm Grant.*
2. *Governors may make Fee-farm Grant in certain Cases.*
3. *Amount of Fee-farm Rent.*
4. *Prices of certain Commodities to regulate the future Variation of Rent.*
5. *How Rent to be revised and varied. Costs of Revision. No Variation less than One Tenth.*
6. *Vacancy in Office of Arbitrator to be supplied.*
7. *Appointment of Umpire.*

An Act to extend the Provisions of "The Renewable Leasehold Conversion (Ireland) Act" to certain Leasehold Tenures in Ireland.

(16th July 1868.)

WHEREAS an Act was passed by the Parliament of Ireland holden in the Twenty-first and Twenty-second Years of the Reign of His Majesty King George the Third, intituled "An Act to enable the Governors of any of the Schools founded in this Kingdom to make long Leases of such Lands as have been granted for the Support of the said Schools, and are situate in Counties of Cities and Counties of Towns :"

And whereas another Act was passed by the Parliament of Ireland holden in the Twenty-fifth Year of the Reign of His Majesty King George the Third, to alter and amend the said first-recited Act :

And whereas by the said last-recited Act it was, amongst other things, enacted, that every Tenant, or the Executors, Administrators, or Assigns of every Tenant, to whom a Lease had been or should be granted, pursuant to the Powers and Provisions in the said first-recited Act contained, and who should apply for a

Renewal of such Lease within the Time and subject to the Conditions in the said Act now in recital mentioned, should be entitled to such Renewal for the Term of Forty-one Years :

And whereas under the Provisions of the said Acts Leases of Parts of the said Lands, and Renewals of the same, have from Time to Time been made for Terms of Forty-one Years by the Governors of certain of the said Schools :

And whereas Doubts have arisen as to whether the Provisions of "The Renewable Leasehold Conversion Act" are applicable to such Leasehold Tenures :

And whereas the same Governors have also, under certain other Powers them in that Behalf enabling, made Leases of other Parts of the said Lands for Terms of Twenty-one Years, and have generally made Renewals of such Leases to the Persons who were entitled to such Leasehold Premises immediately before the Expiration of the Term for which the same were made

And whereas it is expedient to extend the Provisions of the "Renewable Leasehold Conversion Act" to such Leasehold Tenures :

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and

by the Authority of the same, as follows ; (that is to say,)

1. Where any Lands situate in any County of a City or County of a Town in Ireland are or may be held under any Lease made by Governors of Schools, in virtue of the Provisions of the recited Acts, for a Term of Forty-one Years, and which Lease has or shall have been actually renewed within the Period of Seven Years next preceding the Time of such Application as herein-after mentioned, the Owner of such Lease may, at any Time within Seven Years from the last Renewal of such Lease, make Application in Writing to the said Governors requiring them to execute a Grant according to the Provisions of this Act ; and the said Governors, upon being so required as aforesaid, shall execute a Grant to the Owner of such Lease of an Estate of Inheritance in Fee Simple in such Lands, subject to a perpetual yearly Fee-farm Rent, to be ascertained in like Manner as a Fee-farm Rent under the Renewable Leasehold Conversion Act, to be charged upon such Lands, and to be payable on the same Days and Times as the yearly Rent made payable by such Lease, and subject to the like Covenants and Conditions for the securing the Payment of the said Fee-farm Rent as are contained in such Lease with respect to the Rent thereby reserved, and with and subject to such other Covenants, Conditions, Exceptions, and Reservations (save Covenants to grant, accept, and take a Renewal of such Lease, if there be any such), as are contained in such Lease and then subsisting ; and all the Provisions of the Renewable Leasehold Conversion Act, so far as the same may be applicable, are hereby incorporated with this Section ; and such Fee-farm Grant so to be executed shall operate and take effect in like Manner, and with the like Incidents and Consequences to all Intents and Purposes, as if the same were a Fee-farm Grant in Conversion of a Lease in Perpetuity within the Meaning of the said last-mentioned Act, and made under the Provisions thereof.

2. Where any Lands situate in any County of a City or County of a Town in Ireland are or may be held by any Person under any Lease made by Governors of Schools as aforesaid for a Term of Twenty-one Years, it shall be lawful for the said Governors at any Time before the Expiration of the said Term, if they so think fit, to make to such Tenant a Lease or Demise in Fee of all or any of such Lands, subject to a perpetual yearly Fee-farm Rent of such Amount as herein-after mentioned, to be charged upon such Lands, and to be payable on the same Days and Times as the yearly Rent made payable by such Terminable Lease, and subject to the like Covenants and Conditions for the securing

the Payment of the said Fee-farm Rent as are contained in such Terminable Lease with respect to the Rent thereby reserved, and with and subject to such other Covenants, Conditions, Exceptions, and Reservations as are contained in such Terminable Lease and then subsisting : Provided always, that for the making of such Lease or Demise in Fee no Fine, Foregift, Premium, or Consideration in Money or otherwise shall be given or promised to the said Governors.

3. The Fee-farm Rent to be reserved in every Lease or Demise in Fee made under the Provisions of the Second Section of this Act shall be "the Rent reserved by such Terminable Lease " for Twenty-one Years, if the Governors shall " think fit to adopt the same, or " the Rent at which one Year with another the Lands so to be demised might in their actual State be reasonably expected to be let from Year to Year for Agricultural Purposes ; and such Rent shall be ascertained and fixed by Two Arbitrators, one to be nominated and appointed in Writing by the said Governors, the other by the Owner of the said Terminable Lease, or, in case such Arbitrators differ, by an Umpire to be nominated and appointed in manner herein-after provided, to whom such Matters shall be referred ; and in estimating the Amount of such Rent the said Arbitrators or Umpire (as the Case may be) shall not take into account any Increase in the Value of the said Lands arising from any Houses or Buildings erected thereon by the Owner of such Terminable Lease, or by the Person or Persons through, under, or from whom he shall have derived his Interest in the same.

4. The said Arbitrators or Umpire (as the Case may be) shall also, at the Time of so ascertaining and fixing the Amount of the Rent to be reserved by such Lease in Fee as last aforesaid, ascertain and determine the average Prices of the several Commodities of Oats, Wheat, Mutton, Beef, and Butter respectively for the Seven Years ending with the First Day of May then last preceding, and such average Prices so ascertained shall be set forth in such Lease ; and for the Purpose of any future Revision or Recertainment of the Fee-farm Rent for the Time being payable under such Lease, the said Five several Commodities, and the average Prices thereof respectively so ascertained, shall be and be taken as the standard Commodities and Prices for regulating all future Variations of the said Rent, and each of the said Commodities shall for that Purpose represent and regulate the following Proportions or component Parts of the said Rent ; that is to say, Oats, Five Elevenths ; Wheat, One Eleventh ; Mutton, One Eleventh ; Beef, Two Elevenths ; and Butter, Two Elevenths, respectively, of the said Rent.

5. It shall be lawful for the said Governors, or for such Lessee in Fee as last aforesaid, his Heirs or Assigns, if they or he respectively shall so think fit, at any Time within Six Calendar Months next after the Expiration of Twenty-one Years computed from the First Day of May next preceding the Execution of such Lease in Fee, by Notice in Writing duly served on the other of them, to require that the Rent payable under the said Lease shall be revised according to the provisions of this Act, and thereupon the average Prices of the Five several Commodities aforesaid respectively for the Seven Years ending with the First Day of May then last preceding shall be ascertained and determined by Two Arbitrators, One to be appointed by each Party, or, in case such Arbitrators differ, by an Umpire, to be appointed as herein-after provided; and the Amount of such Rent shall be increased or diminished in such Manner and to such Extent as that each component Part (according to the Proportions herein-before mentioned) of such new or revised Rent shall bear the like Proportion to the same component Part of the original or previous Rent as the ascertained average Price or the then last Seven Years so ending as aforesaid of the Commodity representing and regulating such component Part of such Rent shall bear to the standard Price of the same Commodity so ascertained before the Execution of such Lease and set forth therein as herein-before directed; and so in like Manner after each successive Period of Twenty-one Years, or after any of such successive Periods, although there may have been no such Revision made or required after any of the like preceding Periods, the Rent for the Time being payable under any such Lease shall, if so required by either Party, by Notice in Writing duly served within Six Calendar Months after the Expiration of such Period, be revised and readjusted in like Manner; and on the Occasion of every such Revision and Variation of the said Rent an Endorsement shall be made upon the Lease and Counterpart thereof respectively, stating the Amount of the new or revised Rent to be thenceforth payable under the said Lease, which Endorsement as so made upon the said Lease shall be executed by the Governors under their Common Seal, and as made on the said Counterpart shall be executed by the Lessee, his Heirs or Assigns, under his or their Hand and Seal or Hands and Seals; and every such new or revised Rent shall be paid to and received by the said Governors as from the First Day

of May next before the Service of the said Notice requiring such Revision of the Rent, and thenceforward until some further Revision and Variation thereof (if any) shall be required and made as aforesaid; and in respect of every such new or revised Rent the said Governors shall have all the same Rights and Remedies (including Ejectment for Nonpayment thereof) as by the Renewal Leasehold Conversion Act is provided, or as they would have had in respect of the original Rent reserved by such Lease in case the same had not been varied as aforesaid: Provided always, that all the Costs, Charges, and Expenses of or incident to every such Revision of Rent, and the Notice requiring the same respectively, shall be borne by the Party serving such Notice and requiring such Revision; and provided also, that if upon any such Revision the Difference of Prices so ascertained as aforesaid shall not be such as to cause an Increase or Diminution equal to at least One Tenth Part of the Rent for the Time being payable under such Lease, then and in every such Case no Variation shall then be made in the said Rent.

6. If in any Arbitration for any of the Purposes herein-before mentioned any Arbitrator appointed by either Party shall die, or refuse or become incapable to act, the Party by whom such Arbitrator was appointed may nominate and appoint in Writing some other Person to act in his Place, and if for the Space of Seven Days after Notice in Writing from the other Party for that Purpose he fail to do so the remaining or other Arbitrator may proceed *ex parte*.

7. The said Arbitrators shall, before they enter upon Matters referred to them, nominate and appoint, by Writing under their Hands, an Umpire to decide upon any Matters upon which they shall differ, and if such Umpire shall die, or refuse or become incapable to act, they shall forthwith, after such Death, Refusal, or Incapacity, appoint another Umpire in his Place, and the Decision of every such Umpire on the Matters so referred to him shall be final; and if the said Arbitrators do not appoint such Umpire in manner aforesaid, then all Matters upon which they shall differ shall be decided in like Manner by an Umpire to be appointed by the Commissioners of Valuation in Ireland for the Time being.

CAP. LXIII.

Bank of Bombay.

ABSTRACT OF THE ENACTMENTS.

1. *Power for the Commissioners to act in United Kingdom.*
2. *Commissioners to have Powers in the United Kingdom.*
3. *Indemnity to Witnesses.*
4. *Penalty for false Swearing, &c.*
5. *Expenses of Witnesses.*
6. *Protection to the Commissioners.*
7. *Limitation of Actions.*

An Act to enable Commissioners appointed to inquire into the Failure of the Bank of Bombay to examine Witnesses on Oath in the United Kingdom. (16th July 1868.)

WHEREAS under an Act of the Governor General of India in Council, passed in the present Year of the Reign of Her Majesty Queen Victoria, intituled "An Act to appoint a Commission to inquire into the Failure of the "Bank of Bombay," Commissioners have been appointed for the Purpose of inquiring into and reporting on the Causes of the Inability of the Bank of Bombay to pay its Debts, and the Circumstances attending such Inability, and to report thereon to the Governor General of India in Council, and by the said Act Powers were given to the said Commissioners to examine on Oath Witnesses in India in relation to the said Matters:

And whereas it is expedient that the said Commissioners, or any One or more of them, shall have Power to act in the United Kingdom for the Purposes for which the said Commissioners have by the said Act been appointed to act in India, and that such One or more of the said Commissioners as shall act in the United Kingdom shall have such Powers, Rights, and Privileges as are herein-after given to him and them:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. The Commissioners for the Time being appointed under the said Act, or any One or more of them, may act in the United Kingdom for the Purposes for which the said Commissioners were by the said Act so as aforesaid appointed to act in India.

2. Such One or more of the said Commissioners as shall act in the United Kingdom shall have all such Powers, Rights, and Privileges as are vested in any of Her Majesty's Superior Courts, or in any Judge thereof, on the Occasion of any Action or Suit in respect of the following Matters:

1. The enforcing the Attendance of Witnesses and examining them on Oath, Affirmation or otherwise, as he or they may think fit;
2. The compelling the Production of Documents;
3. The punishing Persons guilty of Contempt

And a Summons under the Hand or Hands of the Commissioner or Commissioners acting in the United Kingdom may be substituted for and shall be equivalent to any Form of Process capable of being issued at Law in any Action or Suit for enforcing the Attendance of Witnesses or compelling the Production of Documents.

Any Warrant of Committal to Prison issued for the Purpose of enforcing the Powers conferred by this Section shall be under the Hand or Hands of the Commissioner or Commissioners acting in the United Kingdom, and shall specify the Prison to which the Offender is to be committed, and shall not authorize the Imprisonment of any Offender for a Period exceeding Three Calendar Months.

Every Inquiry under this Act shall be conducted in public, and due Notice shall be given of the Time and Place of holding the same, but with Power to the Commissioner or Commissioners acting in the United Kingdom to adjourn any Meeting as Occasion may require.

3. Any Person examined as a Witness in an Inquiry under this Act, who in the Opinion of the Commissioner or Commissioners acting in the United Kingdom makes a full and true Disclosure touching all the Matters in respect of which he is examined, shall receive a Certificate under the Hand or Hands of such Commissioner or Commissioners, stating that the Witness has upon his Examination made a full and true Disclosure as aforesaid; and if any Criminal Proceeding be at any Time thereafter instituted against such Witness in respect of any Matter touching which he has been so examined, the Tribunal before which such Proceeding is instituted shall, on the Production and Proof of the Certificate, stay the Proceeding.

Provided that no Evidence taken under the Act shall be admissible against any Person in any Criminal Proceeding whatever, except in the

Case of a Witness who may be accused of having given false Evidence before such Commissioner or Commissioners. And no Person shall be excused from answering any Question put to him by such Commissioner or Commissioners on the Ground of any Privilege, or on the Ground that the Answer to such Question will tend to criminate such Person.

4. Every Person who upon Examination upon Oath or Affirmation in any Inquiry under this Act wilfully gives false Evidence shall be liable to the Penalties of Perjury.

5. The reasonable Expenses incurred by any Person who may be summoned to give Evidence in any Inquiry under this Act according to a Scale to be approved by the Secretary of State in Council of India may be allowed to such Person by a Certificate under the Hand or Hands of the Commissioner or Commissioners acting in

the United Kingdom, and shall be paid by the Secretary of State in Council of India out of the Revenues of India.

6. The Commissioner or Commissioners acting in the United Kingdom shall have such and the like Protection and Privileges in case of any Action brought against him or them for any Act done or omitted to be done in the Execution of his or their Duty as is now by Law given by any Act or Acts now or hereafter to be in force to Justices acting in execution of their Office.

7. No Action shall be brought against the Commissioners acting under this Act or any of them, or any other Person whomsoever, for anything done in the Execution of their or his Duty under this Act, unless such Action be brought within Three Calendar Months next after the doing of such Thing.

CAP. LXIV.

The Land Registers (Scotland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
 2. *Interpretation of Terms.*
 3. *In General Register of Sasines, Writs of each County to be kept separate.*
 4. *All Writs shall have a Warrant of Registration endorsed thereon, specifying County or Counties in which Lands lie.*
 5. *Competent to record Writs in other County or Counties to which they refer by new Warrant.*
 6. *Provision for Writs transmitted by Post to General Register of Sasines.*
 7. *Registration how to be made, &c.*
 8. *Particular Registers of Sasines abolished.*
 9. *Printed Abridgments, &c., and Indexes, to be prepared contemporaneously with Record.*
 10. *Printed Abridgments, &c., and Indexes, to be transmitted to Counties.*
 11. *Surplus Copies of former Abridgments to be sent to Counties.*
 12. *Registration in General Register of Sasines equivalent in certain Cases to Registration in the Books of Council and Session.*
 13. *No higher Fees to be chargeable for Writs registered for Preservation and Execution as well as Publication.*
 14. *Registered Writs to be authenticated.*
 15. *Register of Interruptions of Prescriptions to be discontinued.*
 16. *Particular Register of Inhibitions abolished.*
 17. *General Register of Inhibitions and Register of Adjudications to be treated as One Register.*
 18. *Particular Registers of Hornings, &c. not to be affected.*
 19. *Provision as to Official Searchers.*
 20. *Establishment of General Register of Sasines and Inhibitions to be regulated.*
 21. *Remuneration to Sheriff Clerks.*
 22. *Power to Keepers of Registers whose Offices are discontinued to apply for Compensation.*
 23. *Responsibilities of Keepers of Particular Registers to attach to Keeper of General Register.*
 24. *Directions and Forms may be given by Lord Clerk Register.*
 25. *Power to Treasury to prepare amended Table of Fees of Registration.*
 26. *As to Salary and Duties of Lord Clerk Register.*
 27. *Not to extend to Burgh Registers.*
 28. *Commencement of Act.*
Schedules.
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An Act to improve the System of Registration of Writs relating to Heritable Property in Scotland.

(31st July 1868.)

WHEREAS it is expedient to amend the System of Registration of Writs relating to Lands and Heritages in Scotland, to lessen the Number of Registers, and to facilitate Searches thereof:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as "The Land Registers (Scotland) Act, 1868."

2. The Term "Register of Sasines," as used in this Act, shall be held as applying to the Registers directed to be kept by the Act 1617, c. 16., for the Registration of Sasines, Reversions, and other Writs directed to be recorded therein by that Act or by any subsequent Act of Parliament; and the Word "Writ," as used in this Act, shall apply to and include all Deeds and Writings which have heretofore been in the Practice of being recorded in these Registers, or which may under the Provisions of this Act be recorded in the General Register of Sasines.

3. The General Register of Sasines for Scotland shall be so kept that the Writs applicable to each County shall be entered in a separate Series of Presentment Books, and the Writs shall be minuted in a separate Series of Minute Books, and engrossed in a separate Series of Register Volumes, in the Order of Presentment, and where any Writ shall contain Land in more than One County such Writ shall be entered by the Ingiver in the Presentment Book of such of these Counties as may be specified in the Warrant of Registration herein-after provided for, and shall be minuted in the Minute Book of such of these Counties or County as are specified in said Warrant, and shall be engrossed at Length in the Division of the Register applicable to One only of the said Counties; and a Memorandum shall be entered in each Division of the Register applicable to the other Counties or County in the Presentment Book of which it is entered as aforesaid, setting forth the Volume of the Register and the Folio or Folios of such Volume in which such Engrossment is made; and such Memorandum shall be deemed to be equivalent to full Engrossment of such Writ in the Division of the Register wherein such Memorandum shall be entered as aforesaid: For the Purposes of this Act, the Barony and Regality of Glasgow, and also the Stewartry of Kirkcudbright, shall each be treated as a County.

4. All Writs which may be recorded in the General Register of Sasines in Terms of this Act shall, previous to being presented for Registration, have a Warrant endorsed or written thereon, in or as nearly as may be in the Form of Schedule (A.) No. 1. hereto annexed, specifying the Person or Persons on whose Behalf the Writ is so presented, and the County or Counties in which the Lands to which such Writ has reference are situated, and signed by such Person or Persons, or his or their Agent or Agents; and the Form of Warrant of Registration hereby prescribed shall supersede and be used in place of the Form of Warrant of Registration as given in Schedule (A.) No. 1. annexed to "The Titles to Land (Scotland) Act, 1858." And in the Case of an Assignment of an unrecorded Conveyance in virtue of the Provisions of the Thirteenth Section of the said "Titles to Land (Scotland) Act, 1858," the Warrant of Registration to be employed shall be in or as nearly as may be in the Form of Schedule (A.) No. 2. hereto annexed; and the Form of Warrant of Registration shall supersede and be used in place of the Form of such Warrant given in Schedule (A.) No. 2. annexed to the said "Titles to Land (Scotland) Act, 1858." And Warrants of Registration may be signed either by an individual Agent, or by the Subscription of any Firm of which such Agent may be a Partner. And the Form of Warrants of Registration hereby prescribed shall have the same legal Force and Effect as is conferred on the Forms of Warrants of Registration annexed to the said "Titles to Land (Scotland) Act, 1858," with reference to the Conveyances for which such Warrants are prescribed by the said last-mentioned Act.

5. Provided always, That where any Writ containing Lands or Heritages in more than One County shall not have had a Warrant of Registration endorsed or written thereon applicable to all the Counties to which it applies, the Registration of such Writ shall, notwithstanding, as regards the County or Counties mentioned in the Warrant, and in the Minute Books and Register Volumes of which County or Counties it has been recorded, or a Memorandum thereof entered, be effectual; and it shall be competent afterwards to present such Writ by a new Warrant of Registration thereon, and to minute and register such Writ in the Register of any other County or Counties to which such Writ applies, in Terms of such new Warrant; and in the Case of such subsequent Registration it shall not be necessary to engross the Writ at Length in the Division of the Register applicable to such County or Counties, but the same may be effected by the Insertion of a Memorandum in such Division of the Register in the Manner herein-before provided for, and such subsequent Registration shall be effectual as regards the County or Counties to which such

Writ applies, and to which such new Warrant is applicable, of and from the Date of such subsequent Registration.

6. Where any Writ shall be transmitted by Post for Registration in the General Register of Sasines the Keeper of said Register shall, upon the Receipt of such Writ, cause the same to be acknowledged to the Sender, and to be presented in Terms of the Warrant of Registration thereon by a Clerk in his Office to be appointed by him for that Purpose, and who shall be held as the Ingiver of the Writ; and such Clerk shall attach to his Signature in the Presentment Book the Words "transmitted by," and thereafter the Name of the Sender; and such Writ shall be recorded in the same Manner as any other Writ presented for Registration, and on the Writ being ready for Delivery Intimation to that Effect shall be made by Post to the Sender, accompanied by a Note of Fees, and on Receipt of the Fees and Postage, and a Request to that Effect, the Keeper shall transmit the Writs to the Sender by Post; and where Two or more Writs transmitted by Post shall be received by the Keeper at the same Time, the Entries thereof in the Presentment Book and the Minute Book shall be of the same Year, Month, Day, and Hour, and such Writs shall be deemed and taken to be presented and registered contemporaneously.

7. Registration of Writs in the General Register of Sasines shall, except in so far as altered by the Provisions of this Act, continue to be made in conformity with the Practice heretofore in use; and no Error or Omission in any Presentment Book of the General Register of Sasines to be kept as aforesaid shall invalidate, or in any way affect injuriously, the Registration of any Writ recorded in said Register.

8. The whole Particular Registers of Sasines in Scotland shall be discontinued not later than the Thirty-first Day of December One thousand eight hundred and seventy-one; and it shall be competent to the Lord Clerk Register of Scotland, from Time to Time prior to the said Date, upon the Application of the Keeper of the General Register of Sasines, to order the Discontinuance of any Particular Register of Sasines, and the Lord Clerk Register shall cause such Order, signed by him, to be recorded in the General Register of Sasines, and a Copy of such Order, also signed by him, to be transmitted to the Keeper of the Particular Register of Sasines to which it applies, and shall cause such Order to be advertised in the *Edinburgh Gazette*, and in any Newspaper or Newspapers he may deem proper; and such Order shall specify the Day, not being less than One Calendar Month after the Date of such Publication in the *Edinburgh Gazette*, from

and after which such Particular Register is to be discontinued; and after the Date so to be specified in any such Order as regards the Particular Register to which such Order shall apply, and after the said Thirty-first Day of December One thousand eight hundred and seventy-one as regards all other Particular Registers, it shall not be competent to present, or for the Keeper of the said Particular Register to receive, any Writ for Registration therein; and all Writs which, previous to the Discontinuance of the said Particular Registers respectively, might competently have been presented for Registration therein shall after said Discontinuance be registrable only in the General Register of Sasines; and Registration in the General Register of Sasines as herein-before directed to be kept for separate Counties shall have all the Force and Effect previously attached to Registration in such Particular Registers of Sasines respectively.

9. Printed Abridgments and printed Indexes, both of Persons and of Places, applicable to each County in Scotland, in the Form heretofore in use in the General Register House, or in such other Form as may from Time to Time be prescribed by the Lord Clerk Register, shall, from and after the Discontinuance of all the Particular Registers of Sasines directed to be discontinued as aforesaid, be prepared under the Superintendence of the Keeper of the General Register of Sasines, and as nearly as possible contemporaneously with the Minute Books and Volumes of the Register; and such Indexes shall be consolidated from Time to Time for such Periods as may be deemed expedient: Provided always, that it shall be lawful at any Time for the Lord Clerk Register, if he shall think fit, to direct that Abridgments shall cease to be prepared separately from the Minutes; and in that Case, and in lieu of the Preparation and printing of said Abridgments, the Minutes shall be printed under the Superintendence of the Keeper of the General Register of Sasines, in lieu of printing such Abridgments.

10. The Keeper of the General Register of Sasines shall transmit the said printed Abridgments, or printed Minutes and Indexes, from Time to Time as the same are prepared, to the Department of the Lord Clerk Register; and the Lord Clerk Register shall, as soon as possible thereafter, furnish to the Sheriff Clerk of each County a printed Copy of the Abridgments or Minutes and Indexes for such County, and shall also furnish to each such Sheriff Clerk, as soon as prepared and transmitted to his Department as aforesaid, a printed Copy of each consolidated Index applicable to such County; and where in any County there shall be a Resident Sheriff Substitute and Depute Sheriff Clerk, in addition to those at the County Town, it shall be in the

Power of the Lord Clerk Register, on Application made, to direct that Copies of the Abridgments or Minutes and Indexes for such County shall be also sent to such Depute Sheriff Clerk, in the same Manner as to the Principal Sheriff Clerk; and such Abridgments or Minutes and Indexes so furnished to the Sheriff Clerks shall be made patent by them to the Public on Payment of such reasonable Fees as may be fixed by the Lord Clerk Register, with the Sanction of the Lord President of the Court of Session, the Lord Advocate, and the Lord Justice Clerk, which Fees shall be accounted for by the Sheriff Clerks to the Lord Clerk Register as Part of the Fees of his Department.

11. And whereas there are in the Possession of the Lord Clerk Register certain spare or surplus Copies of the printed Abridgments of Sasines, commencing with the Year One thousand seven hundred and eighty-one, which have been prepared and printed from Time to Time, and which will be continued according to the Form presently in use, up to the Date when each Particular Register shall be discontinued under the Provisions of this Act: Such Copies shall, so far as possible, be distributed by the Lord Clerk Register to the different Counties, by depositing with the Sheriff Clerk or Sheriff Clerk Depute of each County a Copy of the Abridgment applicable to that County.

12. It shall not be necessary to register in the Books of Council and Session for the Purpose of Preservation, or of Preservation and Execution, any Writ competent to be registered in the General Register of Sasines, and which shall have been so registered, and such Writ, being registered in the said Register of Sasines, shall be held to be registered also in the Books of Council and Session for Preservation, or for Preservation and Execution, as the Case may be: Provided such Writ, when presented for Registration in the said Register of Sasines, shall, in the Warrant of Registration prescribed by this Act, have an Addition, specifying that the Writ is to be registered for Preservation, or for Preservation and Execution, as well as for Publication, in or as nearly as may be in the Form of Schedule (A.) No. 3. hereto annexed; and the Writ, with such Warrant, being so registered in the said Register of Sasines, shall not be re-delivered to the Ingiver, but an Extract only (containing as Part of said Extract, where the Writ is registered for Execution, a Warrant for Execution) shall be delivered, which Extract may be issued without abiding the actual Booking in the Register of Sasines, and shall be in the Form, as nearly as may be, of the Schedule (B.) to this Act annexed, and shall be signed on each Page by the Keeper of the Register of Sasines, or a Deputy duly commissioned

by him to that Effect; and all Writs so presented to be registered for Preservation and Execution shall, after having been engrossed in the General Register of Sasines in Terms of Law, be periodically transmitted by the Keeper of the Register of Sasines to the Lord Clerk Register or his Deputies, through the Office of the Keeper of the Register of Deeds and Probative Writs and Protests in the Books of Council and Session, or otherwise, as the Lord Clerk Register shall prescribe, and shall be indexed, either separately, or along with other Writs registered in the Books of Council and Session, as the Lord Clerk Register may direct; and such Registration in the General Register of Sasines shall have all the legal Effects of Registration in the Books of Council and Session for Preservation, or for Preservation and Execution, as the Case may be, as well as of Registration in the General Register of Sasines: Provided always, that no Writ shall be held to be registered for the Purpose of Execution which does not contain a Procuratory for Registration, or Clause of Consent to Registration, for the Purpose of Execution, in the Body of the Writ; and Extracts as aforesaid, One or more, of all Writs so registered in the said Register of Sasines may be issued at any Time by the Keeper of the Register of Sasines, or after Transmission as aforesaid, by the Deputy Keeper of the Records, or by any one having their Authority respectively; and all such Extracts, and the Warrants of Execution therein contained, shall have all the like Force and Effect as any Extract from the Books of Council and Session, or as any Warrant of Execution contained in or appended to such Extract, or as any Extract from the General Register of Sasines, according to the existing Law and Practice; and such Extracts, in Terms of this Act, shall be equivalent to the registered Writs themselves, except where any Writ so registered shall be offered to be improved; and all Extracts issued in Terms of this Act shall have upon them, in such Form as may from Time to Time be prescribed by the Lord Clerk Register, a Certificate or Marking indicating the cumulo Amount of Stamp Duty paid on the principal Writ recorded and retained for Preservation.

13. No Fees shall be chargeable at the Office of the Keeper of the Register of Deeds and Probative Writs and Protests in the Books of Council and Session in respect of the Registration of any Writs in the General Register of Sasines for Preservation, or for Preservation and Execution, as well as for Publication, in Terms of this Act; and the Fees to be charged in respect thereof, and of the Extract given out at the Time of Registration at the Office of the General Register of Sasines, shall be the same, with the Addition only of any Outlay for the

Writing and Stamps of such Extract, as would have been chargeable if the Writ had been registered for Publication only; and the Salaries of the Principal Keeper of the Register of Deeds and Probative Writs and Protests in the Books of Council and Session, and of the Assistant Keepers, shall be defrayed out of Funds to be provided by Parliament for the Purpose; and the Fees of the Department shall be accounted for in such Manner as the Commissioners of the Treasury shall direct.

14. The Certificate of Registration on every Writ that shall be registered in the General Register of Sasines and re-delivered to the Ingiver shall be signed by the Keeper of said Register, or a Deputy duly commissioned by him to that Effect; and no further Signature in order to or in token of such Registration shall be necessary to any Writ presented for Registration in the General Register of Sasines; but every Folio of such Writ shall, in token of such Registration, be impressed with an Office Seal or Stamp to be kept in the said General Register of Sasines.

15. The Register of Interruptions of Prescriptions shall be discontinued as a separate Record, and all Writs appropriate thereto may be presented and registered in the General Register of Sasines, in the same Manner as any other Writs appropriate to said General Register of Sasines; and Registration thereof in the General Register of Sasines shall have all the like Force and Effect as Registration in the Register of Interruptions of Prescriptions previous to the passing of this Act.

16. The Particular Registers of Inhibitions and Interdictions throughout Scotland shall be discontinued, and all Diligences, Executions, and other Writings at present appropriate to those Registers, or any of them, shall be registrable only in the General Register of Inhibitions, which shall be the only competent Register for the Registration of Inhibitions and Interdictions; and no Publication whatever of such Diligences, Executions, and other Writings, other than Registration in said General Register of Inhibitions, shall in future be necessary, but such Registration shall for all Purposes whatsoever have all the legal Effect of the Publication at present in use.

17. The Office of the Keeper of the General Register of Hornings, Inhibitions, and Adjudications shall in Time coming be united with the Office of Keeper of the General Register of Sasines to the Effect that both Offices shall be held, and the Duties thereof discharged, by One and the same Person, and the Keeper of the General Register of Hornings, Inhibitions, and

Adjudications shall keep only One Minute Book for Inhibitions and Adjudications, and also for Reductions recorded in his Office, as herein-after provided for, and shall frame only One Index applicable to all Inhibitions, Adjudications, and Reductions so recorded; and such Minute Book and Index shall be in such Form as may be prescribed by the Lord Clerk Register, and shall be printed, and a Copy thereof transmitted, in like Manner as is provided in regard to the Abridgments and Indexes kept in the General Register of Sasines, and shall be made patent to the Public on Payment of reasonable Fees, to be fixed and accounted for as is provided in regard to said Abridgments and Indexes.

18. The Particular Registers of Hornings and expired Charges shall be continued as at the Date of the passing of this Act: Provided always, that where any such Register has been heretofore kept as a Joint Register of Hornings and Inhibitions, it shall cease to be a competent Register for the Registration of Inhibitions.

19. The Commissioners of Her Majesty's Treasury shall have Power, upon the Application from Time to Time of the Lord Clerk Register, to regulate the Number of Official Searchers of the Records, and to grant to such Searchers such Remuneration out of Funds to be provided by Parliament for that Purpose as their Lordships shall deem fit: Provided that nothing herein contained shall interfere with the Right of Parties or their Agents to employ any other Persons to search the Records, or shall affect any Liability legally attaching to such other Persons, or to Agents employing them respectively.

20. From and after and upon the Termination of the present existing Interest in the Office of the Keeper of the General Register of Sasines, or when the said Office shall become vacant, the Person to be then appointed to the said Office, and his Successors, shall hold no other Office, and shall not, directly or indirectly, by himself or any Partner, be engaged in Practice before the Supreme or any Inferior Court, and he shall not, directly or indirectly, by himself or any Partner, transact any Business for Profit other than the Business devolving on him as Keeper of the said Register; and from and after the Date fixed for this Act taking effect it shall be lawful for the Commissioners of Her Majesty's Treasury, upon the Application of the Lord Clerk Register, to regulate from Time to Time the Offices of the General Register of Sasines, and of the General Register of Hornings, Inhibitions, and Adjudications under this Act, and to sanction such increased Establishment of Deputies, Assistants, Clerks, or other Officers as may be necessary for the Purposes hereof, and to fix the Salaries and

Remuneration to be allowed to the Officers of the said Departments respectively; and such Salaries and Remuneration shall be payable out of Funds to be provided by Parliament for that Purpose; and Copies of all Minutes made by said Commissioners in pursuance of this Section shall be laid before Parliament forthwith, if Parliament be sitting, or if not, within Fourteen Days after the next ensuing Sitting of Parliament.

21. It shall be competent to the Commissioners of Her Majesty's Treasury to pay to Sheriff Clerks reasonable Allowances for Duties discharged by them under this Act out of Funds to be voted by Parliament for that Purpose.

22. It shall be competent for every Keeper of any Register whose Office shall be discontinued under the Provisions of this Act to apply to the Commissioners of Her Majesty's Treasury, who shall be empowered, on Proof of the average Amount of the Emoluments received by such Keeper, after defraying the Expenses of his Establishment, and to which Emoluments he was personally entitled under the present System of Registration, to award to him such Compensation as the said Commissioners shall deem just, having regard to the Terms of his Commission; and such Compensation shall be payable out of Funds to be provided by Parliament for that Purpose: Provided always, that if any Person to whom Compensation shall be awarded by way of Annuity as aforesaid shall be hereafter appointed to any other Office in the Public Service, such Compensation shall be accounted pro tanto of the Salary payable to such Person in respect of such other Office, so long as he shall continue to hold the same.

23. The Keeper of the General Register of Sasines shall, from and after the Discontinuance of the Particular Registers or any of them, be subject to such and the like Responsibilities and Liabilities for Loss and Damage by reason of Neglects, Omissions, or Errors in the Registration of Writs in the General Register of Sasines as the Keepers of the Particular Registers of Sasines have hitherto been and now are subject to with reference to the Registration of Writs in such Particular Registers.

24. The Lord Clerk Register shall be empowered, if he shall deem it expedient, with the view of facilitating the Preparation of the Presentment Book and of the Minute Book, to require that such Particulars as he may determine respecting the Writ given in for Registration shall be delivered therewith, and generally shall be empowered to require such Particulars, and to issue such Forms and Directions, as he may deem requisite or expedient for facilitating Registration under this Act, and not being contrary to the Provisions thereof.

25. The Commissioners of Her Majesty's Treasury shall have Power from Time to Time, after the Discontinuance of all the Particular Registers of Sasines in Terms of this Act, to prepare amended Tables of Fees of Registration in the Register of Sasines at Edinburgh, and for that Purpose to reduce or regulate, and alter or vary, and, if considered expedient, to graduate according to the Values of the Lands or other Subjects to which the Fees have reference, all or any of such Fees, including the Fees of Searches against Lands and Heritages, or against the Proprietors thereof, and to lay such amended Tables before the Lord President, Lord Clerk Register, Lord Advocate, and Lord Justice Clerk, and any Alteration in the Amount of such Fees shall be subject to the Approval of such Commissioners; and in the Preparation of any such amended Tables it shall be in view that the Fees to be drawn from the said Department shall not be greater than may reasonably be held sufficient for defraying the Expenses of the said Department, or the Improvement of the System of Registration.

26. It shall be lawful for the Commissioners of Her Majesty's Treasury to provide out of Monies voted by Parliament a Salary to the Lord Clerk Register of Scotland, and to regulate the Duties of such Office.

27. This Act shall not extend or apply to Burgh Registers of Sasines.

28. This Act shall take effect from and after the Thirty-first Day of December One thousand eight hundred and sixty-eight.



SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

No. 1.

Warrant of Registration on a Writ to be registered for Publication.

Register on behalf of *A. B.* [*insert Designation*] in the Register of the County of *C.* [*or if the Writ contains Land in more than One County, in the Registers of the Counties of C., D., E., and F.*] [*or Register, &c., along with Assignation [or Assignations] or Writ of Resignation hereon, in the Register of the County of C., or in the Registers of the Counties of C., D., E., and F.*] [*or otherwise, as the Case may be.*]

(Signed) *A. B.*[*or*] *G. H.,**W.S., Edinburgh, Agent.*[*or*] *J. K. & L.,**W.S., Edinburgh, Agents,
[or as the Case may be].*

No. 2.

Warrant of Registration on a Writ when presented with Assignation apart, or Notarial Instrument for Publication.

Register on behalf of *A. B.* [*insert Designation*] along with the Assignation [*or Assignations, or Notarial Instrument*] docketed with reference hereto [*or otherwise as the Case may be*] in the Register of the County of *C.* [*or if the Writ and Assignation, or Assignations, or Notarial Instrument have reference to Land in more than One County, in the Registers of the Counties of C., D., E., and F.*]

(Signed) *A. B.*[*or*] *G. H.,**W.S., Edinburgh, Agent.*[*or*] *J. K. & L.,**W.S., Edinburgh, Agents,
[or as the Case may be].*

No. 3.

Warrant of Registration on a Writ to be registered for Preservation, or Preservation and Execution, as well as Publication.

Register on behalf of *A. B.* [*insert Designation*] for Preservation [*or Preservation and Execution*], as well as for Publication in the Register in the

County of *C.* [*or in the Registers of the Counties of C., D., E., and F.*]

(Signed) *A. B.*[*or*] *G. H.,**W.S., Edinburgh, Agent.*[*or*] *J. K. & L.,**W.S., Edinburgh, Agents,
[or as the Case may be.]*

SCHEDULE (B.)

Extract of Deed, containing Warrant of Execution.

At Edinburgh, the _____ Day of _____, One thousand eight hundred and _____, between the Hours _____ and _____ Forenoon [*or as the Case may be*], the Writ, with Warrant of Registration thereon, herein-after engrossed, was presented by [*insert Name and Designation of Presenter*] for Registration in the General Register of Sasines for Publication, and also as in the Books of the Lords of Council and Session for Preservation [*or for Preservation and Execution, as the Case may be*], and is, with said Warrant of Registration, recorded in the Register of Sasines as follows:—

[*Insert full Copy of the Deed and Warrant of Registration, and where Deed is recorded for Execution, insert Warrant for Execution as follows:—*]

And the said Lords grant Warrant to Messengers-at-Arms in Her Majesty's Name and Authority to charge the Party or Parties aforesaid, bounden by the foresaid Writ, personally, or at his, her, or their respective Dwelling Place or Places if within Scotland, and if furth thereof, by delivering a Copy or Copies of Charge at the Office of the Keeper of the Record of Edictal Citations at Edinburgh, to pay, implement, and perform the whole Sum or Sums or Obligations or any of them, specified in the said Writ, all in Terms and to the Effect therein contained; and that to the Party or Parties to whom the said Sum or Sums or Obligations are, by the Terms of said Writ, payable or undertaken, within Six [*or Fifteen, as the Case may be*] Days if within Scotland, and if furth thereof, within Twenty-one Days next after he, she, or they are respectively charged to that Effect, under the Pain of Poining and Imprisonment, the Term or Terms of Payment being always first come and bygone; and also under Deduction of any Sum or Sums paid to Account (if any); and also grant Warrant to arrest the said Party or Parties bounden as aforesaid, his, her, or their readiest Goods, Gear,

Debts, and Sums of Money, in Payment and Satisfaction of the said Obligations or any of them; and if the said Party or Parties bounden as aforesaid fail to obey the said Charge, then to poid the said Party or Parties bounden as aforesaid, his, her, or their readiest Goods, Gear, and other Effects; and if needful for effecting the

said Poinding, grant Warrant to open all shut and lockfast Places in Form as effeirs.

Extracted on this and the preceding Pages by me, Keeper of the General Register of Sasines [or Deputy Keeper of the Records, or other Officer duly authorized, as the Case may be].
(Signed) A.B.

CAP. LXV.

The Universities Elections Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Repeal of Form of Declaration.*
2. *Amendment of Sect. 2. of first-recited Act.*
3. *Officers in whose Presence Voting Papers may be signed in the Channel Islands.*
4. *Short Title.*

An Act to amend the Law relating to the Use of Voting Papers in Elections for the Universities.

(31st July 1868.)

WHEREAS by an Act passed in the Session holden in the Twenty-fourth and Twenty-fifth Years of the Reign of Her present Majesty, Chapter Fifty-three, intituled "An Act to provide " that Votes at Elections for the Universities " may be recorded by means of Voting Papers," it is provided that at the Elections for Burgesses to serve in Parliament for the Universities of Oxford, Cambridge, and Dublin Votes may be given by means of Voting Papers; but it is by the said Act provided that no Voting Paper shall be received or recorded unless the Person tendering the same shall make the following Declaration, which he shall sign at the Foot or Back thereof:

'I solemnly declare, That I am personally acquainted with A.B. [*the Voter*], and I verily believe that this is the Paper by which he intends to vote, pursuant to the Provisions of the Universities Election Act.'

And whereas by virtue of the Representation of the People Act, 1867, the said first-mentioned Act applies to every Election of a Member for the University of London:

And whereas it is expedient to amend the said first-mentioned Act so far as respects the said recited Declaration:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons,

in this present Parliament assembled, and by the Authority of the same, as follows:

1. From and after the passing of this Act the said recited Form of Declaration shall not be required, and there shall be substituted in place thereof the Form of Declaration following; that is to say,

'I solemnly declare, That I verily believe that this is the Paper by which A.B. [*the Voter*] intends to vote pursuant to the Provisions of the "Universities Election Act, 1861 and 1868."

2. The Second Section of the said first-mentioned Act shall, in reference to the University of London, be construed as if the Words "in the Manner heretofore used" were omitted therefrom.

3. A Voting Paper for the Election of any Burgess or Member to serve in Parliament for any Universities or University in respect of which the Provisions of the said first-mentioned Act may for the Time being be in force, may be signed by a Voter being in one of the Channel Islands in the Presence of the following Officers; that is to say,

1. In Jersey and Guernsey, of the Bailiffs or any Lieutenant Bailiff, Jurat, or Juge d'Instruction.
2. In Alderney, of the Judge of Alderney, or any Jurat.
3. In Sark, of the Seneschal or Deputy Seneschal.

And for the Purpose of certifying and attesting the Signature of such Voting Paper, each of the

said Officers shall have all the Powers of a Justice of the Peace under the first-mentioned Act, and a Statement of the official Quality of such Officer shall be a sufficient Statement of Quality in pursuance of the Provisions of the said Act.

4. This Act may be cited for all Purposes as "The Universities Elections Act, 1868," and the said first-mentioned Act and this Act may be cited together as "The Universities Election Acts, 1861 and 1868."

CAP. LXVI.

The Turnpike Trusts Arrangements Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Provisional Orders confirmed.*
 2. *Short Title.*
Schedule.
-

An Act to confirm certain Provisional Orders made under an Act of the Fifteenth Year of the Reign of Her present Majesty, to facilitate Arrangements for the Relief of Turnpike Trusts.
(31st July 1868.)

WHEREAS by an Act of the Fifteenth Year of Her Majesty, Chapter Thirty-eight, "to facilitate Arrangements for the Relief of Turnpike Trusts, and to make certain Provisions respecting Exemptions from Tolls," herein-after referred to as the Principal Act, Power is given to One of Her Majesty's Principal Secretaries of State to make Provisional Orders for reducing the Rate of Interest, and for extinguishing the Arrears of Interest on Mortgage Debts charged or secured on the Revenues of Turnpike Roads, in Cases where such Revenues are insufficient for the Payment in full of the Interest charged thereon:

And whereas by the Act of the Session of the Twenty-fourth and Twenty-fifth Years of the Reign of Her present Majesty, Chapter Forty-six, the Principal Act is extended to Turnpike Roads, the Acts relating to which are continued by any Annual Turnpike Acts Continuance Act, although

their Revenues are not insufficient for such Payments as aforesaid:

And whereas, in pursuance of the Principal Act, and the said Act extending the same, the several Provisional Orders referred to in the Schedule annexed hereto have been made by Her Majesty's Principal Secretary of State for the Home Department, and there are stated in the said Schedule the Dates of such Orders, and such Particulars relating thereto as are therein specified:

And whereas it is expedient that the said Provisional Orders should be confirmed and made absolute:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. The several Provisional Orders, the Dates of which are set forth in the First Column of the said Schedule, are hereby confirmed, and the Provisions thereof shall be of the like Force and Effect as if they had been expressly enacted by Parliament.

2. This Act may be cited for all Purposes as "The Turnpike Trusts Arrangements Act, 1868."

SCHEDULE.

Date of Provisional Order.	TITLE OF LOCAL ACT.	Amount of Principal Debt.	Interest to be reduced to the under-mentioned Rates per Annum.	Dates from which reduced Rate of Interest to commence.
1867. 24 June	7 & 8 Geo. 4. c. lxxiii., "An Act for more effectually improving the Road from Creed to Ruan Lanehome, and from Dennis Water to Trethim Mill, in the County of Cornwall" - - -	£ s. d. 1,000 0 0	2l. per Cent.	5 June 1867.
12 Aug.	1 & 2 Geo. 4. c. cvii., "An Act for more effectually repairing the Road from Dunstable in the County of Bedford to the Pond Yards in the County of Hertford"	3,950 0 0	{ One Penny per Cent.	{ 24 June 1867.
5 Dec.	8 & 9 Vict. c. cli., "An Act for repairing and maintaining the Road from Harwell to Streatley in the County of Berks" -	2,900 0 0	{ One Penny per Cent.	{ 13 Aug. 1867 (Arrears extinguished).
1868. 25 May	6 W. 4. c. xli., "An Act for making and maintaining as Turnpike a Road leading from the Flimwell to Hastings Turnpike Road at or near Beauport in the Parish of Hollington to Hastings in the County of Sussex" - - -	11,390 0 0	1l. per Cent.	{ 31 Dec. 1867 (Arrears extinguished).

CAP. LXVII.

The Police Rate Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Manner of defraying Expenses of Metropolitan Police Force.*
3. *Allowance to Assistant Commissioners for House.*
4. *Provisions as to Metropolitan Police Acts.*
5. *Construction of Act.*

An Act to amend the Law relating to the Funds provided for defraying the Expenses of the Metropolitan Police.
(31st July 1868.)

WHEREAS, in pursuance of the Acts relating to the Metropolitan Police, the Expenses of the said Police are defrayed out of an annual Sum limited not to exceed Eightpence in the Pound on the full annual Value of all Property rateable for the Relief of the Poor within the Parishes, Townships, Precincts, and Places therein de-

scribed, such Value to be computed as therein mentioned :

And whereas the said Sum is not sufficient to provide for the Expenses of the increased Force of Police required for the Protection of the Metropolis :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited for all Purposes as "The Police Rate Act, 1868."

2. The annual Sum to be provided in pursuance of the said Acts for defraying the Expenses of the Metropolitan Police Force shall not exceed Ninepence in the Pound, calculated on such Value as aforesaid, and of such annual Sum to be so provided One Fourth Part shall be contributed by the Treasury out of Monies to be for that Purpose provided by Parliament, and Three Fourth Parts shall be raised by a Rate in manner provided by the said Acts.

3. There shall be paid to each Assistant Commissioner of Police in addition to his Salary, as an Allowance for House Rent, such annual Sum not exceeding Three hundred Pounds as may from Time to Time be directed by One of Her Majesty's Principal Secretaries of State, with the Assent of the Commissioners of Her Majesty's Treasury, and any Allowance so paid shall be deemed to be Part of the Expenses of the Metropolitan Police.

4. The Act of the Session of the Third and Fourth Years of the Reign of King William the Fourth, Chapter Eighty-nine, intituled "An Act to authorize the Issue of a Sum of Money out of the Consolidated Fund towards the Support of the Metropolitan Police," and the Tenth Section of the Act of the Twentieth and Twenty-first Years of the Reign of Her present Majesty, Chapter Sixty-four, shall be repealed; and for the Purposes of this Act the Acts relating to the Metropolitan Police shall be deemed to mean all Enactments which are in force of the following Acts; (that is to say,)

An Act passed in the Tenth Year of the Reign of His late Majesty King George the Fourth, intituled "An Act for improving the Police in and near the Metropolis;"

An Act passed in the Session of the Second and Third Years of the Reign of Her Majesty Queen Victoria, Chapter Forty-seven, intituled "An Act for further improving the Police in and near the Metropolis;"

An Act passed in the Session of the Nineteenth and Twentieth Years of the Reign of Her Majesty Queen Victoria, Chapter Two, intituled "An Act to amend the Acts relating to the Metropolitan Police;"

An Act passed in the Session of the Twentieth and Twenty-first Years of the Reign of Her Majesty Queen Victoria, Chapter Sixty-four, intituled "An Act for raising a Sum of Money for building and improving Stations of the Metropolitan Police, and to amend the Acts concerning the Metropolitan Police;" and,

An Act passed in the Session of the Twenty-fourth and Twenty-fifth Years of the Reign of Her Majesty Queen Victoria, Chapter One hundred and twenty-four, intituled "An Act for amending the Law relating to the Receiver for the Metropolitan Police District; and for other Purposes."

5. This Act shall be construed as One with the said Acts relating to the Metropolitan Police, and all the Provisions of such Acts, save in so far as they are hereby varied or repealed, shall continue in full Force.

CAP. LXVIII.

The Liquidation Act, 1868.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short Title.*
2. *Interpretation of Terms.*
3. *Extent of Act.*
4. *Application of Act.*

Division of Assets in Specie.

5. *Power to prepare and file Scheme.*
6. *Provision in Scheme as to secured Creditors.*
7. *Notice of Scheme.*
8. *Application for Confirmation.*
9. *Confirmation of Scheme by Court.*
10. *Effect of Scheme.*
11. *Regard by Court to Wishes of Creditors.*

*Foreclosure by Notice.*12. *Power for Creditors to foreclose by Notice.**Procedure.*13. *General Orders and Forms in Schedule.
Schedule.*

An Act to facilitate Liquidation in certain Cases of Bankruptcy Arrangement and Winding-up.

(31st July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

Preliminary.

1. This Act may be cited as The Liquidation Act, 1868.

2. In this Act—

The Term "Arrangement" means Arrangement, Conveyance, or Assignment by a Debtor, with or for the Benefit of his Creditors, by Deed registered under the Bankruptcy Act, 1861 :

The Term "Deed" includes any Instrument :

The Term "Winding-up" means the Winding-up of a Company in any Manner under the Companies Act, 1862, and any Act amending the same :

The Term "Liquidators" means Assignees in a Bankruptcy, Trustees, or Inspectors, or other Persons acting on behalf of a Debtor and his Creditors, under an Arrangement, or official or other Liquidators in a Winding-up.

3. This Act shall not extend to Scotland or Ireland.

4. This Act shall have Effect in the following Cases only :—

- (1.) In case of Bankruptcy, where the Adjudication has been made before the passing of this Act, or a Deed of Arrangement has been registered before the passing of this Act, and Adjudication of Bankruptcy supervenes before the Completion of the Liquidation under the Deed.
- (2.) In case of Arrangement, where the Deed has been registered before the passing of this Act.
- (3.) In case of Winding-up, where Proceedings are pending at the passing of this Act.

Division of Assets in Specie.

5. If in any case of Bankruptcy, Arrangement, or Winding-up within this Act it appears to the Liquidators that it will be for the Benefit of the Estate in Liquidation that any Part of the Assets thereof should be divided in Specie, or be otherwise disposed of without Sale, they may prepare and file in the Court of Chancery a Scheme in that Behalf.

6. A Scheme may in any Case provide that any Class of secured Creditors shall take in or towards Discharge of their Claims on the Estate the Securities held by them at a Value to be determined by the Court or in such Manner as the Court shall direct.

7. Notice of the filing of the Scheme shall be published and given as General Orders under this Act direct.

8. At such Time after the filing of the Scheme as General Orders under this Act direct the Liquidators may apply to the Court in a summary Way for Confirmation thereof.

9. After hearing the Liquidators, and any Creditors or other Parties whom the Court thinks entitled to be heard on the Application, the Court, if satisfied that no sufficient Objection has been established to the Scheme, may confirm the Scheme, with or without Alteration or Addition.

10. The Scheme, as and when confirmed by the Court, shall be binding and effectual to all Intents (any Rule of Law or Equity or Course of Procedure in any Court notwithstanding), and the Liquidators and Debtor and others affected by the Scheme shall conform with the Conditions thereof, and accordingly shall (subject to the Directions of the Court) execute and do all Deeds and Things necessary or proper for transferring or vesting any Portion of the Assets of the Estate in accordance with the Scheme.

11. The Court, in determining on the Confirmation of a Scheme, and in all Proceedings and Matters under or relating to a Scheme, may have regard to the Wishes of the Creditors or of separate Classes of Creditors, as proved to the Court by any sufficient Evidence; and the Court

may, if it thinks it expedient for the Purpose of ascertaining their Wishes, direct Meetings of Creditors or of Classes of Creditors to be summoned and held, which Meetings shall be regulated in such Manner as the Court thinks fit (regard being always had to the Value of the Debts due to the several Creditors and to the Nature and Amount of their respective Securities, if any), and may appoint a Person to act as Chairman of any such Meeting, and to report the Result thereof to the Court.

Foreclosure by Notice.

12. For facilitating the Settlement of Claims of secured Creditors the following Provisions shall have Effect:—

- (1.) In any Case of Bankruptcy, Arrangement, or Winding-up within this Act, any Person being or claiming to be a Creditor on the Estate in Liquidation, and holding or claiming a Security, Charge, or Lien on the Assets of the Estate, may, without Suit, give Notice in Writing to the Liquidators and the Debtor, stating his Debt or Demand, and the Security, Charge, or Lien which he holds or claims, and requiring Payment of his Debt or Demand within a Time therein specified, not being less than Six Months from the Delivery of the Notice:
- (2.) Unless the Liquidators within the Time specified either comply with the Notice, or give to the Creditor a counter-Notice to the Effect that they dispute his Right

to the Security, Charge, or Lien held or claimed by him, then from and after the Expiration of the Time specified the Creditor shall be entitled and bound to retain and accept, in full and final Satisfaction of the Debt or Demand stated in his Notice, that Portion of the Assets on which he holds or claims the Security, Charge, or Lien, and all Right and Title of the Liquidators and Debtor therein shall thenceforth be foreclosed:

- (3.) The Liquidators and Debtor shall, at the Cost of the Estate, execute and do all Deeds and Things necessary or proper for vesting in the Creditor such Portion of the Assets as aforesaid, free from all Right of Redemption by such Liquidators or Debtor.

Procedure.

13. General Orders for the better Execution of this Act and for the Regulation of Procedure thereunder shall be from Time to Time made by the [Lord Chancellor of Great Britain, with the Advice and Assistance of the Lords Justices of the Court of Appeal in Chancery, the Master of the Rolls, and the Vice Chancellors, or of any Two of those Judges; and subject to the Provisions of any such General Orders, and until any such are made, the Forms given in the Schedule to this Act, or Forms to the like Effect, may be used for the Purposes therein indicated, with such Variations as Circumstances require, and when used shall be deemed sufficient.

THE SCHEDULE.

FORMS.

I.

NOTICE BY CREDITOR.

The Liquidation Act, 1868.

To A.B. and C.D., being the Assignees in Bankruptcy [or as the Case may be] of E.F., of _____ and to the said E.F.

I [or we], the undersigned, being a Creditor [or Creditors] of the above-named E.F. to the Amount of £ _____ and holding the following Securities, namely [here the Nature of the Securities claimed, and whether legal or equitable, to be fully stated], do hereby require you (or some or one of you) to pay off my [or our] said Debt or Demand within

[not less than Six Calendar Months] from the Receipt by you of this Notice.

Dated this _____ Day of _____ (Signed) G.H.

II.

COUNTER-NOTICE BY LIQUIDATORS.

The Liquidation Act, 1868.

To G.H.

We, the undersigned, being the Assignees in Bankruptcy [or as the Case may be] of the Estate of E.F., do hereby give you Notice that we dispute your Right to the Security, Charge, or Lien held or claimed by you on a Portion of the Assets of the Estate in respect of the Debt or Demand of £ _____ claimed by you.

Dated this _____ Day of _____ (Signed) A.B.
C.D.

CAP. LXIX.

The Libel Act (Ireland), 1868.

ABSTRACT OF THE ENACTMENTS.

1. *When Damages in an Action for Libel are under 40s. Plaintiff not to get more Costs than Damages.*
2. *To apply to Ireland only. Short Title.*

An Act to assimilate the Law in Ireland to the Law in England as to Costs in Actions of Libel. (31st July 1868.)

WHEREAS it is expedient to assimilate the Law in Ireland to the Law in England as to Costs in Actions of Libel :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. In all Actions for Libel, where the Jury shall give Damages under Forty Shillings, the Plaintiff shall not be entitled to more Costs than Damages, unless the Judge before whom such Verdict shall be obtained shall immediately afterwards certify on the Back of the Record that the Libel was wilful and malicious.

2. This Act shall not apply to England and Scotland, and for all Purposes may be cited as *The Libel Act (Ireland), 1868.*

CAP. LXX.

The Railways Traverse Act.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Provision for Trial of Traverse in County other than that in which Lands are situate.*
3. *When Application for Trial of Traverse to be made.*
4. *Construction of Acts.*
5. *Jurisdiction out of Term Time.*

An Act to amend "The Railways (Ireland) Act, 1851," "The Railways (Ireland) Act, 1860," and "The Railways (Ireland) Act, 1864," as to the Trial of Traverses. (31st July 1868.)

WHEREAS by the Twenty-sixth Section of "The Railways Act (Ireland), 1851," it is provided, that where the Party named in any Certificate of the Amount of the Price or Compensation ascertained by any Award (or any Party claiming under the Party so named) should be dissatisfied with the Amount in such Certificate certified to be payable, and where any Party claiming any Interest in any Monies paid into Court should be dissatisfied with the Amount of the Price or Compensation in respect of such Monies, and where any Party interested in Land adjoining any Railway should be dissatisfied with

any Award so far as respects any Works for the Accommodation of Lands thereby awarded to be made and maintained by the Company, or which such Party might claim to have so made and maintained, it should be lawful for such Party, at the Assizes for the County in which the Lands are situate, or, where the Lands are situate in the County of Dublin or County of the City of Dublin, in the Term next following the giving of such Certificate, or the Payment of such Money into Court, or (if the Claim be only in respect of Accommodation Works) the making of the Award, or where such Assizes are holden or such Term begins within less than Twenty-one Days after the giving of such Certificate, or the Payment of such Money, or the making of the Award, then at the next subsequent Assizes, or in the next subsequent Term (as the Case might be), upon giving Ten Days Notice in Writing previously to such Assizes or Term respectively

to the Secretary of the Company of the Amount or the Accommodation Works intended to be claimed, to have a Traverse for Damages entered in the Crown Book in respect of such Claim, and thereupon such Traverse should be tried in such Manner, subject to such Regulations, and with such Consequences, as in the said Act in that Behalf respectively mentioned :

And whereas by "The Railways Act (Ireland), 1860," the said first-mentioned Act was amended and made perpetual :

And whereas by the First Section of the Railways Act (Ireland), 1864, it is provided that in all Cases where the Amount of Money which the Arbitrator should have awarded to be paid by the Company to any Person in respect of any Estate or Interest in Lands should exceed the Sum of Five hundred Pounds it should be lawful for the Company, if dissatisfied with such Award, upon giving to such Person within Ten Days next after the Date of such Award Notice in Writing of their Intention to appeal therefrom, to have a Traverse entered by the Company in the Crown Book in respect of such Award at the same Time and in like Manner in all respects as were provided with respect to Traverses taken by Persons dissatisfied with any Award, and the like Proceedings should be taken with respect to a Traverse so taken by the Company, and the Verdict of the Jury upon such Traverse should have the like Effect as in the Case of a Traverse taken by a Person so dissatisfied :

And whereas such Traverses as aforesaid must at present be tried in the County or County of a City where the Lands are situate; and it is expedient to amend the Law in that respect in the Manner herein-after mentioned :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited as "The Railways Traverse Act."

2. Whenever either Party shall be entitled and shall intend to have any such Traverse entered under the said recited Acts, or any or either of them, or any Act already or hereafter incorporating the said Acts or any of them, it shall be lawful for the other Party to apply to the Court of Queen's Bench for an Order directing such Traverse to be entered and tried in some County other than the County or County of a

City in which the Lands are situate; and if upon such Application it shall appear to said Court that it will be more convenient or proper or more in furtherance of Justice that such Traverse should be tried elsewhere than in the County or County of a City where the Lands are situate, the said Court may order such Traverse to be entered and tried in some other County or County of a City to be specified in such Order, and thereupon such Traverse shall be entered and tried in such other County or County of a City in such Manner, and subject to the like Regulations, and with the same Consequences, and the Verdict and Proceedings shall have the like Effect, as if the Lands were situate in the County or County of a City in which such Traverse shall under such Order be so entered and tried.

3. Such Application may be made either before or after the Ten Days Notice shall have been given, and before or after such Traverse may have been entered for the County or County of a City where the Lands are situate, and notwithstanding that such Traverse may have been respited from an Assizes or Term previously to such Application; and in case such Order shall have been made after the Entry of the Traverse in the County or County of a City in which the Lands are situate, no Trial shall be had upon such Entry. The said Court may make such Order as it may deem fit respecting the Costs of such Application, or any Costs to be incurred by reason of such Change of the Place of Trial or otherwise incidental to such Order as aforesaid, and may, in making such Order and in respect thereof, impose such Terms upon either Party as Justice may require.

4. This Act and the said recited Acts shall be read together as One Act, and this Act shall be held to be incorporated with each of the said recited Acts in any Act already or hereafter incorporating the said recited Acts or any of them, and shall apply to Traverses of Awards made before the passing of this Act in respect of which the Right of Traverse shall still subsist.

5. The Jurisdiction herein-before conferred upon the Court of Queen's Bench may out of Term be exercised by any Judge of that Court, or any Judge having for the Time being Jurisdiction to entertain and determine a Motion to change the Venue in any Action depending in said Court.

CAP. LXXI.

The County Courts Admiralty Jurisdiction Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. Short Title.
2. Appointment of County Courts for Admiralty Purposes.
3. Extent of Admiralty Jurisdiction of County Courts.
4. Restrictions on County Court Jurisdiction in certain Cases.
5. No County Court other than that appointed to have Jurisdiction.
6. As to Transfer from County Court by Order of High Court of Admiralty.
7. As to Transfer of Causes by Order of County Court to High Court of Admiralty.
8. As to Transfer of Causes to other County Courts or Court of Admiralty.
9. Restrictions on Proceedings in the Court of Admiralty or Superior Court.
10. Powers, &c. of Judges and Registrars.
11. Power to Judge of County Court to summon Nautical Assessors to his Assistance.
12. Decrees in County Courts in Admiralty Causes to have same Force as those in Civil Causes.
13. Admiralty Causes to be heard at usual Courts.
14. Appointment of Assessors in County Court.
15. Attendance of Assessors.
16. Removal of Assessors.
17. Remuneration of Registrars.
18. Scale of Costs.
19. Power to Registrars to administer Oaths and take Evidence.
20. Evidence before Registrar receivable in Admiralty Court.
21. As to Proceedings in County Court for Commencement of Cause.
22. Limitation of Arrest.
23. Power to issue Process.
24. Registration of Decrees and Orders.
25. Concurrent Jurisdiction of the Court of Passage.
26. Appeal to Court of Admiralty.
27. Time for Appeal.
28. Agreement not to appeal.
29. As to Appeals to the Queen in Council.
30. Costs of Appeal.
31. No Appeal unless Amount exceeds 50l.
32. Conduct of Sale, &c. in Court of Admiralty.
33. In certain Cases Causes may be transferred by County Court, and Appeals made to Court of Admiralty of the Cinque Ports.
34. County Court Acts applied to this.
35. Practice, &c. to be regulated by General Orders.
36. Authority for making General Orders.

An Act for conferring Admiralty Jurisdiction on the County Courts.
(31st July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited as The County Courts Admiralty Jurisdiction Act, 1868.

2. If at any Time after the passing of this Act it appears to Her Majesty in Council, on the

Representation of the Lord Chancellor, expedient that any County Court should have Admiralty Jurisdiction, it shall be lawful for Her Majesty, by Order in Council, to appoint that Court to have Admiralty Jurisdiction accordingly, and to assign to that Court as its District for Admiralty Purposes any Part or Parts of any One or more District or Districts of County Courts; and the District so constituted for that Court, with the Parts of the Sea (if any) adjacent to that District to a Distance of Three Miles from the Shore thereof, shall be deemed its District for Admiralty Purposes; and accordingly the Judge and all Officers of the Court shall have Jurisdiction and Authority for those Purposes throughout that

District, as if the same was the District of the Court for all Purposes; and, from a Time to be specified in each such Order, this Act shall have Effect in and throughout the District so constituted; and any such Order may be from Time to Time varied as seems expedient; and a County Court so appointed to have Admiralty Jurisdiction, and no other County Court, shall, for the Purposes of this Act, be deemed a County Court having Admiralty Jurisdiction: Provided that no Judge of a County Court, except the Judges of the London Court, shall have Jurisdiction in the City of London.

3. Any County Court having Admiralty Jurisdiction shall have Jurisdiction, and all Powers and Authorities relating thereto, to try and determine, subject and according to the Provisions of this Act, the following Causes (in this Act referred to as Admiralty Causes):

- (1.) As to any Claim for Salvage—Any Cause in which the Value of the Property saved does not exceed One thousand Pounds, or in which the Amount claimed does not exceed Three hundred Pounds:
- (2.) As to any Claim for Towage, Necessaries, or Wages—Any Cause in which the Amount claimed does not exceed One hundred and fifty Pounds:
- (3.) As to any Claim for Damage to Cargo, or Damage by Collision—Any Cause in which the Amount claimed does not exceed Three hundred Pounds:
- (4.) Any Cause in respect of any such Claim, or Claims as aforesaid, but in which the Value of the Property saved or the Amount claimed is beyond the Amount limited as above mentioned, when the Parties agree by a Memorandum, signed by them or by their Attorneys or Agents, that any County Court having Admiralty Jurisdiction, and specified in the Memorandum, shall have Jurisdiction.

4. Nothing in this Act, or in any Order in Council under it, shall confer on a County Court Jurisdiction in any Prize Cause, or in any other Matter within the Naval Prize Act, 1864, or in any Matter arising under any of the Acts for the Suppression of the Slave Trade, or any Admiralty Jurisdiction by way of Appeal.

5. From and after the Time specified in each Order in Council under this Act appointing a County Court to have Admiralty Jurisdiction within any District as the Time from which this Act shall have Effect in and throughout that District, no County Court, other than the County Court so appointed, shall have Jurisdiction within that District in any Admiralty Cause; provided that all Admiralty Causes at that Time pending in any County Court within that District may be

continued as if no such Order in Council had been made.

6. The High Court of Admiralty of England, on Motion by any Party to an Admiralty Cause pending in a County Court, may, if it shall think fit, with previous Notice to the other Party, transfer the Cause to the High Court of Admiralty, and may order Security for Costs, or impose such other Terms as to the Court may seem fit.

7. If during the Progress of an Admiralty Cause in a County Court it appears to the Court that the Subject Matter exceeds the Limit in respect of Amount of the Admiralty Jurisdiction of the Court, the Validity of any Order or Decree theretofore made by the Court shall not be thereby affected, but (unless the Parties agree, by a Memorandum signed by them or by their Attorneys or Agents, that the Court shall retain Jurisdiction,) the Court shall by Order transfer the Cause to the High Court of Admiralty; but that Court may, nevertheless, if the Judge of that Court in any Case thinks fit, order that the Cause shall be prosecuted in the County Court in which it was commenced, and it shall be prosecuted accordingly.

8. If during the Progress of an Admiralty Cause in a County Court it shall appear to the Court that the Cause could be more conveniently prosecuted in some other County Court, or in the High Court of Admiralty of England, the Court may by Order transfer it to such other County Court, or to the High Court of Admiralty of England, as the Case may be, and the Cause shall thenceforward be so prosecuted accordingly.

9. If any Person shall take in the High Court of Admiralty of England or in any Superior Court Proceedings which he might, without Agreement, have taken in a County Court, except by Order of the Judge of the High Court of Admiralty or of such Superior Court or of a County Court having Admiralty Jurisdiction, and shall not recover a Sum exceeding the Amount to which the Jurisdiction of the County Court in that Admiralty Cause is limited by this Act, and also if any Person without Agreement shall, except by Order as aforesaid, take Proceedings as to Salvage in the High Court of Admiralty or in any Superior Court in respect of Property saved, the Value of which when saved does not exceed One thousand Pounds, he shall not be entitled to Costs, and shall be liable to be condemned in Costs, unless the Judge of the High Court of Admiralty or of a Superior Court before whom the Cause is tried or heard shall certify that it was a proper Admiralty Cause to be tried in the High Court of Admiralty of England or in a Superior Court.

10. In an Admiralty Cause in a County Court the Cause shall be heard and determined in like Manner as ordinary Civil Causes are now heard and determined in County Courts; save and except that in any Admiralty Cause of Salvage, Towage, or Collision the County Court Judge shall, if he think fit, or on the Request of either Party to such Cause, be assisted by Two Nautical Assessors in the same Way as the Judge of the High Court of Admiralty is now assisted by Nautical Assessors.

11. In any such Admiralty Cause as last aforesaid it shall be lawful for the Judge of the County Court, if he think fit, and he shall, upon Request of either Party, summon to his Assistance in such Manner as General Orders shall direct Two Nautical Assessors, and such Nautical Assessors shall attend and assist accordingly.

12. The Decree of the County Court in an Admiralty Cause shall be enforced against the Person or Persons summoned as the Defendant or Defendants in the same Manner as the Decrees of the said Court are enforced in ordinary Civil Causes, save and except as in this Act otherwise provided.

13. The Judge of every County Court having Admiralty Jurisdiction shall hear and determine Admiralty Causes at the usual Courts held within his Jurisdiction, or at special Courts to be held by him, and which he is hereby required to hold as soon as may be after he shall have had Notice of an Admiralty Cause having arisen within the Jurisdiction of his Court.

14. The Registrar of each County Court having Admiralty Jurisdiction shall from Time to Time frame a List, to be approved by the Judge of the High Court of Admiralty before whom the same shall be laid by the County Court Judge, and without whose Approval it shall have no Validity, of Assessors, of Persons of nautical Skill and Experience residing or having Places of Business within the District of the County Court, to act as Assessors in that Court, and shall cause the List to be published in the *London Gazette*.

15. Every Person named in the List of Assessors so framed and approved shall attend the County Court under such Circumstances, and in such Rotation, and subject to such Regulations, and shall receive such Fees for his Attendance, as General Orders shall direct, and for every wilful Non-attendance shall be liable, at the Discretion of the Court, to a Penalty not exceeding Five Pounds.

16. Every Assessor named in such List shall hold his Office until a new List of Assessors shall

have been framed and approved as aforesaid, or until he shall resign his Appointment.

17. The Registrars of the County Courts shall be remunerated for their Duties in Admiralty Causes by receiving for their own Use such Fees as General Orders shall direct.

18. A Scale of Costs and Charges in Admiralty Causes in the County Courts shall be prescribed by General Orders.

19. The Registrar of a County Court shall have Power to administer Oaths in relation to any Admiralty Cause in a County Court; and any Person who shall wilfully depose or affirm falsely before the Registrar in any Admiralty Cause shall be deemed to be guilty of Perjury, and shall be liable to all the Pains and Penalties attaching to wilful and corrupt Perjury.

20. Evidence taken in any Admiralty Cause before the Registrar of a County Court, as the Judge of a County Court or General Orders shall direct, shall be received as Evidence in any other County Court, saving all just Exceptions; and the Registrar of any County Court shall, for the Purpose of the Examination of any Witnesses within the District of that Court, have all and the like Powers and Authorities of an Examiner of the High Court of Admiralty of England, and Evidence taken by him in that Capacity shall be received as Evidence in the High Court of Admiralty of England, saving all just Exceptions.

21. Proceedings in an Admiralty Cause shall be commenced—

- (1.) In the County Court having Admiralty Jurisdiction within the District of which the Vessel or Property to which the Cause relates is at the Commencement of the Proceedings;
- (2.) If the foregoing Rule be not applicable, then in the County Court having Admiralty Jurisdiction in the District of which the Owner of the Vessel or Property to which the Cause relates, or his Agent in England, resides, or if such Owner or Agent does not reside within any such District, then in the County Court having Admiralty Jurisdiction the District whereof is nearest to the Place where such Owner or Agent resides;
- (3.) If for any Reason the last foregoing Rule is not applicable or cannot be acted on, then in such County Court having Admiralty Jurisdiction as General Orders direct;
- (4.) In any Case in the County Court or One of the County Courts having Admiralty

Jurisdiction in which the Parties by a Memorandum, signed by them or by their Attorneys or Agents, agree shall have Jurisdiction in the Cause.

22. In an Admiralty Cause in a County Court if Evidence be given to the Satisfaction of the Judge, or in his Absence the Registrar of the Court, that it is probable that the Vessel or Property to which the Cause relates will be removed out of the Jurisdiction of the Court before the Plaintiff's Claim is satisfied, it shall be lawful for the said Judge, or in his Absence for the Registrar, to issue a Warrant for the Arrest and Detention of the said Vessel or Property, unless or until Bail to the Amount of the Claim made in such Cause, and to the reasonable Costs of the Plaintiff in such Cause, be entered into and perfected, according to General Orders, by or on behalf of the Owner of the Vessel or Property or his Agent, or other the Defendant in such Cause; and, except as in this Section expressly provided, there shall be no Arrest or Detention of a Vessel or Property in an Admiralty Cause in a County Court otherwise than in Execution.

23. For the Execution of any Decree or Order of a County Court in an Admiralty Cause the Court may order, and the Registrar on such Order may seal and issue, and any Officer of any County Court may execute, Process according to General Orders; provided that where under such Process a Vessel or Property would or might be sold, then, if the Owner of the Vessel or Property desires that the Sale should be conducted in the High Court of Admiralty instead of in the County Court, he shall be entitled, on Security for Costs being first given, and subject and according to such other Provisions as General Orders direct, to obtain an Order of the County Court for Transfer of the Proceedings for Sale, with or without (as the Judge of the County Court thinks fit) the Transfer of the subsequent Proceedings in the Cause, to the High Court of Admiralty, which Court shall have Jurisdiction and all Powers and Authorities relating thereto accordingly.

24. Such Decrees and Orders of County Courts in Admiralty Causes as General Orders shall direct shall be registered with the Registrar of County Court Judgments in London in such Manner as General Orders shall direct.

25. The Court of Passage of the Borough of Liverpool shall, upon an Order in Council being made which shall appoint the County Court of Lancashire holden at Liverpool to have Admiralty Jurisdiction, have the like Jurisdiction, Powers and Authorities as by that Order are

conferred on the said County Court; but nothing herein shall be deemed to enlarge the Area over which the Jurisdiction of the Court of Passage extends, or to alter the Rules and Regulations for holding the said Court, or to take away or restrict any Jurisdiction, Power, or Authority already vested in that Court; and Fees received in that Court under this Act shall be dealt with as Fees received in that Court under its ordinary Jurisdiction.

26. An Appeal may be made to the High Court of Admiralty of England from a final Decree or Order of a County Court in an Admiralty Cause, and, by Permission of the Judge of the County Court, from any interlocutory Decree or Order therein, on Security for Costs being first given, and subject to such other Provisions as General Orders shall direct.

27. No Appeal shall be allowed unless the Instrument of Appeal is lodged in the Registry of the High Court of Admiralty within Ten Days from the Date of the Decree or Order appealed from, but the Judge of the High Court of Admiralty of England may, on sufficient Cause being shown to his Satisfaction for such Omission, allow an Appeal to be prosecuted, notwithstanding that the Instrument of Appeal has not been lodged within that Time.

28. No Appeal shall be allowed if, before the Decree or Order is made, the Parties shall have agreed by a Memorandum signed by them, or by their Attorneys or Agents, that the Decree or Order shall be final; and any such Agreement need not be stamped, except in respect of any Fee imposed by General Orders.

29. There shall be no Appeal from a Decree or Order of the High Court of Admiralty of England made on Appeal from a County Court, except by express Permission of the Judge of the High Court of Admiralty.

30. On an Appeal under this Act, when the Appellant is unsuccessful, he shall pay the Costs of the Appeal, unless the Appellate Court shall otherwise direct.

31. No Appeal shall be allowed unless the Amount decreed or ordered to be due exceeds the Sum of Fifty Pounds.

32. On an Appeal under this Act, the Judge of the High Court of Admiralty, if it appears to him expedient that any Sale decreed or ordered to be made of the Vessel or Property to which the Cause relates should be conducted in the High Court of Admiralty instead of in the County Court from which the Appeal is brought,

may direct the Transfer of the Proceedings for Sale, with or without the Transfer of the subsequent Proceedings in the Cause, to the High Court of Admiralty, which Court shall have Jurisdiction and all Powers and Authorities relating thereto accordingly.

33. In all Cases which shall arise within the Jurisdiction of the Cinque Ports as defined by the Act First and Second George the Fourth, Chapter Seventy-six, Section Eighteen, Causes may be transferred by the County Court and Appeals made to the Court of Admiralty of the Cinque Ports in lieu of the High Court of Admiralty; and in the Case of Appeals the Instrument of Appeal shall be lodged in the Registry of the Cinque Ports, and the same Discretion vested in the Judge Official and Commissary of the said Cinque Ports Court as is by this Act vested in the Judge of the High Court of Admiralty.

34. This Act shall be read as One Act with so much of the County Courts Act, 1846, and the

Acts amending or extending the same, as is now in force.

35. General Orders shall be from Time to Time made under this Act for the Purposes in this Act directed, and for regulating the Practice and Procedure of the Admiralty Jurisdiction of the County Courts, the Form of Processes and Proceedings therein or issuing therefrom, and the Days and Places of Sittings for Admiralty Causes, the Duties of the Judges and Officers thereof, and the Fees to be taken therein.

36. General Orders under this Act shall be made by the Lord Chancellor, with the Advice and Assistance of the Judge of the High Court of Admiralty of England, and, as far as they relate to Fees, or to the Receipt and Expenditure of and accounting for Money, with the Approval of the Commissioners of Her Majesty's Treasury.

CAP. LXXII.

Promissory Oaths Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*

PART I.

OATHS TO BE CONTINUED.

Oath of Allegiance. Official and Judicial Oaths.

2. *Form of Oath of Allegiance.*
3. *Form of Official Oath.*
4. *Form of Judicial Oath.*
5. *Persons to take the Oath of Allegiance and Official Oath.*
6. *Persons to take the Oath of Allegiance and Judicial Oath.*
7. *Penalty on not taking required Oath.*
8. *Form of Oath of Allegiance in this Act substituted for Form in certain other Acts.*
9. *Prohibition of Oath of Allegiance except in accordance with Act.*

Miscellaneous Provisions as to Oaths.

10. *The Name of the Sovereign for the Time being to be used in the Oath.*
 11. *Provision in favour of Persons permitted to make Affirmations.*
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PART 2.

OATHS TO BE ABOLISHED.

Substitution of Declaration for Oaths.

12. *Regulations as to Substitution of Declarations for Oaths.*
13. *Penalty on not making Declaration required by this Act.*

PART 3.

Saving Clause.

14. *Not to affect Matters herein stated.*
15. *Saving of Powers of Alteration hitherto exercised.*
16. *General Saving as to Matters herein stated.*
Schedule.

An Act to amend the Law relating to Promissory Oaths. (31st July 1868.)

‘ after the Laws and Usages of this Realm, without Fear or Favour, Affection or Illwill.
‘ So help me GOD.’

WHEREAS it is expedient to amend the Law relating to Promissory Oaths :

Be it enacted by the Queen’s most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited for all Purposes as the “Promissory Oaths Act, 1868.”

PART 1.

OATHS TO BE CONTINUED.

Oath of Allegiance. Official and Judicial Oaths.

2. The Oath in this Act referred to as the Oath of Allegiance shall be in the Form following ; that is to say,

‘ I do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria, Her Heirs and Successors, according to Law. So help me GOD.’

3. The Oath in this Act referred to as the Official Oath shall be in the Form following ; that is to say,

‘ I do swear, That I will well and truly serve Her Majesty Queen Victoria in the Office of
‘ So help me GOD.’

4. The Oath in this Act referred to as the Judicial Oath shall be in the Form following ; that is to say,

‘ I do swear, That I will well and truly serve our Sovereign Lady Queen Victoria in the Office of
‘ and I will do Right to all Manner of People

5. The Oath of Allegiance and Official Oath shall be tendered to and taken by each of the Officers named in the First Part of the Schedule annexed hereto as soon as may be after his Acceptance of Office by the Officer, and in the Manner in that Behalf mentioned in the said First Part of the said Schedule.

6. The Oath of Allegiance and Judicial Oath shall be taken by each of the Officers named in the Second Part of the said Schedule hereto as soon as may be after his Acceptance of Office, and such Oaths shall be tendered and taken in manner in which the Oaths required to be taken by such Officer previously to the passing of this Act on entering his Office would have been tendered and taken.

7. If any Officer specified in the Schedule hereto declines or neglects, when any Oath required to be taken by him under this Act is duly tendered, to take such Oath, he shall, if he has already entered on his Office, vacate the same, and if he has not entered on the same be disqualified from entering on the same ; but no Person shall be compelled, in respect of the same Appointment to the same Office, to take such Oath or make such Affirmation more Times than One.

8. The Form of the Oath of Allegiance provided by this Act shall be deemed to be substituted in the Case of the Clerical Subscription Act, 1865, for the Form of the Oath of Allegiance and Supremacy therein referred to ; in the Case of the Parliamentary Oaths Act, 1866, for the Form of the Oath thereby prescribed to be taken and subscribed by Members of Parliament on taking their Seats ; and in the Case of the

Office and Oaths Act, 1867, for the Form of the Oaths of Allegiance, Supremacy, and Abjuration therein referred to; and all the Provisions of the said Acts shall apply to the Oath substituted by this Section in the same Manner as if that Form of Oath were actually inserted in each of the said Acts in the Place of the Oath for which it is substituted.

9. No Person shall be required or authorized to take the Oaths of Allegiance, Supremacy, and Abjuration, or any of such Oaths, or any Oath substituted for such Oaths, or any of them, or to make any Declaration to the like Effect of such Oaths, or any of them, except the Persons required to take the Oath of Allegiance by this Act and the Clerical Subscription Act, 1865, and the Parliamentary Oaths Act, 1866, or One of such Acts, any Act of Parliament, Charter, or Custom to the contrary notwithstanding; and no Person shall be required or authorized to take the Oath of Assurance in Scotland.

Miscellaneous Provisions as to Oaths.

10. Where in any Oath under this Act the Name of Her present Majesty is expressed, the Name of the Sovereign of this Kingdom for the Time being shall be substituted from Time to Time.

11. When an Oath is required to be taken under this Act, every Person for the Time being by Law permitted to make a solemn Affirmation or Declaration instead of taking an Oath may, instead of taking such Oath, make a solemn Affirmation in the Form of the Oath hereby appointed, substituting the Words "solemnly, sincerely, and truly declare and affirm" for the Word "swear," and omitting the Words "So help me God."

PART 2.

OATHS TO BE ABOLISHED.

Substitution of Declaration for Oaths.

12. The following Regulations shall be enacted with respect to the Substitution of Declarations for Oaths; (that is to say,)

1. Where before the passing of this Act an Oath was required to be taken by any Person on or as a Condition of accepting any Employment or Office in Her Majesty's Honourable Band of Gentlemen at Arms or Body Guard of Yeomen of the Guard, or in any other Department of Her Majesty's Household, in such Case a Declaration of Fidelity in Office shall be substituted with the Addition (in Cases where it seems meet to Her Majesty by Order in Council to make such Addition)

of a Declaration of Secrecy to be observed by the Declarant with respect to Matters coming within his Cognizance by reason of his Employment or Office:

2. Where before the passing of this Act an Oath was required to be taken by any Person on or as a Condition of accepting any Office in or under a Municipal Corporation, or on or as a Condition of Admission to Membership in or Participation in the Privileges of any Municipal Corporation, there shall be substituted for such Oath, in the Case of an Office, a Declaration that the Declarant will faithfully perform the Duties of his Office; and in the Case of Admission to Membership or Participation in the Privileges of a Municipal Corporation, a Declaration that the Declarant will faithfully demean himself as a Member of or Participant in the Privileges of such Corporation:
3. Where before the passing of this Act an Oath was required to be taken on or as a Condition of Admission to Membership or Fellowship or Participation in the Privileges of any Guild, Body Corporate, Society, or Company, a Declaration to the like Effect of such Oath shall be substituted; provided that if any Two or more of the Members of such Guild, Body Corporate, Society, or Company, with the Concurrence of the Majority of the Members present and voting at a Meeting specially summoned for the Purpose, object to any Statement contained in such Declaration on the Ground of its relating to Duties which by reason of Change of Circumstances have become obsolete, they may appeal to One of Her Majesty's Principal Secretaries of State to omit such Statement, and the Decision of such Secretary of State shall be final:
4. Where in any Case not otherwise provided for by this Act or included within the Saving Clauses thereof an Oath is required to be taken by any Person on or as a Condition of his accepting any Employment or Office, a Declaration shall be substituted for such Oath to the like Effect in all respects as such Oath:
5. The making a Declaration in pursuance of this Section instead of Oath shall in all respects have the same Effect as the taking the Oath for which such Declaration is substituted would have had if this Act had not passed.
13. If any Person required by this Act to make a Declaration instead of an Oath declines or neglects to make such Declaration, he shall be

subject to the same Penalties and Disabilities, if any, as he would have been subjected to for declining or neglecting to take the Oath for which the Declaration provided by this Act is substituted.

PART 3.

Saving Clause.

14. Nothing in this Act contained shall affect—

1. The Clerical Subscription Act, 1865, or the Parliamentary Oaths, 1866, except in relation to the Form of Oath in manner herein-before mentioned :
2. The Oath taken by Privy Councillors of the United Kingdom, or by Privy Councillors of Ireland, with the Exception that the Form of the Oath of Allegiance prescribed by this Act shall be substituted for the Oath of Allegiance, Supremacy, and Abjuration now required to be taken by Privy Councillors :
3. The Oath of Homage taken by Archbishops and Bishops in the Presence of Her Majesty :
4. The Oath of Canonical Obedience to the Bishop, or the Oath of due Obedience to the Archbishop, taken by Bishops on Consecration, and which Oaths are reserved by the Clerical Subscription Act, 1865 :
5. Any Oath taken by Peers, Baronets, or Knights on their Creation, with this Exception, that where the Oaths of Allegiance, Supremacy, or Abjuration, or any Two or One of such Oaths, or any Oath substituted for such Oaths or any of them, are or is required to be taken by such Peers, Baronets, or Knights, there shall be substituted for such Oaths, or any Two or One of them, the Oath of Allegiance prescribed by this Act :
6. Any Oath required to be taken in the Army, the Marines, the Militia, the Yeomanry, or the Volunteers :
7. The Oath taken by Aliens on being naturalized, with this Exception, that the Form of the Oath of Allegiance prescribed by this Act shall be substituted for the Form of the Oath of Allegiance required so to be taken by Aliens previously to the passing of this Act :
8. The Eighteenth Section of the Merchant Shipping Act, 1854, or any Provision to be substituted therefor, whereby certain

Persons claiming to be Owners of British Ships are required to take the Oath of Allegiance, with this Exception, that the Form of the Oath of Allegiance as prescribed by this Act shall be substituted for the Form of the Oath of Allegiance contained in the said Merchant Shipping Act, 1854 :

9. Any Power of substituting a Declaration for an Oath vested in the Commissioners of Her Majesty's Treasury by the Act of the Session of the Fifth and Sixth Years of the Reign of His late Majesty King William the Fourth, Chapter Sixty-two :
10. Any Oath required or authorized by Act of Parliament to be taken or made for the Purpose of attesting any Fact or verifying any Account or Document :
11. Any Oath or Declaration taken in Judicial Ratification by Married Women, as the same by the Law and Practice of Scotland have been in use to be taken :
12. Any Oath required to be taken by any Juror, Witness, or other Person in pursuance of any Act of Parliament or Custom as preliminary to or in the course of any Civil, Military, Criminal, or other Trial, Inquest, or Proceedings of a Judicial Nature, including any Arbitration, or as preliminary to or in the course of any Proceedings before a Committee of either House of Parliament, or before any Commissioner or other special Tribunal appointed by the Crown.
15. Where a Declaration has been substituted for an Oath under this Act, any Person, Guild, Body Corporate, or Society which before the passing of this Act had Power to alter such Oath, or to substitute another Oath in its Place, may exercise a like Power with regard to such Declaration.
16. Where previously to the passing of this Act the taking of any Oath formed a Condition precedent or subsequent to the Attainment by any Person of any Office, Privilege, Exemption, or other Benefit, and such Person is by this Act prevented from fulfilling such Condition, he shall nevertheless, on complying with the other Conditions, if any, attached to the Attainment of such Office, Privilege, Exemption, or other Benefit, be entitled thereto in the same Manner as if the Condition relating to such Oath, and any Directions as to the Certificate or Registration of the taking of such Oath, or otherwise, had been fulfilled and performed.

SCHEDULE.

FIRST PART.

ENGLAND.

First Lord of the Treasury.
 Chancellor of the Exchequer.
 Lord Chancellor.
 President of the Council.
 Lord Privy Seal.
 Secretaries of State.
 First Lord of the Admiralty.
 Chief Commissioner of Works and Public Buildings.
 President of the Board of Trade.
 President of the Poor Law Board.
 Lord Steward.
 Lord Chamberlain.
 Earl Marshal.
 Master of the Horse.
 Commander-in-Chief.
 Chancellor of the Duchy of Lancaster.
 Paymaster General.
 Postmaster General.

The Oath as to England is to be tendered by the Clerk of the Council, and taken in Presence of Her Majesty in Council, or otherwise as Her Majesty shall direct.

SCOTLAND.

The Lord Keeper of the Great Seal.
 The Lord Keeper of the Privy Seal.
 The Lord Clerk Register.
 The Lord Advocate.
 The Lord Justice Clerk.

The Oath as to Scotland is to be tendered by the Lord President of the Court of Session at a Sitting of the Court.

IRELAND.

Lord Lieutenant.
 Lord Chancellor.
 Commander of the Forces.
 Chief Secretary for Ireland.

The Oath as to Ireland is to be tendered by the Clerk of the Council, and taken at a Meeting of the Privy Council in Ireland.

SECOND PART.

ENGLAND.

The Lord Chancellor of Great Britain.
 The Lord Chief Justice.
 The Master of the Rolls.
 The Chief Justice of the Common Pleas.
 The Chief Baron of the Exchequer.
 The Lord Justices of the Court of Appeal in Chancery.
 The Vice-Chancellors.
 The Puisne Justices of the Queen's Bench.
 The Puisne Justices of the Common Pleas.
 The Puisne Barons of the Exchequer.
 The Judge of the Admiralty Court.
 The Recorder of London.
 The Judge of the Probate Court.
 Justices of the Peace for Counties and Boroughs.

SCOTLAND.

The Lord Justice General and President of the Court of Session in Scotland, the Lord Justice Clerk of Scotland, the Judges of the Court of Session in Scotland, Sheriffs of Counties, and Justices of the Peace for Counties and Burghs.

IRELAND.

The Lord Chancellor of Ireland.
The Lord Chief Justice.
The Master of the Rolls.
The Chief Justice of the Common Pleas.
The Chief Baron of the Exchequer.
The Lord Justice of the Court of Appeal in Chancery.
The Vice-Chancellor.
The Puisne Justices of the Queen's Bench.
The Puisne Justices of the Common Pleas.
The Puisne Barons of the Exchequer.
The Judge of the Probate Court.
The Judges of the Landed Estates Court.
The Judge of the Admiralty Court.
The Judges of the Court of Bankruptcy and Insolvency.
The Recorder of Dublin.
Justices of the Peace for Counties and Boroughs.

CAP. LXXXIII.

Revenue Officers Disabilities Removal.

ABSTRACT OF THE ENACTMENTS.

1. *Repeal of Enactments quoted in Schedule.*
Schedule.

An Act to relieve certain Officers employed in the Collection and Management of Her Majesty's Revenues from any legal Disability to vote at the Election of Members to serve in Parliament.
(31st July 1868.)

WHEREAS it is inexpedient that any Person otherwise entitled to be registered as a Voter should be incapacitated to vote at the Election

of a Member or Members to serve in Parliament by reason of his being employed in the Collection or Management of Her Majesty's Revenues :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. The Enactments contained in the Schedule to this Act are hereby repealed.

SCHEDULE.

- 22 George III. c. 41.
- 43 George III. c. 25.
- 7 & 8 George IV. c. 53. sec. 9.

CAP. LXXIV.

Poor Law and Medical Inspectors (Ireland).

ABSTRACT OF THE ENACTMENTS.

1. *Inspectors under 10 & 11 Vict. c. 90. deemed to be Inspectors under 14 & 15 Vict. c. 68., and e converso.*
2. *Power to Inspectors under 10 & 11 Vict. c. 90. and 14 & 15 Vict. c. 68. to assist in Execution of 29 & 30 Vict. c. 90.*

An Act to extend the Powers of Poor Law Inspectors and Medical Inspectors in Ireland. (31st July 1868.)

WHEREAS by an Act passed in the Tenth and Eleventh Years of the Reign of Her Majesty, Chapter Ninety, the Poor Law Commissioners in Ireland are empowered from Time to Time, subject to the Approval of the Lord Lieutenant, to appoint so many fit Persons as shall be allowed by the Commissioners of Her Majesty's Treasury to be Inspectors to assist in the Execution of the Acts for the Relief of the Poor in Ireland :

And whereas by an Act passed in the Fourteenth and Fifteenth Years of the Reign of Her Majesty, Chapter Sixty-eight, the said Poor Law Commissioners are empowered from Time to Time to appoint so many fit Persons as the Commissioners of Her Majesty's Treasury shall sanction, being practising Physicians or Surgeons of not less than Seven Years standing, to be Inspectors to assist in carrying out the Provisions of the last-mentioned Act :

And whereas by the "Sanitary Act, 1866," it is enacted that the Provisions of the said Act of the Fourteenth and Fifteenth Years of Her Majesty, Chapter Sixty-eight, with respect to the Duties and Appointment of Medical Inspectors, shall be incorporated therewith, and that the Prevention of Disease and Inquiry into Public Health under the said Sanitary Act, 1866, shall be deemed to be One of the Purposes for which such Inspectors have been or may be appointed, in like Manner as if its Provisions had been referred to in the said Act of the Fourteenth and Fifteenth Years of Her Majesty :

And whereas it is expedient to amend the Law in this Behalf :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. Every Inspector appointed or hereafter to be appointed under the Provisions of the said Act Tenth and Eleventh Victoria, Chapter Ninety,

to assist in the Execution of the Acts for the Relief of the Poor in Ireland, shall be deemed to be an Inspector under the Provisions of the said Fourteenth and Fifteenth Victoria, Chapter Sixty-eight, although he may not have the Qualification required by the said last-mentioned Act, and shall be empowered to assist in carrying out the Provisions of the said Act as fully and effectually as if he had the Qualification required and had been appointed under the said Act ; and in like Manner every Inspector appointed or to be hereafter appointed under the Provisions of the said Act Fourteenth and Fifteenth Victoria, Chapter Sixty-eight, shall be deemed to be an Inspector under the Provisions of the said Act Tenth and Eleventh Victoria, Chapter Ninety, and shall be empowered to assist in carrying out the Provisions of the said last-mentioned Act as fully and effectually as if he had been appointed under the said Act.

2. Every Inspector appointed under the Provisions of the said Act Tenth and Eleventh Victoria, Chapter Ninety, or under the Provisions of the said Act Fourteenth and Fifteenth Victoria, Chapter Sixty-eight, shall be empowered to assist in carrying out the Provisions of the Sanitary Act, 1866, and shall have for that Purpose all and the like Powers of Inquiry, and all other Powers of Inspectors acting in the Execution of the Acts in force for Relief of the Poor in Ireland : Provided always, that it shall be lawful for the said Poor Law Commissioners in any Case in which they shall direct Inquiry to be made into any Matter connected with the Administration of the Laws for the Relief of the Poor, or connected with the Execution of the said Act of Fourteenth and Fifteenth Victoria, Chapter Sixty-eight, or with the Provisions of the Sanitary Act, 1866, to associate together for the Purpose of such Inquiry, if they shall see fit so to do, an Inspector appointed under the said Act Tenth and Eleventh Victoria, Chapter Ninety, and an Inspector appointed under the said Act Fourteenth and Fifteenth Victoria, Chapter Sixty-eight, and such Inspectors shall in such Case make a joint Inquiry concerning the Matters in question.

CAP. LXXV.

The Juries Act (Ireland), 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *To extend to Ireland only.*
3. *Provisions of 24 & 25 Vict. c. 66., as to Witnesses who object to be sworn, extended to Jurors.*
4. *Power to send Juries to the adjoining County for the Night where necessary to keep them together.*

An Act to amend the Law relating to Petit Juries in Ireland.

(31st July 1868.)

WHEREAS it is expedient to amend the Laws relating to Petit Juries in Ireland: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as "The Juries Act (Ireland), 1868."

2. This Act shall extend to Ireland only.

3. If any Person summoned or required to serve as a Juror in any Civil or Criminal Proceeding shall refuse or be unwilling, from alleged conscientious Motives, to be sworn, it shall be lawful for the Court or Judge, or other presiding Officer or Person qualified to administer an Oath to a Juror, upon being satisfied of the Sincerity of such Objection, to permit such Person, instead of being sworn, to make his or her solemn Affirmation or Declaration in the Words following:

'I A.B. do solemnly, sincerely, and truly affirm and declare, That the taking of any Oath is, according to my religious Belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare.' &c.

Which solemn Affirmation and Declaration shall be of the same Force and Effect, and if untrue shall entail all the same Consequences, as if such Person had taken an Oath in the usual Form; and whenever in any legal Proceedings it is necessary or usual to state or allege that Jurors have been sworn, it shall not be necessary to specify that any particular Juror has made Affirmation or Declaration instead of Oath, but it shall be sufficient to state or allege that the Jurors have been "sworn or affirmed."

4. Where any Jury shall be empanelled and sworn to try any Issue of Treason or Felony in the Court House of any County, which Court House shall be situate within or shall adjoin a different County or County of a City, if it shall become necessary to keep such Jury together for any Night or Nights or for any Sunday, it shall be lawful for the Court to direct that such Jury shall be taken for such Night or Nights, or such Sunday, to any convenient Place, to be named by the Court, within such surrounding or adjoining County or County of a City; and such Jury, in going to, remaining at, and returning from such Place, shall be kept in the like Custody, and treated in all respects in the same Manner, and all Officers intrusted with the Duty of keeping such Jury together shall have the same Powers, as if such surrounding or adjoining County or County of a City formed Part of the County to which such Court House shall belong.

CAP. LXXVI.

Militia Pay.

ABSTRACT OF THE ENACTMENTS.

1. *Secretary of State for War to issue the Money required for Pay, &c. of Regular Militia, as herein stated.*
2. *Members of the Permanent Staff to reside where the Secretary of State for War shall appoint.*
3. *And may be employed in their Counties.*

4. *Quartermaster, &c. to have Charge of the Arms and Clothing. Adjutant to issue the Money for contingent Expenses on an Order signed by the Colonel. Balance to form a Stock Purse. Power to Secretary of State for War to order Arms, &c. to be deposited in War Office Stores while disembodied.*
5. *Commanding Officers may appoint Non-commissioned Officers.*
6. *In Absence of the Adjutant, the Serjeants to be under the Command of the Quartermaster, and, in his Absence, of the Serjeant Major.*
7. *Persons receiving Pay as Members of Permanent Staff of Militia to be subject to Mutiny Act.*
8. *Extension of Powers for providing Quarters for Permanent Staff to Barracks for Men during Training.*
9. *Provision for Payment of Billet Money towards Expenses of Barracks.*
10. *Militia when called out for Training or Exercise entitled to Pay, &c. as herein stated.*
11. *Volunteers punished for Absence from Training, and shall afterwards serve for an additional Period to receive Bounty under 15 & 16 Vict. c. 50.*
12. *Volunteers attached to Regiments of the Line to be subject to the Mutiny Act.*
13. *Volunteers may be transferred to another Regiment without being re-sworn.*
14. *Certain Officers unfit for Duty entitled to a retired Allowance, upon making the following Declaration. Form of Declaration.*
15. *Out-Pension to reduced Non-commissioned Officers and Drummers not to be received while serving.*
16. *Persons on Half Pay, or entitled to Allowance as having served in the Army or Navy, empowered to receive Pay, &c. during Training.*
17. *Members of the Permanent Staff, &c. not to lose their Right to Chelsea or Kilmainham Pensions, &c.*
18. *Allowance to be made for Medicines.*
19. *Reduced Adjutants to receive 4s. per Day till 31st July 1869. Right to Half Pay reserved.*
20. *Allowances to Adjutants, Surgeons, and Quartermasters.*
21. *Allowances granted to Adjutants on Completion of certain Periods of Service.*
22. *Restrictions as to Allowances to reduced Adjutants of the Local Militia.*
23. *A Declaration to be taken by Adjutants of Local Militia claiming the said Allowance.*
24. *Adjutant after Five Years Service may be appointed to serve with Rank of Captain.*
25. *Allowance to Clerks of General Meetings, &c.*
26. *Manner of granting Allowances. Clerks, &c. to make Declaration of the Justness of their Accounts.*
27. *Deputy Lieutenants may require the Attendance of any Surgeon residing near the Place of Meeting for Appeals. Declaration to be made by Surgeon. Allowance to Surgeon.*
28. *Pay, &c. to be issued under Direction of the Secretary of State for War.*
29. *Bills drawn for Pay, &c. may be on unstamped Paper.*
30. *No Fee to be taken.*
31. *All Things in this Act relating to Counties shall extend to Ridings, Shires, &c.*
32. *Continuance of Act.*
Schedules.

An Act to defray the Charge of the Pay, Clothing, and contingent and other Expenses of the Disembodied Militia in Great Britain and Ireland; to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, and Surgeons Mates of the Militia; and to authorize the Employment of the Non-commissioned Officers.
(31st July 1868.)

WHEREAS it is necessary that Provision should be made for defraying the Charge of the Pay, Clothing, and contingent and other Expenses of the Regular Militia, including the Miners of Cornwall and Devon, when disembodied, in Great

Britain and Ireland, and for making in certain Cases Allowances of Retired Pay to Subaltern Officers and Surgeons Mates and Assistant Surgeons of the Regular Militia, and of the Miners of Devon and Cornwall, also to Adjutants, Paymasters, Surgeons, and Quartermasters of the Regular Militia, who have been allowed to retire, and to Adjutants disabled after long Service:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. The Secretary of State for War for the Time being shall cause to be issued and paid the whole Sum required for the Regular Militia of Great Britain and Ireland (when disembodied) in the Manner and for the several Uses herein-after mentioned; (that is to say,) for the Pay of the

Permanent Staff of the said Regular Militia at the daily Rates following; (that is to say,)

	Infantry.			Artillery.		
	£	s.	d.	£	s.	d.
For each Adjutant	0	10	0	0	10	0
Quartermaster, where One is appointed in Corps consisting of not less than 360 Private Men	0	5	0	0	5	0
and of less than 360 Private Men	0	3	6	0	3	6
Serjeant Major, where One is appointed in Corps consisting of Two or more Companies	0	3	2	0	3	8
Quartermaster Serjeant (in Corps whose Establishment exceeds Four Companies)	0	2	8	0	3	0
and for the Serjeant performing the Duty of both Quartermaster Serjeant and Paymaster Serjeant (in Corps consisting of Four Companies or less)	0	2	8	0	3	0
Serjeant Instructor of Musketry or Gunnery	0	2	0	0	2	8
Paymaster Serjeant (in Corps whose Establishment exceeds Four Companies)	0	2	0	0	2	8
Serjeant, Orderly Room Clerk, Drum Major, or Bugle Major	0	2	0	0	2	8
Drummer, Trumpeter, Bugler, or Fifer above Sixteen Years of Age	0	1	3	0	1	5
and if under Sixteen Years of Age	0	1	0	0	1	0

Provided always, that when any Non-commissioned Officer or Man on the Permanent Staff shall be absent on Furlough or Licence, he shall during such Absence receive Sixpence per Diem less than the above-mentioned Rates respectively:

And also at Rates varying from Two Shillings to Sixpence per Annum for each Private Man for defraying the contingent Expenses of each Regiment, Battalion, or Corps, when enrolled:

And the Secretary of State for War for the Time being shall give the necessary Instructions for the Provision of Clothing for each Non-commissioned Officer or Man on the Permanent Staff of the Militia of Great Britain and Ireland who shall be resident at Head Quarters, and the said Permanent Staff shall be entitled to be clothed once in Two Years.

2. Except when employed as herein-after provided, every Member of the Permanent Staff of the Regular Militia, when disembodied, shall reside in such Places as shall be sanctioned by the Secretary of State for War, and every such Member shall forfeit his Pay for any Period during which he shall be absent, except when employed as herein-after provided, or when absent by Leave from the Colonel or Commandant of the Regiment, Battalion, or Corps, which Leave shall not, except in case of certified Sickness, extend beyond Three Calendar Months in One Year, nor to a greater Proportion than One Third

of the Non-commissioned Officers and Men at the same Time.

3. Every Member of the Permanent Staff, when not called out for Training or Exercise, shall be liable to be employed within the County to which the Regiment, Battalion, or Company of the said Militia Staff belongs, under the Officers appointed to pay and superintend the Out-Pensioners of Chelsea Hospital, in such Manner as One of Her Majesty's Principal Secretaries of State may determine: Provided always, that the Senior Officer shall have the Command of the Force so employed.

4. The Quartermaster of each Regiment of Militia in which a Quartermaster is appointed and receives daily Pay under the Provisions of the First Section of this Act, and when no Quartermaster is appointed, then the Adjutant of each Regiment of Militia, shall have the Charge and Care of the Arms, Accoutrements, Great Coats, Clothing, Necessaries, and other Stores thereof, under the Superintendence of the Colonel or Commandant; and the Adjutant shall, out of the Allowance directed by this Act to be issued and paid for defraying the contingent Expenses of such Regiment, Battalion, or Corps, from Time to Time issue and pay such Sums of Money as may be necessary for the Repair of Arms, and other usual contingent Expenses, upon an Order in Writing signed by the Colonel or other Commandant; and after Payment of such Sums as aforesaid he shall Three Times in the Year make up Accounts of all such Money, and of the Expenditure thereof, showing the Balance remaining in his Hands (which said Balance shall form a Stock Purse for the Use of the Regiment, Battalion, or Corps), and shall transmit the same to the Colonel or other Commandant of such Regiment, Battalion, or Corps, to be by him examined, allowed, and signed; and the said Accounts, so allowed and signed, shall be the proper Vouchers and Acquittal of such Adjutant for the Application and Disposal of such Money: Provided always, that it shall and may be lawful for the Secretary of State for War to order and direct that the Arms, Accoutrements, and other Stores, or any Part thereof, belonging to any Regiment, Battalion, or Corps of Militia of the United Kingdom shall at any Time, while such Regiment, Battalion, or Corps shall not be embodied or in actual Service, be conveyed to and deposited and kept in any of Her Majesty's War Office Stores.

5. It shall be lawful for the Commanding Officer of every Regiment of Militia from Time to Time to appoint, subject to such Regulations as shall from Time to Time be made by the Secretary of State, and, at Pleasure to remove, all Non-

commissioned Officers on the disembodied Staff of the said Regiment.

6. In the occasional and unavoidable Absence of the Adjutant from the City, Town, or Place where the Permanent Staff is quartered, or during any Vacancy in the Appointment of Adjutant, the Permanent Staff shall be under the Command of the Quartermaster in Cases in which One is appointed, and when no Quartermaster is appointed or is present, then under the Command of the Serjeant Major, or of some Serjeant who shall be appointed by the said Adjutant, with the Approbation of the Colonel or other Commanding Officer, to act as Serjeant Major during the Absence of such Adjutant and Quartermaster; and the said Quartermaster and Serjeant Major or acting Serjeant Major shall render the same Returns and perform such other Acts as are by Law required from the Adjutant.

7. All Persons receiving Pay as Members of the Permanent Staff of any Militia Regiment shall be subject to the Provisions of the Mutiny Act and Articles of War for the Time being in force, and shall be entitled to be billeted in like Manner as Officers and Soldiers of Her Majesty's Army, and the Innkeepers and others who are liable to have Officers and Soldiers billeted on them shall provide the Members of the Permanent Staff with convenient Lodging, Fire, and Candle, and in default thereof be liable to the Penalties imposed upon Civil Subjects offending against the Laws relating to Billets, as prescribed by the Mutiny Act for the Time being in force.

8. All Powers and Provisions for providing Quarters for the Permanent Staff or a Portion of the Permanent Staff of any Militia of any Part of the United Kingdom, and for defraying out of Rates or Assessments, or Monies raised on the Security thereof, the Cost of such Quarters, and the Expenses incidental to the Use and Maintenance thereof, and otherwise relating or applicable to such Quarters, or any Place, Building, or Premises provided for the same, shall be applicable for providing Barracks for the Use of any such Militia, or any Portion thereof, during the Period of Training and Exercise, and to any such Barracks, or any Place, Building, or Premises provided for the same.

9. Where Barracks are hereafter provided as aforesaid for any Militia or any Portion thereof, with the Approval of the Secretary of State for War, or such Secretary of State approves of any such Barracks which may theretofore have been provided, it shall be lawful for such Secretary of State to cause such Money as would otherwise be payable for billeting the Non-commissioned Officers and Men accommodated in such Barracks

to be paid to the Treasurer of the County, or in Scotland the Commissioners of Supply of the County, for which such Barracks may be provided, or in the Case of any united Corps of Militia or united Militias then to be apportioned between or among the Counties which may have contributed to the Expenses of such Barracks, in proportion to their respective Contributions thereto, and to be paid to the respective Treasurers or Commissioners of Supply thereof accordingly.

10. The Officers and Volunteer Non-commissioned Officers and Private Men of the Regular Militia shall, for the Period or Periods during which they shall be called out for the Purpose of Exercise or Training, be entitled to the following daily Rates of Pay and Allowances:

	Infantry.	Artillery.
	£ s. d.	£ s. d.
Colonel	1 2 6	1 2 6
Lieutenant-Colonel	0 15 11	0 15 11
Major	0 14 1	0 14 1
Captain (including non-effective Allowance)	0 10 6	0 10 6
Lieutenant	0 6 6	0 6 6
Ensign	0 5 3	0 5 3
Adjutant, if acting also as Paymaster in Corps consisting of Four Companies and upwards	0 3 9	0 3 9
" if acting also as Paymaster in Corps consisting of less than Four Companies	0 2 6	0 2 6
Adjutant, if acting also as Paymaster and Quartermaster in Corps consisting of Four Companies and upwards	0 7 0	0 7 0
" if acting also as Paymaster and Quartermaster in Corps consisting of less than Four Companies	0 4 6	0 4 6
Quartermaster (if not holding a Subaltern's Commission, nor on the Permanent Staff)	0 6 6	0 6 6
" (if holding a Subaltern's Commission, and if not on the Permanent Staff)	0 3 6	0 3 6
" (if on the Permanent Staff in Corps of not less than 360 Private Men)	0 1 6	0 1 6
" (if on the Permanent Staff in Corps of less than 360 Private Men)	0 3 0	0 3 0
Surgeon	0 11 4	0 11 4
Assistant Surgeon	0 7 6	0 7 6
Serjeant Instructor of Musketry or Gunnery, in addition to the daily Rate of Pay granted by Sect. 1.	0 1 0	0 1 0
Serjeant (not on the Permanent Staff)	0 1 8	0 2 8
Corporal	0 1 4	0 1 4
Private	0 1 2	0 1 4
Command Allowance to the Officer actually in Command during Training and Exercise, if the Pay of Colonel is not drawn	0 3 0	0 3 0
Beer Money to each Non-commissioned Officer, Drummer, and Man (including the Permanent Staff) present at Training and Exercise	0 0 1	0 0 1

11. Whenever a Volunteer who has been punished for Absence from any annual Training

shall subsequently thereto serve for an additional Year or Years for any annual Period or Periods of Training and Exercise from or during which he absented himself, he shall be entitled to receive the same Bounty which, under the Regulation under the Act of the Fifteenth and Sixteenth Victoria, Chapter Fifty, would have been payable to him during or in respect of Attendance at Training and Exercise.

12. Volunteers shall, with the Sanction of the Secretary of State for War, when attached to Regiments of the Line to qualify themselves for the Permanent Staff, be allowed Pay whilst so under Instruction, but while they remain so attached they will be under the Command of the Officer commanding the Regiment of the Line equally with the Soldiers of that Regiment, and will be subject to the Provisions of the Mutiny Act.

13. Volunteers may, if they desire, be transferred to another Regiment, with the Consent of the Commanding Officers of both Regiments, whether of Great Britain or Ireland, without being required to take any Oath other than that which they took on their original Enrolment.

14. And whereas certain Lieutenants, Ensigns, and Surgeons Mates of the Militia of Great Britain, or Subaltern Officers and Assistant Surgeons of the Militia of Ireland, when unfit for further Duty, have been placed upon a retired Allowance equal to and instead of the Allowance granted to them on the disembodiment of the Militia at the Termination of the War in the Year One thousand eight hundred and fifteen: And whereas certain Paymasters, Surgeons, and Quartermasters, when unfit for Duty, have also been placed on a retired Allowance equal to and instead of their reduced Allowances granted to them in pursuance of an Act passed in the Tenth Year of the Reign of His Majesty King George the Fourth: All such Paymasters, Surgeons, Quartermasters, Subalterns, Surgeons Mates, and Assistant Surgeons, to entitle them to the Receipt of such retired Allowances, shall make and subscribe the following Declaration; (videlicet,)

‘ I do solemnly and sincerely
‘ declare, That I formerly served as a
‘ in the Militia; that I am not in
‘ Holy Orders; and that from the
‘ Day of to the Day of
‘ I did not hold or enjoy any Place
‘ or Employment of Profit, Civil or Military,
‘ under Her Majesty, or in the Colonies or Pos-
‘ sessions of Her Majesty beyond the Seas, or
‘ under any other Government, besides my Al-
‘ lowance of per Diem as a
‘ of the said Militia, except my Half Pay or Civil
‘ Pension as a

15. And whereas certain Non-commissioned Officers and Drummers of the Militia of the United Kingdom of Great Britain and Ireland have, on the Reduction of the Establishment of the Disembodied Staff, been placed on the Out-Pension, although not unfit for further Service: No Non-commissioned Officer or Drummer so placed on Pension shall be entitled to receive the said Pension for any Period during which he shall be receiving Pay in the Militia.

16. Provided always, That any Person, being on Naval or Military Half Pay, or being entitled to any Allowance as having served in any of Her Majesty's Regular Forces or Navy or Marines, and serving in the Militia, may receive the Pay and Allowances by this Act directed to be paid to the Field Officers, Captains, Lieutenants, Ensigns, Adjutants, Quartermasters, Surgeons, Surgeons Mates, and Assistant Surgeons, when assembled for annual Training; and the receiving any such Pay and Allowances by any such Field Officer, Captain, Lieutenant, Ensign, Adjutant, Quartermaster, Surgeon, Surgeon's Mate, or Assistant Surgeon shall not prevent such Person on Half Pay, or being entitled to any such Allowance, from receiving his Half Pay or such Allowance: Provided also, that such Person shall, in the Declaration to be taken for the Receipt of the Half Pay or such Allowance, declare that he has received or is entitled to such Militia Pay and Allowances, and shall specify the Militia Rank which entitles him to the same.

17. Provided always, That no Member of the Permanent Staff in the Regular Militia, entitled to receive any Chelsea or Kilmainham Pension or Allowance on account of Service in the Regular Army, shall forfeit or lose his Right to the same by reason of his serving and receiving Pay in the Regular Militia; nor shall any Quartermaster, Subaltern Officer, Surgeon's Mate, or Assistant Surgeon forfeit or lose his Right to receive any such Chelsea or Kilmainham Pension or Allowance by reason of his receiving the Allowance by this Act granted to him when disembodied.

18. There shall be granted for each Regiment of Regular Militia a Sum of Money after the Rate of One Guinea for every One hundred Rank and File effective Men during the Period of Training and Exercise, for the Expense of necessary Medicines for the sick Non-commissioned Officers and Men thereof, including the Non-commissioned Officers and Men of the Permanent Staff and their Wives and Families, and also an Allowance of Twopence per Week, excluding the Period of Training and Exercise, for the Expenses of necessary Medicines and Attendance for the sick Non-commissioned Officers and Men of the Permanent Staff and their Wives

and Families while such Regiment is not called out for Training and Exercise.

19. In case any Regiment, Battalion, or Corps of Militia shall have already ceased and determined or been reduced in its Establishment, or shall cease and determine or be reduced in its Establishment during the Continuance of this Act, the Sum of Four Shillings per Diem shall be paid to such Person as was or shall be actually serving as Adjutant to such Regiment, Battalion, or Corps at the Time of Reduction from the Thirty-first Day of July One thousand eight hundred and sixty-eight, or from the Time such Regiment shall cease and determine or be reduced in its Establishment, (as the Case may be,) to the Thirty-first Day of July One thousand eight hundred and sixty-nine, in like Manner and subject to the same Restrictions and Conditions as the Allowances granted by this Act to Adjutants who shall by Age or Infirmary be rendered unfit for further Service: Provided always, that no such reduced Adjutant shall lose any Right he may have to Half Pay of the Navy, Army, Marines, or Provisional Battalion formed from the Militia by reason of receiving such Allowance as last aforesaid, but shall be entitled to receive such Half Pay as well as such Allowance.

20. And whereas certain Allowances have been granted in pursuance of former Acts to Adjutants, Surgeons, and Quartermasters of Regular Militia who have by Age or Infirmary been rendered unfit for further Service: Such Allowances shall be issued and paid, during the Continuance of this Act, in like Manner and subject to the same Restrictions as the Allowances granted by this Act to Adjutants who shall by Age or Infirmary be rendered unfit for further Service: Provided always, that no Person receiving such Allowance shall by reason thereof forfeit his Right to any Half Pay to which he may be entitled.

21. The following Allowances shall be granted and paid, under the Restrictions and Limitations herein-after expressed, to Adjutants of the Militia of Great Britain and Ireland on the Completion of the following Periods of Service in Her Majesty's Regular or Indian Forces, or in the Army of the East India Company, and in the Militia, if unfit, either by Age or Infirmary, for the Performance of the Duties of their Commissions; (that is to say.)

To every Adjutant who shall have completed in the Service a Period of, (videlicet,)

Fifteen Years, of which Five Years as an Adjutant of Militia, an Allowance of Three Shillings per Diem:

Twenty Years, of which Seven Years as an Adjutant of Militia, an Allowance of Four Shillings per Diem:

Twenty-five Years, of which Ten Years as an Adjutant of Militia, an Allowance of Five Shillings per Diem:

Thirty Years, of which Fifteen Years as an Adjutant of Militia, an Allowance of Six Shillings per Diem:

Provided that such Adjutants shall retain any Right they may have to Half Pay or to Out-Pension, notwithstanding the Grant of such retired Allowance as aforesaid; and all such Allowances shall be granted upon the Production to the Secretary of State for War of a Certificate of such Service and Disability; and upon the Order of the Secretary of State for War, founded upon such Certificate, the Paymaster General shall pay to such Adjutant the above Allowance: Provided always, that no Person shall be entitled to receive such Allowance as aforesaid who shall hold any Military Office or Employment of Profit under Her Majesty or any other Government: and that no Person who before the First Day of June One thousand eight hundred and twenty-nine held any Civil Place or Employment of Profit under the Crown, or in the Colonies or Possessions of Her Majesty beyond the Seas, or under any other Government, shall receive any Part of the said Allowance for any Time during which he held such Civil Place or Employment, except in the Cases in which the Emoluments of such Civil Place or Employment shall not exceed Three Times the Amount of the said Allowance, and unless in such excepted Cases the Royal Consent to the holding of such Civil Place or Employment shall have been signified through the Secretary of State for War; and that no Person appointed on or after the First Day of June One thousand eight hundred and twenty-nine to any Civil Place or Employment of Profit under Her Majesty, or in the Colonies or Possessions of Her Majesty beyond the Seas, or under any other Government, shall receive any Part of the said Allowance for any Time during which he shall hold such Civil Place or Employment.

22. And whereas certain Allowances have been granted to reduced Adjutants of the Local Militia: The said Allowances shall be issued and paid during the Continuance of this Act, under the Restrictions and in the Manner herein-after expressed: Provided always, that in the Cases in which any such Local Militia Adjutants have been permitted to receive the said Allowances whilst holding any Civil Offices under the Crown, to which Offices they had been appointed previously to the Twenty-eighth Day of July One thousand eight hundred and twenty-eight, it shall be lawful to continue the Payment of the said Allowances under the same Regulations and Restrictions as those under which the Permission was originally granted.

23. Every Adjutant of Local Militia who shall claim under the Authority of this Act to receive any Part of the said Allowance shall, previous to receiving the same, and in order to entitle himself thereto, take and subscribe a Declaration before some One of Her Majesty's Justices of the Peace in the United Kingdom, or Notary Public, or other Officer now by Law authorized to administer or receive such Declaration, or before some One of Her Majesty's Ministers, Secretaries of Embassy, of Legation, or Consuls abroad, in the Words or to the Effect following; (that is to say,)

' I A. B. do solemnly and sincerely declare, That I was serving as Adjutant in the of Local Militia at the Reduction of the Staff of the said Militia in One thousand eight hundred and twenty-nine; and that I was not in Holy Orders during any Part of the Period for which I now claim to receive an Allowance, that is to say, from the Day of One thousand eight hundred and to the Day of One thousand eight hundred and ; and that I did not hold or enjoy, nor did any Person for me hold or enjoy, during any Part of the said Period, any Place, Office, or Employment of Profit, Civil or Military, under the Crown or any other Government, besides the Allowance of a Day now claimed, except my Half Pay as a [of the Army or Navy or Marines, or of a Provisional Battalion formed from the Militia, as the Case may be].'

Which Declaration, so taken and subscribed, shall be produced to the Paymaster General of Her Majesty's Forces by the Adjutant claiming the Allowance: Provided always, that any Adjutant receiving such Allowance, and being on Naval or Military Half Pay or entitled to any Allowance as having served in any of Her Majesty's Regular Forces, or Navy or Marines, shall, notwithstanding such Militia Allowance, be entitled to receive such Half Pay or Allowance.

24. Any Adjutant who has served as such in the Militia or Volunteer Force, or in both of such Forces, for Five consecutive Years immediately preceding the Appointment herein-after referred to, may, on the Recommendation of the Colonel or other Commandant of the Militia Regiment in which he has been serving as aforesaid, be appointed by the Lord Lieutenant of the County, Riding, or Place from which such Regiment has been raised to serve with the Rank of Captain, subject nevertheless to all the same Restrictions as to Rank, Command, and Pay as are now in force with reference to other Adjutants now serving with the Rank of Captain.

25. Where the Militia is raised by Ballot in Great Britain Allowances shall be made and

issued to the Clerks of General and Subdivision Meetings of Lieutenantancy and others mentioned in Schedule A. to this Act for their Trouble and Expenses in the Execution of the Laws relating to the Militia at the Rates mentioned in the same Schedule; and where the Militia is raised in the United Kingdom otherwise than by Ballot, Allowances shall be made and issued to the Clerks of General Meetings for their Trouble and Expenses in the Execution of such Laws at the Rates mentioned in the Schedule B. to this Act.

26. The said Allowances shall be granted as follows; (videlicet,) the Account shall be certified by the Lieutenant of the County, Stewartry, City, or Place, or by Two or more Deputy Lieutenants acting for such County, Stewartry, City, or Place, or by the Lord Warden of the Stannaries of Cornwall and Devon, or by Two or more Deputy Wardens of the Stannaries of Cornwall and Devon; and the Clerks of General and Subdivision Meetings in Great Britain, and the Schoolmasters, Constables, and other Officers in Scotland, shall make a Declaration as to the Justness of the Accounts, in the following Terms respectively, before some Justice of the Peace; (videlicet.)

Declaration of a Clerk of General or Subdivision Meetings.

' I do solemnly declare, That the preceding Account, so far as regards my Interest therein, is a just and true Account of Business performed by me for and in behalf of the Public Service according to the Manner therein set forth; and the Sums claimed as disbursed were actually paid by me.'

Declaration of a Schoolmaster, Constable, or other Officer in Scotland.

' I do solemnly declare, That I am the Parochial Schoolmaster [or Constable or other Officer] of the District of in the Subdivision of the County of ; and that the preceding Account is a just and true Account of Business actually performed by myself for and in behalf of the Public Service according to the Manner therein set forth; and that I was employed on such Business the full Time therein stated; and that the Sums claimed as disbursed were actually paid by me.'

And the said Accounts shall be transmitted to the Secretary of State for War, who is hereby empowered to issue the Allowances according to the Rates specified in the respective Tables to this Act annexed, or such Sums as he shall think reasonable and proper.

27. And whereas it is expedient that the Deputy Lieutenants acting in any Subdivision

of any County, Stewartry, City, or Place in Great Britain, and the Special Deputy Wardens acting in any Subdivision in the Stannaries of the Counties of Cornwall and Devon, should be assisted by the Advice of a Surgeon in deciding upon the Appeals of Persons claiming to be exempt from compulsory Service in the Militia by reason of bodily Infirmary, and upon the Fitness for Service of the Persons presenting themselves for Enrolment: It shall be lawful for any Two Deputy Lieutenants and they are hereby empowered and required to summon, by Two Days previous Notice in Writing, any competent Surgeon residing at or nearest to the Place where any Meeting for Appeals or Enrolment shall be held to attend at such Meeting; and every such Surgeon shall, before he begins any such Examination, make the following Declaration, which Declaration any Deputy Lieutenant is hereby authorized to administer; (videlicet,)

‘ I do solemnly declare, That I will, to the best of my Ability, faithfully and truly report as to the Fitness for Service of the Man or Men about to be submitted to my Examination, and that I will not receive from any of them any Fee or Reward whatever for any such Examination.’

And every such Surgeon shall receive for each Day's Attendance at such Meeting a Sum not less than Half a Guinea nor exceeding Two Guineas, according to the Extent of the Duty performed: Provided always, that the Accounts and Vouchers upon which the said Allowances shall be recommended by the Deputy Lieutenants of the respective Subdivisions shall be transmitted to the Secretary of State for War, with the

Accounts of the Lieutenantcy Clerks, for Examination and Payment.

28. All Sums of Money granted for the Pay, contingent and other Expenses, and for the Allowances to the Officers and Men of the Regular and Local Militia, when disembodied, shall be issued and paid under the Direction of the Secretary of State for War, by the Acceptance of Bills or otherwise, according to such Regulations as have been or shall be established on that Head.

29. All Bills, Drafts, and Orders drawn for Pay or Allowances under this Act may be drawn upon unstamped Paper; and no such Bill, Draft, or Order shall be void by reason of being drawn or written on unstamped Paper.

30. No Fee or Gratuity whatsoever shall be given or paid for or upon account of any Warrant or Sum of Money which shall be issued in relation to or in pursuance of this Act.

31. All Things in this Act contained relating to Counties, and to Regiments of Militia respectively, shall be construed to extend to all Ridings, Shires, Stewartries, Cities, and Places, and to all Battalions, Corps, and independent Companies respectively, and to the Corps of Miners of Cornwall and Devon.

32. This Act shall take effect and continue in force from the Thirty-first Day of July One thousand eight hundred and sixty-eight until the First Day of September One thousand eight hundred and sixty-nine.

SCHEDULES to which this Act refers.

SCHEDULE A.

SCALE of RATES of REMUNERATION to the Clerks of General and Subdivision Meetings of Lieutenantcy in Great Britain, including the Clerks of the Tower Hamlets and the Stannaries of Cornwall and Devon, and to Schoolmasters, Constables, and other Officers in Scotland, for carrying into execution the Acts relating to the Militia when the Militia are raised by Ballot.

ALLOWANCES TO THE CLERKS OF GENERAL MEETINGS.

1. For Trouble in calling a General Meeting by Circular Letters or Advertisements (no separate Charge being made for writing the Letters or framing the Advertisements) - 0 7 6
2. For attending General Meetings at

which the Statutory Quorum of Lieutenantcy shall be present, each 5 5 0
For each Meeting which shall be necessarily adjourned by the Clerk in consequence of the Absence of the Lord Lieutenant or Deputy Lieutenants - 1 11 6
Which Allowances are to be in full for engrossing Minutes, &c.

3. For filling up printed Precepts to the High or Chief Constable of each Subdivision, Hundred, Lathe, Rape, or Wapentake in England and Wales, including the Tower Hamlets, and the Stannaries of Cornwall and Devon, to return Lists, each - 0 0 6

TRAINING AND EXERCISE.

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| <p>13. For making out correct Abstracts from the Adjutant's or other Commanding Officer's Returns, Schedule (F.), in the Form Schedule (G.), for Her Majesty's Secretary of State for the Home Department, in Counties in England and Scotland furnishing a Quota towards the Formation of an entire Regiment or Battalion - - - 1 0 0</p> <p style="padding-left: 40px;">In Counties in England, Wales, and Scotland furnishing One Regiment, Battalion, or Corps 2 0 0</p> <p style="padding-left: 40px;">Ditto - Two - Ditto 3 0 0</p> <p style="padding-left: 40px;">Ditto - Three - Ditto 4 0 0</p> <p style="text-align: center;">ALLOWANCES TO CLERKS OF SUBDIVISION MEETINGS.</p> <p>14. For Trouble in calling a Subdivision Meeting by Advertisement, no separate Charge being made for writing Letters or framing Advertisement - - - 0 5 0</p> <p style="padding-left: 40px;">Or for calling a Meeting by Circular Letters to the Deputy Lieutenants, the Adjutant, or other Commanding Officer, (no Charge being made for the Draft,) for each Letter - 0 1 0</p> <p>15. For attending Subdivision Meetings, for each of the Three First or principal Meetings at which the Statutory Quorum of Lieutenantancy shall be present; videlicet,</p> <p style="padding-left: 40px;">For receiving Lists and hearing Appeals,</p> <p style="padding-left: 40px;">For balloting,</p> <p style="padding-left: 40px;">For enrolling,</p> <p style="padding-left: 40px;">And for the Meeting held to apportion the Deficiencies among the Parishes, et cetera, when necessary to be done; and also for calling out the Quota or Apportionment of the Subdivision to be trained and exercised, which Allowance shall be in full for engrossing Minutes and making up Lists - - - 2 2 0</p> <p style="padding-left: 40px;">And for each Meeting held by Adjournment to complete the Business of any or either of the Three first or principal Meetings above enumerated, which Allowance shall be in full for engrossing Minutes and making up Lists - - - 1 5 0</p> <p style="padding-left: 40px;">And for each Meeting which shall have been summoned, but which is necessarily postponed by the Subdivision Clerk in consequence of the Absence of the Deputy Lieutenant - - - 0 15 0</p> | <p>16. For filling up printed Precepts to the Chief or High Constables in England and Wales, including the Tower Hamlets and Stannaries of Cornwall and Devon, to give Notice of the Number of Men apportioned to serve for each Parish, and to issue out their Orders to the Petty Constables to serve Notices upon balloted Men, each Precept - 0 0 6</p> <p style="padding-left: 40px;">And for filling up printed Precepts to the Schoolmasters, Chief Constables, or other Officers in Scotland, for the Performance of similar Duty, each Precept - 0 0 6</p> <p>17. For Trouble in amending the Returns of Persons liable to serve in the Regular Militia, by taking out the Names of all Persons who may appeal, and whose Appeals or Claims of Exemption have been allowed, and inserting the Names of any Persons that have been omitted to be inserted, and in numbering the Returns, and making out the Tickets for the balloting, after the Rate of Two Pounds for every One thousand Names of Persons returned liable to serve, and so in proportion for a greater or smaller Number of Men - £2 per 1,000</p> <p>18. For making out the annual Abstracts of Lists, Schedule (C.), for the Use of the Clerk of General Meetings, where the original Quota or Apportionment of the Subdivision is - 50 Men and under - 2 2 0</p> <p style="padding-left: 40px;">Ditto from 51 to 150 Men - 3 3 0</p> <p style="padding-left: 40px;">Ditto from 151 to 250 Men - 4 4 0</p> <p style="padding-left: 40px;">Ditto from 251 Men and upwards 5 5 0</p> <p>19. For making out fair and true Copies of Lists of Men enrolled for each Subdivision of a County in Great Britain, including the Tower Hamlets and the Stannaries of Cornwall and Devon, for the Use of the Clerk of General Meetings, Schedule (E.), and the Colonel or Commandant of the Regiment of the County; (videlicet,) For a Roll containing 50 Names and under - - - 0 5 0</p> <p style="padding-left: 40px;">Ditto from 51 to 150 Names - 0 10 0</p> <p style="padding-left: 40px;">Ditto from 151 to 250 Names - 0 15 0</p> <p style="padding-left: 40px;">Ditto from 251 Names and upwards - - - 1 0 0</p> <p>20. For Stationery to the Clerk of a Subdivision furnishing Men towards the Quota of a County in the following Proportions; (videlicet,)</p> |
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	£	s.	d.		£	s.	d.
For a Subdivision furnishing				And for filling up printed Precepts			
50 Men and under -	1	10	0	to the Chief Constables, and to the			
Ditto from 51 to 150 Men -	2	0	0	Schoolmasters, Constables, or other			
Ditto from 151 to 250 Men -	2	10	0	Officers of the Parishes within the			
Ditto from 251 Men and upwards	3	0	0	Subdivision of any County, Stew-			
1. For Correspondence, Copyings, et				artry, City, or Place in Scotland,			
cetera, to the Clerk of a Sub-				to give Notice in Writing to the			
division furnishing Men towards				Men enrolled to attend the Train-			
the Quota of a County in the fol-				ing and Exercise of the Militia :			
lowing Proportions; (videlicet,)				For each Precept containing			
For a Subdivision furnishing				10 Names and under -	0	0	6
50 Men and under -	2	0	0	Ditto from 11 to 30 Names -	0	1	0
Ditto from 51 to 150 Men -	3	0	0	Ditto from 31 to 50 Names -	0	2	6
Ditto from 151 to 250 Men -	4	0	0	Ditto from 51 to 70 Names -	0	4	0
Ditto from 251 Men and upwards	5	0	0	Ditto from 71 to 100 Names -	0	7	0
2. The actual Amount expended for				Ditto from 100 upwards -	0	10	0
printing and publishing Advertise-				25. For making out full and true Lists			
ments, for Postage, Expresses, and				of the Names and Dates of En-			
Messengers, to be allowed upon				rolment of all Persons enrolled			
an Account specifying each Article				within each Subdivision respec-			
of Postage, and specially certified				tively, for the Use of the Com-			
by the Lieutenantcy, whose Certifi-				manding Officer and Adjutant of			
cate shall state that the same was				each Regiment, Battalion, or Corps			
necessary and actually performed.				of any County, Stewartry, City, or			
The Charge for printing and				Place in Great Britain, previously			
publishing Advertisements is				to the Training and Exercise :			
invariably to be supported by				For a Roll containing 20 Names			
the Receipt of the Person to				and under -	0	2	0
whom paid.				Ditto from 21 to 50 Names -	0	5	0
3. For Trouble in apportioning and				Ditto from 51 to 150 Names -	0	10	0
distributing to the Constables of				Ditto from 151 to 250 Names -	0	15	0
the several Townships, Parishes,				Ditto from 251 and upwards -	1	0	0
et cetera, within the Limits of the				26. For correcting the Books of Enrol-			
Subdivision, the various Forms of				ment of the Subdivisions so as to			
Schedules, et cetera :				correspond accurately with the Ex-			
For a Subdivision furnishing 50				tracts from the Adjutant's or other			
Men and under -	0	5	0	Commanding Officer's Return,			
Ditto from 51 to 150 Men -	0	10	0	Schedule (F.), of the State of the			
Ditto from 151 to 250 Men -	0	15	0	Classes of the Men forming the			
Ditto from 251 Men and upwards	1	0	0	Quota or Apportionment serving			
TRAINING AND EXERCISE.				in the Regiment, Battalion, or			
1. For filling up printed Precepts				Corps of Militia of any County,			
to the High or Chief Constable in				Stewartry, City, or Place in Great			
each Subdivision of any County				Britain :			
in England and Wales, including				For a Subdivision furnishing 50			
the Tower Hamlets and the Stan-				Men and under -	0	5	0
narries of Cornwall and Devon, to				Ditto from 51 to 150 Men -	0	10	0
issue out their Warrants to the				Ditto from 151 to 250 Men -	0	15	0
Petty Constables, Tithingmen, or				Ditto from 251 and upwards -	1	0	0
other Officers within their respec-				ALLOWANCES TO SCHOOLMASTERS IN			
tive Hundreds to give Notice in				SCOTLAND.			
Writing to the Men enrolled to				27. For filling up and delivering Notices			
attend the Training and Exercise				to Householdors, for each Day			
of the Militia :				consisting of Eight Hours -	0	5	0
For each Precept containing 50				28. For making out Lists, for each			
Names and under -	0	5	0	Folio consisting of Sixty Lines -	0	1	0
Ditto from 51 to 150 Names -	0	10	0				
Ditto from 151 to 250 Names -	0	15	0				
Ditto from 251 Names and up-							
wards -	1	0	0				

29. For attending Meetings of Lieutenancy, each Meeting -	£	s.	d.
	-	0	10 0
30. For filling up and delivering Notices to balloted Men, per Day -	-	0	5 0
31. For Stationery, per Annum -	-	0	5 0

ALLOWANCES TO CONSTABLES IN SCOTLAND.

32. For filling up and delivering Notices to Householdors, for each Day consisting of Eight Hours -	-	0	4 0
33. For making out Lists, for each Folio consisting of Sixty Lines -	-	0	1 0
34. For attending each Meeting of Lieutenancy, per Day -	-	0	4 0
35. For filling up and delivering Notices to balloted and enrolled Men, per Day -	-	0	4 0
36. For Stationery, where the Lists are made out by the Constables, per Annum -	-	0	5 0

SPECIAL CONTINGENT ALLOWANCES applicable to the CLERKS of GENERAL SUBDIVISION MEETINGS of LIEUTENANCY respectively.

37. When it is necessary to call the Person from a Distance to perform the Duty of a General or Subdivision Clerk, such Person shall have an Allowance for his travelling Expenses not exceeding Ninepence per Mile, and the Expenses of Tolls and Ferry Money; but the Particulars of such Expenses shall be specified in a Statement, and certified by the Lieutenancy, and transmitted in support of the Charge in the Clerk's annual Account.
38. The Expense necessarily incurred for the Use of the Room at the Place of Meeting to be allowed upon the Production of the Receipt of the Person to whom the same may be paid.

SCHEDULE B.

SCALE of RATES of REMUNERATION to the Clerks of General Meetings for any Duty they may be required to perform under the Acts relating to the Militia, or by Her Majesty's Secretary of State, or (in Ireland) by the Lord Lieutenant, in execution of the Provisions of such Acts when the Militia is raised otherwise than by Ballot.

CLERKS OF GENERAL MEETINGS.

Per Annum.

For Trouble in executing the Duty required of them, including Copyings, Correspondence, and Stationery :	£	s.	d.
In Counties where the Quota does not exceed 200 -	-	15	0 0
Where the Quota is			
Above 200 and not exceeding 400 -	-	20	0 0
Above 400 and not exceeding 500 -	-	25	0 0
And where the Quota exceeds 500 the following Additions for every 100 or fractional Part of 100 :			
Above 500 and not exceeding 1,000 -	-	4	0 0
Above 1,000 and not exceeding 2,000 -	-	3	0 0
Above 2,000 and not exceeding 3,000 -	-	2	0 0
Above 3,000 and not exceeding 4,000 -	-	1	10 0
Above 4,000 -	-	1	0 0
For convening and attending any General Meeting summoned by the distinct Order of the Secretary of State, or (in Ireland) of the Lord Lieutenant -	-	2	2 0
The actual Expense incurred in printing or advertising, and for Postage, may be charged.			

CAP. LXXVII.

The Divorce Amendment Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Interpretation.*
2. *Section 56 of 20 & 21 Vict. c. 85., Sect. 17 of 21 & 22 Vict. c. 103., and Sect. 3. of 23 & 24 Vict. c. 144. repealed.*
3. *Appeals to House of Lords to be within One Month. No Appeal in undefended Suits for Dissolution unless by Leave of Court.*
4. *Liberty to Parties to marry again.*
5. *Short Title.*
6. *Qualified retrospective Operation.*

An Act to amend the Law relating to Appeals from the Court of Divorce and Matrimonial Causes in England.
(31st July 1868.)

WHEREAS it is expedient to amend the Law relating to Appeals from the Court for Divorce and Matrimonial Causes with a view to prevent unnecessary Delay in the final Determination of Suits for Dissolution or Nullity of Marriage :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. Throughout this Act the Expression "the Court" shall mean the Court for Divorce and Matrimonial Causes.

2. Section Fifty-six of the Act of Twentieth and Twenty-first Victoria, Chapter Eighty-five, Section Seventeen of the Act of Twenty-first and Twenty-second Victoria, Chapter One hundred and eight, and Section Three of the Act of Twenty-third and Twenty-fourth Victoria, Chapter One hundred and forty-four, are hereby repealed.

3. Either Party dissatisfied with the final Decision of the Court on any Petition for Dissolution or Nullity of Marriage may, within One Calendar Month after the pronouncing thereof, appeal therefrom to the House of Lords, and on the Hearing of any such Appeal the House of

Lords may either dismiss the Appeal or reverse the Decree, or remit the Case to be dealt with in all respects as the House of Lords shall direct : Provided always, that in Suits for Dissolution of Marriage no Respondent or Co-Respondent, not appearing and defending the Suit on the Occasion of the Decree Nisi being made, shall have any Right of Appeal to the House of Lords against the Decree when made absolute, unless the Court, upon Application made at the Time of the pronouncing of the Decree absolute, shall see fit to permit an Appeal.

4. Section Fifty-seven of the said Act of Twenty-first Victoria, Chapter Eighty-five, shall be read and construed with reference to the Time for appealing as varied by this Act; and in Cases where under this Act there shall be no Right of Appeal, the Parties respectively shall be at liberty to marry again at any Time after the pronouncing of the Decree absolute.

5. This Act may be cited as "The Divorce Amendment Act, 1868."

6. This Act shall extend to all Suits pending at the Time when the same shall come into operation, notwithstanding that a Decree may have been pronounced therein; provided nevertheless, that this Act shall not affect any pending Appeal, nor shall the same prejudice any subsisting Right of Appeal against a Decree already pronounced, provided such Appeal be lodged within One Calendar Month after this Act shall come into operation.

CAP. LXXVIII.

The Admiralty Suits Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
 2. *"The Admiralty."*
 3. *Power to Admiralty to institute Actions, &c. as to Naval Stores, &c.*
 4. *Style of Admiralty in Suits, &c.*
 5. *Costs in Suits, &c.*
 6. *Nothing to affect legal Rights, &c. of the Crown, &c.*
 7. *Power reserved to Her Majesty to proceed by Information, &c.*
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An Act to amend the Law relating to Proceedings instituted by the Admiralty; and for other Purposes connected therewith. (31st July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited as The Admiralty Suits Act, 1868.

2. In this Act the Term "the Admiralty" means the Lord High Admiral of the United Kingdom for the Time being, or the Commissioners for the Time being for executing the Office of Lord High Admiral.

3. The Admiralty may institute any Action, Suit, or Proceeding concerning Naval or Victualing Stores, or other Her Majesty's Stores, Goods, or Chattels under the Charge or Control of the Admiralty, or any Stores, Goods, or Chattels sold or contracted to be delivered to or by the Admiralty for the Use or on account of Her Majesty, or the Price to be paid for the same, or any Loss or Injury of or to any such Stores, Goods, or Chattels as aforesaid, or concerning any Contract with the Admiralty relative to the Execution of any Work, or the doing of any Thing, or concerning any Matter arising under or in relation to any such Contract, or concerning any periodical or other Payment or Due payable to the Admiralty, or concerning any Debt, Damages, Claim, Demand, or Cause of Action or Suit whatever arising out of any Matter in anywise relating to the Rights, Powers, or Duties of the Admiralty, or to Property vested in or pur-

chased by or being under the Management or Control of the Admiralty, in like Manner and Form (as nearly as may be) as if the Question in dispute were one between Subject and Subject.

4. In any such Action, Suit, or Proceeding the Admiralty may be styled "the Lord High Admiral of the United Kingdom" or "the Commissioners" for executing the Office of Lord High Admiral "of the United Kingdom" (as the Case requires), without more; and any such Action, Suit, or Proceeding shall not be affected by any Change in the Admiralty.

5. In any such Action, Suit, or Proceeding the Admiralty shall be liable and entitled to pay or receive Costs according to the ordinary Law and Practice relative to Costs.

6. Nothing in this Act (except as expressly otherwise provided) shall take away or abridge in any such Action, Suit, or Proceeding any legal Right, Privilege, or Prerogative of the Crown; and in all such Actions, Suits, and Proceedings, and in all Matters and Proceedings connected therewith, the Admiralty may exercise and enjoy all such Rights, Privileges, and Prerogatives as are for the Time being exerciseable and enjoyable in any Proceeding in any Court of Law or Equity by the Crown as if the Crown were actually a Party to such Action, Suit, or Proceeding.

7. Notwithstanding anything in this Act, it shall be lawful for Her Majesty, Her Heirs and Successors, if and when it seems fit, to proceed by Information in the Court of Exchequer, or by any other Crown Process, legal or equitable, in any Case in which it would have been competent for Her Majesty, Her Heirs or Successors, so to proceed if this Act had not been passed.

CAP. LXXIX.

The Railway Companies Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Continuance of Restriction on Execution against Property.*
 2. *Short Title.*
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An Act to further amend the Law relating to Railway Companies.
(31st July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. Section Four of The Railway Companies Act, 1867, and Section Four of The Railway Companies (Scotland) Act, 1867, shall be read and have effect as if the First Day of September One thousand eight hundred and seventy were therein mentioned instead of the First Day of September One thousand eight hundred and sixty-eight.

2. This Act may be cited as The Railway Companies Act, 1868.

CAP. LXXX.

The Contagious Diseases Act Amendment Act.

ABSTRACT OF THE ENACTMENTS.

1. *Meaning of the Term "Superintendent" in 29 and 30 Vict. c. 35.*
2. *This and recited Act to be as one.*

An Act to amend the Contagious Diseases Act, 1866. (31st July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. In the Application of the Provisions of the Contagious Diseases Act, 1866, to Ireland the

Term "Superintendent" mentioned in the Second Section of the said Act shall include "Head Constable," or any other Constable duly authorized by the Inspector General of the Royal Constabulary acting under the Statutes for the Time being in force relating to the Royal Constabulary Force in Ireland to carry into effect the Provisions of the said Act.

2. This Act shall be read and construed as Part of the said recited Act.

CAP. LXXXI.

Portpatrick and Belfast and County Down Railway Companies.

ABSTRACT OF THE ENACTMENTS.

1. *Power to charge not exceeding 320,000l. upon the Consolidated Fund for the Purpose of Loans by this Act authorized.*
2. *Power to Public Works Loan Act extended to this Act.*
3. *Power to Portpatrick Company to borrow from the Public Works Loan Commissioners.*
4. *Application of said Sum.*
5. *Power to the Belfast and County Down Company to borrow on Mortgage.*
6. *Application of Monies borrowed.*
7. *Treasury to pay the Portpatrick Company a Sum not exceeding 20,000l. Schedule.*

An Act to authorize Loans of Public Money to the Portpatrick and the Belfast and County Down Railway Companies, and a Payment to the Portpatrick Company in consequence of the Abandonment of the Communication between Donaghadee and Portpatrick. (31st July 1868.)

WHEREAS the Treasury Minute set out in the Schedule to this Act annexed was passed on the Fifteenth Day of August One thousand eight hundred and fifty-six :

And whereas by an Act of Parliament passed in the Twentieth and Twenty-first Years of Her Majesty, intituled "An Act to authorize the Construction of a Railway from Castle Douglas in the Stewartry of Kirkcudbright to Portpatrick in the County of Wigtown," the Persons therein named were incorporated by the Name of "The Portpatrick Railway Company," and it is by the said Act amongst other things provided, that if the Railway and Branch Railway by the said Act authorized should not be completed and opened to the Public within the Period of Five Years from the passing of the said Act, then and from thenceforth it should not be lawful for the Company or the Directors thereof to pay any Dividend to the Shareholders until such Railway and Branch Railway to the North Pier at Portpatrick Harbour should have been completed and opened for public Traffic, and the Belfast and County Down Railway Company contributed a Sum of Fifteen thousand Pounds towards the said Undertaking, as by the said Act required :

And whereas by a further Treasury Minute, bearing Date the Twenty-first Day of July One thousand eight hundred and fifty-seven (previously to the passing of the said Act), their Lordships had approved of the said last-recited Clause being inserted therein, and stated that immediately on the passing of the said Act their Lordships would be prepared, in Communication with the Railway Company, to take such Steps as should be required in order to secure the Completion of the Works in the said Harbour of Portpatrick, so that they should be concluded at least as soon as the Railway Company should be in a Condition to use it in connexion with their Line :

And whereas by an Act passed in the Eighteenth Year of the Reign of Her present Majesty, intituled "An Act to enable the Belfast and County Down Railway Company to extend their Railway in the County of Down," it was provided that in case the Railways by the said Act authorized should not be completed and opened for public Traffic within a Period of Five

Years from the passing of the said Act, then and from thenceforth it should not be lawful for the Company or the Directors thereof to pay any Dividend to the Shareholders on the ordinary or unguaranteed Capital of the Company until such Railways should have been completed and opened for public Traffic, and the Time for Completion of said Railways was, by a further Act of the Twenty-first and Twenty-second of Her Majesty, extended to the Thirty-first Day of July One thousand eight hundred and fifty-nine :

And whereas both the said Railways have been completed by the said Companies respectively, making on the one Side a Railway Communication with the Harbour of Portpatrick, and on the other with the Harbour of Donaghadee, and the said Companies were induced to make the said Railway Communications on the Faith of the said recited Treasury Minute of the Fifteenth Day of August One thousand eight hundred and fifty-six, and for the Purposes of the said Railway Works the said Companies have borrowed large Sums of Money on the Security of their Debentures :

And whereas, at the Time of the said herein-before recited Minute of the Fifteenth Day of August One thousand eight hundred and fifty-six, the Works at the Harbour of Portpatrick were estimated to cost a Sum not exceeding the Sum of Twenty thousand Pounds, and the Lords Commissioners of the Admiralty proceeded with the Execution of the Works so estimated ; but, notwithstanding an Expenditure of public Money far exceeding the said Sum has been made, it has been reported that the Harbour of Portpatrick is quite unsuited for a speedy and punctual Service, and that it could not at any reasonable Cost be rendered suitable for the Service proposed :

And whereas the Payment of a Subsidy for the proper Maintenance of a Mail Service between the said Ports of Donaghadee and Portpatrick would be quite out of proportion to and far exceed any Advantage to be gained by such Service :

And whereas under the Circumstances herein-before stated it has been considered expedient to abandon the Establishment of a Mail Service between the said Ports of Donaghadee and Portpatrick, and inasmuch as such Abandonment will seriously and most injuriously affect the Interests of the said Two Railway Companies, to a great Extent rendering unprofitable and worthless the Expenditure which has been incurred in making the Railways herein-before mentioned, it is considered that both said Companies, under the Circumstances herein-before stated, have just and fair Claims to the Consideration of Parliament, and for the Adjustment thereof it has been proposed by the said Com-



panies respectively, and (subject to the Approval of Parliament) agreed to by the Lords Commissioners of Her Majesty's Treasury, that such Claims should be settled and arranged as is herein-after provided :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. For the Purposes of the Loans by this Act authorized the Commissioners of Her Majesty's Treasury may from Time to Time, by Warrant under the Hands of Two or more of them, cause to be issued out of the Consolidated Fund of the United Kingdom, or the growing Produce thereof, to the Account of the Commissioners for the Reduction of the National Debt, any Sum or Sums of Money not exceeding in the whole the Sum of Three hundred and twenty thousand Pounds, such Money to be applied exclusively under this Act, and be at the Disposal of the Public Works Loan Commissioners in like Manner in all respects as Money placed at their Disposal under the Act of the Session of the Twenty-fourth and Twenty-fifth Year of Her Majesty, Chapter Eighty, and the Acts therein recited, subject nevertheless to the Provisions of this Act, which Provisions shall have full Effect notwithstanding anything in the "Public Works Loan Act, 1853," or any Act therein mentioned, to the contrary contained.

2. All the several Clauses, Powers, Authorities, Provisoes, Enactments, Directions, Regulations, Restrictions, Privileges, Priorities, Advantages, Penalties, and Forfeitures contained in and conferred and imposed by the said Acts or any of them, so far as the same may be made applicable and are not varied by this Act, shall be taken to extend to this Act, and to everything to be done in pursuance of this Act, as if the same were herein repeated and set forth.

3. It shall be lawful for the said Portpatrick Company to borrow on Mortgage, and for the Public Works Loan Commissioners, out of the Funds at their Disposal under this Act, to lend and advance to the said last-mentioned Company, (under the Direction and with the Consent of the Commissioners of Her Majesty's Treasury,) a Sum not exceeding in the whole the Sum of One hundred and fifty-three thousand Pounds on the Security of the said Company's Railway Works and Undertaking, as well as all Rates, Rents, Tolls, and Profits, and all other Property of the said Company, the said Sum of One

hundred and fifty-three thousand Pounds to be the first Charge thereon, and to be repaid by equal half-yearly Instalments within a Period of Thirty-five Years from the Date of such Advances, together with Interest at the Rate of Three Pounds Ten Shillings per Centum per Annum on the said Sum of One hundred and fifty-three thousand Pounds, or on such Part thereof as may from Time to Time remain due and unpaid.

4. Such Portion of the said Sum of One hundred and fifty-three thousand Pounds as may be requisite for the Purpose shall be applied in discharge of all existing Debts of the said Company secured either by way of Mortgage, Debenture, or otherwise howsoever, and the Balance of the said Sum shall be applied by the said Company for the general Purposes of their Undertaking.

5. It shall be lawful for the said Belfast and County Down Railway Company to borrow on Mortgage, and for the said Public Works Loan Commissioners, out of the Funds at their Disposal under this Act, to lend and advance to the said last-mentioned Company, (under the Direction and with the Consent of the Commissioners of Her Majesty's Treasury,) a Sum not exceeding the Sum of One hundred and sixty-six thousand Pounds on the Security of all and every the said Company's Railway Works and Undertaking, as well on all Rates, Rents, Tolls, and Profits, and all other Property of the said Company, the said Sum of One hundred and sixty-six thousand Pounds to be the first Charge thereon, and to be repaid by equal half-yearly Instalments within a Period of Thirty-five Years from the Date of such Advance, together with Interest thereon at the Rate of Three Pounds Ten Shillings per Centum per Annum on the said Sum of One hundred and sixty-six thousand Pounds, or on such Part as may from Time to Time remain due and unpaid.

6. The said Sum of One hundred and sixty-six thousand Pounds to be applied in the Discharge of all existing Debts of the said Company, whether secured by Mortgage, Debenture, or otherwise however.

7. It shall be lawful for the Lords Commissioners of Her Majesty's Treasury, out of Monies to be provided by Parliament for the Purpose, to pay, by way of free Grant, to the said Portpatrick Railway Company a Sum not exceeding the Sum of Twenty thousand Pounds.

SCHEDULE referred to in the foregoing Act.

Treasury Minute, dated August 15, 1856.

My Lords have under their Consideration several Memorials, signed by Persons interested in the Communication between the North of Ireland and Scotland, and praying that their Lordships will take Measures to determine the Ports best adapted for the Establishment of a short Sea Passage between the two Countries, with a view to promote the quickest Postal and Passenger Communication.

One of these Memorials prays for a public Loan to the County Down Railway Company, in order to enable them to complete their Line to Donaghadee.

Fully recognising the great Advantages which would be derived by the extensive Manufacturing Districts in the North of Ireland, in the West of Scotland, and in the North of England, by establishing a Communication between the Two Ports which should reduce the Sea Passage to the shortest possible Time, and in connexion with a System of Railways on both Sides, which to a certain Extent already exists and the Completion of which my Lords understand is in contemplation, by which a direct Communication will be opened between all the above important Districts, my Lords referred the Subject to the Admiralty, for their Lordships Opinion upon the nautical Questions raised in the Memorials.

My Lords have now before them the Reply of the Admiralty, in which the Lords Commissioners report, that the most favourable Ports for the Establishment of a short Sea Passage are those of Portpatrick and Donaghadee; and they suggest that Instructions should be given to them to institute an Inquiry as to the best and cheapest Manner in which those Ports may be made suitable for the Purpose. These Instructions my Lords have already issued.

Before any Expense, however, is incurred, it becomes necessary that my Lords should clearly state their Views upon the Subject, for the Information of all the Parties who have appeared before them, either by Memorial or by personal Application, and of others who take an Interest in it.

It has been represented to my Lords that in the event of the Government deciding upon the best Ports for the Passage referred to, and especially in the Case of Portpatrick and Donaghadee being adopted, and provided the Government should be willing to use it as a Mail Communication, that, in the first place, a Steam Boat Service, suited both for Passengers and Mails, would be established by a private Company,

without any Aid from the Government except a fair Price for carrying the Mails; and that, in the second place, the Railways on each Side of the Channel would be completed so as to connect Donaghadee on the one Side with Belfast and the Main Line, and Portpatrick, on the other Side with Glasgow to the North, and with Dumfries to the East, by which all the important Objects in view would be fully attained. All this, it has been understood, will be performed by private Enterprise, if only the Government, on its Part, will—

1. Determine the Ports most suitable for the Service.
2. Adopt the Line between such Ports as a Mail Passage.
3. Make such Improvements in the Ports as shall best fit them for the Purpose.

These Conditions my Lords are prepared to adopt. They have already, upon the Advice of the Admiralty, decided that the best Ports will be Portpatrick and Donaghadee, and have instructed the Lords Commissioners to report upon the Improvements and Alterations required to render them suitable for the Service, and when a Steam Service shall be established for carrying the Mails they will be prepared to use it for that Purpose upon fair and reasonable Terms.

But, before my Lords proceed actually to incur any Expense upon the Ports named for their Improvement in pursuance of any Report that may be made by the Admiralty, it will be quite necessary that they should be well satisfied that all the Arrangements herein referred to, and which would be necessary to give public Utility to the Scheme, will be completed.

With regard to the Memorials for Aid in completing the Railways by a public Loan there is no Fund disposable for such a Purpose except that annually voted by Parliament for Public Works and administered under this Board by Commissioners appointed for the Purpose. It will, therefore, be necessary for those requiring such a Loan to apply to the Public Loan Commissioners, with whom rests the Responsibility of judging of the Security to be accepted in such Cases, and who alone can determine how far the other Demands upon the Fund at their Disposal will enable them to entertain the Requests.

Let a Copy of this Minute be forwarded to the Chief Secretary for Ireland, to the Chamber of Commerce, Belfast, to the other Memorialists, and to the Postmaster General.

CAP. LXXXII.

The County General Assessment (Scotland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Abolition of Rate known as "Rogue Money."*
3. *Salaries of County Officials, &c. to be defrayed out of County General Assessment.*
4. *County General Assessment to be levied for the Purposes of this Act.*
5. *Commissioners of Supply may relieve from Payment of Assessment in case of Poverty.*
6. *Detached Parts of Counties to be Part of the County in which locally situated.*
7. *Assessments under this Act to be recovered, &c. as Police Assessments under 20 & 21 Vict. c. 72.*
8. *Incorporation of Commissioners of Supply.*
9. *Commissioners of Supply to adopt One uniform Manner and Time of auditing Accounts.*
10. *Not to confer on Commissioners of Supply the Right to levy certain Assessments.*

An Act to abolish the Power of levying the Assessment known as "Rogue Money," and in lieu thereof to confer on the Commissioners of Supply of Counties in Scotland the Power of levying a "County General Assessment." (31st July 1868.)

WHEREAS it is expedient to abolish the Power of levying the Assessment known as "Rogue Money," and in lieu thereof to confer upon the Commissioners of Supply of Counties in Scotland the Power of levying a "County General Assessment:"

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as the "County General Assessment (Scotland) Act, 1868."

2. From and after the passing of this Act, it shall no longer be lawful for the Commissioners of Supply of Counties in Scotland to impose or levy the Rate or Assessment heretofore known as "Rogue Money:" Provided always, that nothing herein contained shall prejudice the Right of the said Commissioners to recover any Rogue Money which may have been imposed before the passing hereof.

3. The following Salaries, Fees, Outlays, and Expenses, viz.,

- (1.) The Salaries or Fees of Clerks, Treasurers, Collectors, Auditors, and other Officials necessarily employed in conducting the Affairs of each County, together with the necessary Outlays of such Officials, in so far as not covered by their Salaries or Fees;

(2.) The Salaries or Fees and necessary Outlays of Procurators Fiscal in the Sheriff and Justice of Peace Courts, and Clerks of Justice of Peace Court, in so far as such Salaries, Fees, and Outlays are at present in use to be paid by each County;

(3.) The Expenses incurred in searching for, apprehending, subsisting, prosecuting, or punishing Criminals;

(4.) The Expenses connected with the upholding, repairing, enlarging, renting, furnishing, insuring, lighting, cleaning, or warming any Courthouse or any Buildings belonging to or occupied for the Purposes of such County, and all Taxes, Rates, and Assessments legally chargeable thereon;

(5.) The Expenses connected with the holding of the Court for striking the Fairs Prices for such County, in so far as the said Expenses have hitherto been defrayed by such County, together with a Fee of Three Guineas to each of such Professional Accountants not exceeding Two, and a Fee of One Guinea to each of such other Persons not exceeding Six, as shall be summoned by the Sheriff as Witnesses at such Court, as such Fees shall be certified under the Hand of the Sheriff;

(6.) All Expenses occasioned by Damage done to Property within the County by tumultuous or riotous Assemblies, and all Expenses properly incurred in the Prevention of Riots;

(7.) All Expenses or Payments presently directed by any Act of Parliament to be defrayed out of the "Rogue Money,"

in so far as any of such Salaries, Fees, Outlays, and Expenses are not by Law or Usage payable or provided from other Funds than those raised by the Commissioners of Supply, may be defrayed by the said Commissioners out of the "County General Assessment," to be made and levied by them in Terms of this Act.

4. It shall be lawful for the Commissioners of Supply of every County in Scotland once in each Year to impose an Assessment for the Purposes of this Act, to be called the "County General Assessment," upon all Lands and Heritages within such County, according to the yearly Value thereof as established by the Valuation Roll for the Year (commencing at Whitsunday) in which such Assessment is imposed, subject to the Provision in the Sixth Section hereof, and that at such Rate in each Year as the said Commissioners shall deem necessary, in order to provide sufficient Funds for all the Purposes of this Act, including such Sum as may be requisite to cover the Expenses of Assessment, Collection, and Management, and any Arrears of preceding Years; and the said Assessment so to be laid on in each Year shall be payable as for the Period from Whitsunday then last to Whitsunday then next, and shall be due at such Date as the Commissioners shall determine, and may be levied either on the Proprietor or Tenant of all such Lands and Heritages; but such Tenant, in case of his paying such Assessment, shall be entitled to deduct the Amount from the Rent payable by him, unless under existing special Agreement with his Landlord to the contrary: Provided always, that the said Commissioners shall not levy Assessment in respect of any Dwelling House, Shop, or other such Premises, or any Offices or Outhouses connected therewith, which shall be unoccupied and unfurnished during the whole of the Period to which such Assessment applies: Provided also, that the Words "Lands and Assessments" shall have the like Signification as in the Act Seventeenth and Eighteenth Victoria, Chapter Ninety-one.

5. The Commissioners of Supply of any County may, on the Ground of Poverty or Inability of any Person liable in Assessment under this Act, in respect of any Lands and Heritages in Value not amounting to Four Pounds per Annum, remit, in whole or in part, Payment of the said Assessment by such Person, in such Manner as the said Commissioners shall, in their Discretion, think just and reasonable, but upon no other Account whatsoever.

6. In assessing for the Purposes of this Act, the Commissioners of Supply of each County shall assess the whole County, including all detached Parts of other Counties forming Part of such County for the Purposes of this Act, and excluding all detached Parts of their own County forming Parts of other Counties for the Purposes of this Act; and for the Purposes of this Act all detached Parts of Counties shall be considered as forming Part of that County by which they are surrounded, or if partly surrounded by Two or more Counties, then as forming Part of that

County with which they have the longest common Boundary; and the Provisions of the Seventieth and Seventy-first Sections of the Act of the Twentieth and Twenty-first Victoria, Chapter Seventy-two, with respect to the Parishes of Cumbernauld and Kirkintilloch, and with respect to the Parishes or Parts of the Parishes of Tuliallan, Culross, Logie, Fossoway, Muckhart, and Alva, shall be and the same are hereby incorporated herewith, the Words "Purposes of this Act," and "Provisions of this Act," therein occurring, being read and construed herein as referring to the Purposes and Provisions of this Act: Provided always, that in case any Question shall arise under this Section the same shall be determined by the Secretary of State acting in the Home Department, whose Decision shall be final; and his Finding or Findings, after being published once in the *Edinburgh Gazette*, and advertised for Three successive Weeks in One or more Newspapers circulating in the District, shall have the same Force and Effect as if they were contained in this Act.

7. All Assessments under this Act (whether upon detached Parts of Counties or otherwise) shall be collected, obtained, and recovered, and in the Case of Bankruptcy or Insolvency shall be paid and shall be preferable, the Collector thereof shall be appointed, the Insolvency of such Collector shall be provided against, the Monies produced thereby shall be lodged and dealt with, and all Disputes in regard thereto shall be determined, and the Accounts of the Commissioners of Supply and their Collectors with reference to the same shall be kept, audited, and published in the same Manner as these several Matters are provided for under the Act Twentieth and Twenty-first Victoria, Chapter Seventy-two, with respect to the Police Assessments for the Purposes of that Act. Where by any existing Law or Usage Penalties, Fees, or other Monies fall to be paid or credited to the "Rogue Money," the same shall, from and after the passing of this Act, be paid or credited to the "County General Assessment."

8. The Commissioners of Supply of each County in Scotland shall be and the same are hereby incorporated, under the Name and Title of the Commissioners of Supply of such County, and each Incorporation shall include all the Persons who at the passing of this Act are or who shall be hereafter placed upon the List of Commissioners of Supply of such County, so long as they retain their Qualification to act as such Commissioners, and shall have Power in their Corporate Name to sue and be sued, and to acquire, hold, and transfer Property, Heritable and Moveable, and shall possess such other Powers as by Law belong to an Incorporation: Provided always, that

t shall be sufficient that any Deeds granted by the said Commissioners shall be signed by Two of their Number and by the Clerk of Supply, and that all Citations, Intimations, Notices, Schedules of Protest, of or for the said Commissioners, shall be competently made or served if delivered to the Clerk of Supply or left for him within his Office: And farther, it is provided, that in all Cases where Heritable Subjects are presently held by Persons or Trustees, in Name or for Behoof of Commissioners of Supply, or where the Conveiances have been taken, prior to the passing of his Act, to such Commissioners, it shall be sufficient that any Deeds hereafter transferring such Subjects, or to be granted in relation thereto, be signed by Two of the Commissioners of Supply and by the Clerk of Supply: Provided also, that the Acceptance of any Office of Emolument in the Gift of the Commissioners of Supply of any County shall disqualify, as it is hereby declared to disqualify, such Person so holding said Appointment from acting and voting as a Commissioner of Supply for said County so long as he holds the said Office.

9. Whereas the Assessments levied by Commissioners of Supply are regulated by various Acts of Parliament which prescribe different Modes of Periods for making up, auditing, and publishing the Accounts of Income and Expenditure applicable to such Assessments respectively, and it is expedient to enable the Commissioners of Supply of each County, if they shall think fit, to adopt One uniform Manner and Time of making up, auditing, and publishing such Accounts for such County: Be it enacted as follows: Notwithstanding the Terms of any Act of Parliament, it shall be lawful for the Commissioners of Supply

of any County to resolve at any Meeting of their Number, ordinary or special, duly called, and by a Majority of those attending and voting, that the Accounts of all the Assessments imposed or which may be imposed by such Commissioners, or by any Board or Committee nominated by or composed of such Commissioners, shall be made up annually to a Date to be specified in the Resolution, and shall thereafter be audited in such Manner as the Commissioners shall direct; and that a printed Abstract thereof shall be transmitted to each Commissioner of Supply, and published for Two successive Weeks in such Newspaper or Newspapers circulating in the County as the Commissioners shall direct, at least Ten Days before the next ensuing stated half-yearly Meeting of the Commissioners of Supply; and such Accounts, and the Audit and Publication thereof directed by such Commissioners, shall come in place of and be for all Purposes as effectual as the Accounts and the Audit and Publication thereof prescribed by the several Acts of Parliament herein-before mentioned: Provided always, that Notice of the Intention to move such Resolution shall be inserted in the Notice calling the Meeting at which it is to be moved.

10. Nothing herein contained shall confer on the Commissioners of Supply of any County the Right to levy Assessments under this Act on any Lands or Heritages upon which it is not now competent for the Commissioners of Supply of such County to levy Rogue Money, nor shall anything herein contained prejudice the Right now possessed by any other Body than Commissioners of Supply to levy Rogue Money under or in virtue of any Law or Custom now in force, but such Right shall continue as heretofore.

CAP. LXXXIII.

The Army Chaplains Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Interpretation of Terms.*
3. *Extent of Act.*
1. *Power to Her Majesty, with Consent, &c., to set out Precinct, and declare the same to be an Extra-parochial District.*
5. *Map describing Metes and Bounds shall be annexed to Scheme and registered.*
2. *Power to Secretary of State to appoint any Army Chaplain to perform Functions in Extra-parochial District.*
7. *Chapel erected and consecrated in Extra-parochial District to be the Chapel thereof.*
3. *Where Building certified to Bishop, Secretary of State may appoint a Chaplain to officiate therein.*
4. *Power to declare Extra-parochial Districts to be under Jurisdiction of such Archbishop or Bishop named in Order.*
6. *Act not to affect Chaplains, &c. in connexion with the Church of Scotland.*

An Act to afford greater Facilities for
the Ministrations of Army Chaplains.
(31st July 1868.)

WHEREAS it would conduce to the Well-being of Her Majesty's Army if greater Facilities were afforded for the Ministrations of Army Chaplains within the Stations to which such Chaplains are appointed, and if more particular Provision were made for the Superintendence of Army Chaplains officiating in Chapels or Places set apart or used for Divine Worship according to the Rites and Ceremonies of the United Church of England and Ireland :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited as "The Army Chaplains Act, 1868."

2. For the Purposes of this Act, the Term "Army Chaplain" shall mean a Commissioned Chaplain to Her Majesty's Military Forces in Holy Orders of the said Church; and the Term "Station" shall mean and include any Camp, Barrack, Hospital, or Arsenal, and Property adjacent thereto, the Site whereof is held by or in trust for Her Majesty.

3. This Act shall extend to England, Ireland, the Islands of Jersey, Guernsey, Alderney, Sark, and their Dependencies, and the Isle of Man.

4. It shall be lawful for the Queen's most Excellent Majesty in Council, upon the Recommendation of One of Her Majesty's Principal Secretaries of State, at any Time after the passing of this Act, with the Consent under the Hand and Seal of the Bishop of the Diocese within which such Station shall be locally situate, to set out by Metes and Bounds the Precinct thereof, and to declare the same for the Purposes of this Act to be an Extra-parochial District: Provided always, that a Copy of the Draft of any Scheme for constituting any such Precinct or District proposed to be laid before Her Majesty in Council shall be delivered or transmitted to the Incumbent and to the Patron or Patrons of the Church or Chapel of any Parish, Chapelry, or District out of which it is recommended that any such Precinct or District, or any Part thereof, should be taken, in order that such Incumbent, Patron or Patrons, may have an Opportunity of offering or making to One of Her Majesty's Principal Secretaries of State or to the said Bishop any Observations or Objections upon or to the Constitution of such Precinct or District; and such Scheme shall not be laid before Her Majesty in Council until after the Expiration of

One Month next after such Copy shall have been so delivered or transmitted, unless such Incumbent and Patron or Patrons shall in the meantime consent to the same; and upon such Scheme having been ratified by Her Majesty in Council, such Precinct or District shall thereafter for all Ecclesiastical Purposes be and be adjudged and taken to be an Extra-parochial Place.

5. A Map or Plan, setting forth and describing such Metes and Bounds, shall be annexed to the Scheme for constituting any such Precinct or District, and shall be transmitted therewith to Her Majesty in Council, and a Copy thereof shall be registered by the Registrar of the Diocese, together with any Order issued by Her Majesty in Council for ratifying such Scheme: Provided always, that it shall not be necessary to publish any such Map or Plan in the *London Gazette*.

6. It shall be lawful for One of Her Majesty's Principal Secretaries of State to appoint from Time to Time any Army Chaplain to perform the Functions of an Army Chaplain in any such Extra-parochial District, and thereupon it shall be lawful for any such Chaplain to officiate therein; and such Chaplain during the Continuance of his Appointment shall for all Ecclesiastical Purposes be, and be adjudged and taken to be, the Chaplain of an Extra-parochial Place within the Provisions of this Act.

7. Where a Chapel has been or shall be hereafter erected within the said Extra-parochial District, and consecrated for the Performance therein of Divine Service according to the Rites and Ceremonies of the said United Church, such Chapel shall be for the Purposes of this Act the Chapel of the said Extra-parochial District, and shall for all Ecclesiastical Purposes be, and be adjudged and taken to be, an Extra-parochial Chapel.

8. Where a Building shall have been certified under the Hand of One of Her Majesty's Principal Secretaries of State, to the Bishop of the Diocese within which such Building is locally situate, as used or intended to be used by Her Majesty's Military Forces as an unconsecrated Chapel for the Purpose of Divine Worship according to the Rites and Ceremonies of the said United Church, it shall be lawful for One of Her Majesty's Principal Secretaries of State from Time to Time to appoint any Army Chaplain to perform all the Functions of an Army Chaplain therein; and if at any Time such Building shall cease to be used for the Purpose aforesaid, it shall be lawful for One of Her Majesty's Principal Secretaries of State to certify such Fact to the said Bishop, and thereupon the Provisions of this Act shall no longer apply to such Building.

9. It shall be lawful for the Queen's most Excellent Majesty in Council, upon the Recommendation of One of Her Majesty's Principal Secretaries of State, at any Time after the passing of this Act, to declare all or any of the Extra-parochial Districts set out under the Provisions of this Act to be under the exclusive Jurisdiction of such Archbishop or Bishop of the said United Church as may be named in such Order during such Time as Her Majesty shall see fit, and thereupon it shall be lawful for such Archbishop or Bishop to exercise over any Army Chaplain appointed to officiate within any such Extra-parochial District all the Powers and Authority which he is by Law authorized to exercise over any Clerk in Holy Orders of the said United Church holding any Preferment within his

Diocese: Provided always, that the previous Consent in Writing of the said Archbishop or Bishop named therein shall be obtained before the making of such Order, and further that after the making of such Order, and until the Revocation thereof, all other Ecclesiastical Jurisdiction in respect of the Extra-parochial Districts named in such Order shall wholly cease.

10. Nothing in this Act contained shall be held to apply to Chaplains of Her Majesty's Forces in connexion with the Church of Scotland, or to affect the Ministrations of such Chaplains, or of any Licentiate or Minister of the Church of Scotland authorized by the War Office to officiate to Her Majesty's Presbyterian Soldiers in any Station within the Limits of this Act.

CAP. LXXXIV.

Entail Amendment (Scotland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

- 1. Short Title.
 - 2. Interpretation of Terms.
 - 3. Power to grant Feus, Building Leases, &c.
 - 4. Procedure in granting Feus, Building Leases, &c.
 - 5. Feus Charters, &c. to be void unless Buildings of certain Value erected and kept in repair.
 - 6. Power to grant Provisions to Wife and Children of Heir Apparent.
 - 7. Intimation of Petitions under Entail Acts.
 - 8. Repeal of 11 & 12 Vict. c. 36. s. 12. and 16 & 17 Vict. c. 94. s. 12., 10 G. 3. c. 51., and 5 G. 4. c. 87. to apply to all Entails.
 - 9. When Estate may be sold, Sale may be by private Bargain.
 - 10. Provisions as to Sale by Public Roup.
 - 11. Entailer's Debts, &c. may be charged on Entailed Estate by Bond and Disposition in Security.
 - 12. Provisions of Act 10 G. 3. c. 51. to apply to Dwellings for the Labouring Classes.
 - 13. Where Estate propelled, Applications under 11 and 12 Vict. c. 36. and 16 & 17 Vict. c. 94. may be made either in Name of Liferenter or of Fiar.
 - 14. Repeal of Sect. 33. of Act of 10 G. 3. c. 51.
 - 15. Court of Session may cause Entails to be registered for Preservation.
 - 16. Court may make Acts of Sederunt.
 - 17. Liferents of Personal Estate beyond certain Limits prohibited.
 - 18. 11 & 12 Vict. c. 36. ss. 5. 16. to apply to Entails dated after 1848, and to all Trusts.
- Schedule.

An Act to amend in several Particulars the Law of Entail in Scotland.
(31st July 1868.)

WHEREAS it is expedient to amend in several Particulars the Law of Entail in Scotland: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as the "Entail Amendment (Scotland) Act, 1868."

2. The following Words occurring in this Act shall, except where the Nature of the Provision shall be repugnant to such Construction, be construed as follows; that is to say, the Words "Court of Session," or "the Court," shall be construed to mean either Division of the Court of Session, or the Junior Lord Ordinary, or the Lord Ordinary on the Bills, as the Case may be; the Word "Sheriff" shall include "Sheriff Sub-

stitute;" the Words "Heir of Entail" shall include "Institute;" the Word "Lands" shall extend to and comprehend all Heritages; the Words "Entailed Estate" shall extend to and comprehend all Heritages which by the Law of Scotland may be made the Subject of Entail; and the Words "Feu Charter" shall comprehend a Feu Contract, a Feu Disposition, and every other Grant of a like Kind.

3. It shall be lawful for any Heir in possession of an Entailed Estate, notwithstanding any Prohibitions or Limitations in the Deed of Entail or in any Act of Parliament, in the Manner and subject to the Conditions herein-after mentioned, to grant Leases for the Purpose of building for any Number of Years not exceeding Ninety-nine Years, or Feus of any Part of such Estate (but reserving the Minerals therein and the Right of working the same), except the Garden, Orchards, Policies, or Inclosures adjacent to or in connexion with the Manor Place, in so far as such Garden, Orchards, Policies, or Inclosures are necessary to the Amenity of the Manor Place, or, if the Estate be held by Burgage Tenure, to dispose any Part thereof, reserving and excepting as aforesaid, subject to a Ground Annual: Provided always, that the Feu Duty, Rent, or Ground Annual to be stipulated for shall not be less than the Amount ascertained as herein-after provided: Provided also, that it shall not be lawful for such Heir to take any Grassum or Fine or valuable Consideration other than the Feu Duty, Rent, or Ground Annual for granting any such Charter, Lease, or Disposition; and in case any such Grassum, Fine, or Consideration shall be taken, such Charter, Lease, or Disposition shall be null and void; but nothing herein contained shall prevent any Heir of Entail in possession from exercising any Power of granting Feu Charters, Leases, or other Grants which may be contained in the Entail under which he possesses, more extensive than the Powers hereby conferred.

4. For ascertaining whether the Land so proposed to be feued, leased, or disposed may be feued, leased, or disposed in Terms of the Provisions of the preceding Section, and the Value of the same, an Application shall be made by the Heir in possession of the Entailed Estate to the Sheriff of the County within which the Entailed Estate, or the Portion thereof proposed to be feued, leased, or disposed, is situated, who thereupon shall direct Notice to be given to the next Heir of Entail entitled to succeed to the Entailed Estate in such Manner as shall seem proper (and in the event of such next Heir of Entail being under Age or subject to any legal Incapacity, the Sheriff shall appoint a Tutor ad litem or Curator ad litem to such Heir), and shall appoint One or more skilful Persons to inquire and report as to

the Value of the Lands proposed to be feued, leased, or disposed, and whether from their Position or otherwise they may or ought to be feued, leased, or disposed in Terms of the preceding Section either in whole or in Lots; and upon such Person or Persons reporting that the Feu Duty, Rent, or Ground Annual offered is in their Opinion, having regard to all the Circumstances, fair and adequate, and that such Land may, from its Position, be feued, leased, or disposed in Terms of the preceding Section either in whole or in Lots, the Sheriff, on consideration of the whole Circumstances, may and is hereby empowered to authorize such Heir in possession or his Successor in the Entailed Estate at any Time within Ten Years from the Date of such Deliverance to feu, lease, or dispose the said Land in One or more Lots at such Rate of Feu Duty, Rent, or Ground Annual as he can obtain for the same, not being less than the Rate fixed by the said skilled Persons, subject to such Conditions as the Sheriff may think essential to secure such Feu Duty, Rent, or Ground Annual, and any other Conditions he may see fit, and also subject to a nominal taxed Sum of One Penny Sterling in lieu of all Casualties on the Entry of Heirs and singular Successors, and to grant the necessary Feu Charter, Lease, or Disposition, and which being executed and recorded in the Register of Sasines shall be effectual to all Intents and Purposes; and the Lands so feued, leased, or disposed shall, from the Date of recording the Feu Charter, Lease, or Disposition in the Register of Sasines, and so long as such Feu Charter, Lease, or Disposition shall remain in force, be held as out of the Entail, and be liberated from all the prohibitory, irritant, and resolute Clauses or Clause of Registration thereof: Provided always, that the Superiority of the Lands so feued, leased, or disposed, and the Feu Duties, Rents, and Ground Annuals thereof, shall be and shall remain subject to the said Entail in the same Manner as the Lands themselves were subject thereto previous to the granting of such Feu Charter, Lease, or Disposition; and it is hereby provided, that the Decree of the Sheriff pronounced on such Application and Proceeding shall not be subject to Review by Suspension, Advocacion, or Reduction, or in any other Form, except by a short Note of Appeal to be presented to the Court of Session in one or other of the Divisions thereof, which Appeal shall be disposed of by such Division as a summary Cause: Provided always, that unless such Note of Appeal shall be lodged with the Clerk of the Division of the Court of Session, and Notice thereof given in Writing to the opposite Party, or his known Agent, or lodged with the Sheriff Clerk, within Six Months of the Date of the Decree of the Sheriff, such Decree shall be final and conclusive; and in the event of an Appeal being duly taken

and lodged, the Judgment of the Court of Session thereon shall be final and conclusive.

5. Provided always, That every such Feu Charter, Lease, or Disposition shall contain a Condition that the same shall be void, and the same is hereby declared void, if Buildings of the annual Value of at the least double the Feu Duty, Rent, or Ground Annual therein stipulated shall not be built within the Space of Five Years from the Date of such Grant upon the Ground comprehended therein, and that the said Buildings shall be kept in good, tenantable, and sufficient Repair, and that such Grant shall be void whenever there shall not be Buildings of the Value aforesaid, kept in such Repair as aforesaid, standing upon the Ground so feued, leased, or disposed.

6. It shall be lawful for the Heir Apparent to any Entailed Estate, with the Consent of the Heir in possession of such Estate, to grant Provisions in favour of his Wife, and of the lawful Child or Children of such Heir Apparent who shall not succeed to such Entailed Estate, to the same Extent, in the same Manner, and subject to the same Conditions to, in, or under which it is now competent for the Heir in possession of such Entailed Estate to grant such Provisions either under the Act of the Fifth George the Fourth, Chapter Eighty-seven, or under the Powers of the Entail: Provided that such Provisions shall not exceed in any Case the Amount authorized to be charged on the Entailed Estate and Rents thereof, either under the said Act or under the Entail of the said Estate, and that the same shall become payable at the Death of such Heir Apparent; and provided also, that such Provisions to be granted by such Heir Apparent shall not interfere with or affect any Provisions which have been granted by the Heir in possession of such Estate, and shall be postponed to the Provisions granted by such Heir in possession; and that the Provisions to be granted by such Heir Apparent shall be calculated under the said Act, or under the Provisions of the Entail, on the Footing of the Rental of such Entailed Estate, after deducting the Burdens and Provisions directed to be deducted by the said Act or by the Deed of Entail, and also after deducting the Burdens and Provisions granted by the Heir in possession to his or her Wife or Husband and Child or Children, so far as chargeable on such Entailed Estate, or on the Rents thereof.

7. Notwithstanding the Provisions contained in any of the Statutes relating to Entails, and particularly in the Thirty-fourth Section of the Act Eleventh and Twelfth of Victoria, Chapter Thirty-six, it shall be sufficient Advertisement of any Petition presented to the Court of Session

under these Acts or any of them if the presenting of such Petition is advertised once in the *Edinburgh Gazette*, and once weekly for Three successive Weeks in such Newspaper or Newspapers as may be appointed by the Lord Ordinary of the Court; and it shall be sufficient in such Advertisements to state the leading Name of the Lands by which the same are commonly known, without any detailed Description thereof, and the leading Purpose of the Petition, without any detailed Statement of such Purpose, and such Advertisement may be in the Form or as nearly as may be in the Form of Schedule (A.) hereto annexed; and in all Cases of Parties called under such Petitions who may be resident furth of Scotland the Induciae for citing such Parties shall be Thirty Days.

8. The Twelfth Section of the Act Eleventh and Twelfth Victoria, Chapter Thirty-six, and the Twelfth Section of the Act Sixteenth and Seventeenth Victoria, Chapter Ninety-four, are hereby repealed; and it is enacted, that the Act Tenth George the Third, Chapter Fifty-one, intituled "An Act to encourage the Improvement of Lands, Tenements, and Hereditaments in that Part of Great Britain called Scotland, held under Settlements of strict Entail," and the said Act Fifth George the Fourth, Chapter Eighty-seven, intituled "An Act to authorize the Proprietors of Entailed Estates in Scotland to grant Provisions to the Wives or Husbands and Children of such Proprietors," shall, from and after the passing of this Act, be applicable to all Entails, whether dated before or after the First Day of August One thousand eight hundred and forty-eight, and to all Trusts, of whatever Date, under which Land is held for the Purpose of being entailed, or by which Money or other Property, Real or Personal, is invested in trust for the Purpose of purchasing Land to be entailed; and the Powers conferred by the said Two last-mentioned Acts or either of them may be exercised with reference to such Land, Money, or other Property by the Person who if such Land had been entailed in Terms of the Trust would be the Heir in possession of the Entailed Land, and by the Person who if such Money or other Property had been invested in the Purchase of Land to be entailed would be the Heir in possession under the Entail to be executed of such purchased Land if such Entail had been executed, and the Apparent Heir of such Person who would be Heir of Entail in possession of such Land if it were entailed, or if it were purchased and entailed, shall have the same Powers with reference to such Land, Money, or other Property as are conferred on Heirs Apparent under the Sixth Section of this Act with reference to granting Provisions to their Wives or Husbands and Child or Children: Provided always, that

where the Operation of the said Two last-mentioned Acts, or the Power granted by the Sixth Section of this Act, are, or any One of them is, expressly excluded by the Deed of Entail or Trust Deed, the Powers conferred by the said Acts, or by the Act so excluded, or by the Sixth Section of this Act when so excluded, shall not be competent to the Heir of Entail in possession under such Entail, or to the Person who would be Heir of Entail in possession under the Entail directed to be made if such Entail were executed as aforesaid, or to the Heir Apparent of such Heir of Entail or Person.

9. It shall be competent for the Court of Session, where any Entailed Estate is subject to or may be charged with Debt affecting or that may be made to affect the Fee of the Estate, on a Petition to be presented by the Heir of Entail in possession of such Estate, to approve of an Agreement to sell by private Bargain the whole or any Portion of such Estate for Payment of the whole or any Part of such Debt; and the Court may authorize such Sale under such Agreement where they are satisfied, after making such Inquiry as they consider necessary, that the Sale is advantageous and beneficial for the Heir of Entail in possession of such Estate, and not detrimental to the Interests of the succeeding Heirs of Entail; and the said Court may authorize such Sale even though the Price to be paid under such Agreement is considerably above the total Amount of the Debt affecting such Entailed Estate as aforesaid, provided they are satisfied of the Advantage and Benefit likely to accrue from such Sale as aforesaid; and in the event of such Sale being effected as aforesaid, and of any Surplus remaining after paying off the said Debts and the Expenses attending the Sale, such Surplus, if less than Two hundred Pounds, shall belong to the Heir of Entail in possession, and, if more than Two hundred Pounds, shall be applied, under the Authority of the Court, in buying other Lands in the Neighbourhood of the Remainder of the Entailed Estate, if the whole Estate is not sold, or, if the whole Estate is sold, in buying Lands in Scotland, to be approved of by the Court; and until a suitable Purchase of Land is found such Surplus may be invested by Trustees to be appointed by the Court, on the Application of the Petitioner in the course of the Proceedings, or in any Application to be presented by him for the Purpose, on Heritable Security in Scotland to the Satisfaction of the said Trustees, or may be applied otherwise under the Provisions of the Acts of Parliament relating to Entails in Scotland; and the Form of Petitions to be presented under this Section and the Procedure thereon shall, as nearly as may be, be similar to the Form and Procedure prescribed with reference to Petitions presented to

the Court under the said Acts; and until such Surplus is invested in the Purchase of Land for the Purpose of being entailed, the free annual Proceeds thereof shall be paid to the Person who would be the Heir in possession if such Land were purchased and entailed; and it is hereby provided that it shall be competent to any Heir of Entail in possession of an Entailed Estate in Scotland who has or whose Predecessors have sold the whole or Part of the Entailed Estate, and where the Price or the Balance of the Price is available for the Purchase of Land, to apply to the Court in like Manner for the Appointment of Trustees by whom the said Price or Balance thereof may be invested on Heritable Security in Scotland, or may be applied otherwise under the Provisions of the Acts of Parliament relating to Entails, in the same Manner, till the same Event, and to the same Effect in all respects as is herein-before provided with reference to the Price or the Balance of the Price of Lands sold under the Provisions of this Section.

10. When the Upset Price of any Entailed Lands the Sale of which has been authorized by the Court shall have been fixed, the Court may authorize the Lands to be exposed by the Heir of Entail in possession, in Presence of the Judge of the Roup appointed by the Court, at such Time and at such Upset Price, not being under the said fixed Upset Price, as the Heir of Entail in possession may arrange, and in the event of the Lands not being sold at such Upset Price, then the Heir of Entail in possession may re-expose the Lands at a reduced Upset Price, not being under the said fixed Upset Price, in Presence of the Judge of the Roup, and so on thereafter if the said Lands shall not be sold at such Re-exposure: Provided always, that such Heir of Entail in possession shall advertise the Land in the first and subsequent Exposures, if any, in Terms of the Interlocutor which shall have been pronounced by the Court on authorizing the Sale, and upon the Heir of Entail effecting a Sale in virtue hereof the Court shall approve of such Sale according to the existing Law and Practice.

11. In all Cases where there are or shall be Entailer's or other Debts or Sums of Money which might lawfully be made chargeable, by Adjudication or otherwise, upon the Fee of an Entailed Estate, the Heir of Entail in possession of such Estate for the Time being shall have all the like Powers of charging the Fee and Rents of such Estate, or any Portion thereof, other than the Mansion House, Offices, and Policies thereof, with the full Amount of such Debts or Sums of Money, and of granting, with the Authority of the Court of Session, Bonds and Dispositions in Security for the full Amount of such Debts and

Sums of Money, as by the Act Eleventh and Twelfth Victoria, Chapter Thirty-six, and the Act Sixteenth and Seventeenth Victoria, Chapter Ninety-four, are conferred with reference to Provisions to younger Children; and such Bonds and Dispositions in Security may be granted in favour of any Parties in the Right of such Debts or Sums of Money at the Date when such Bonds and Dispositions in Security are executed.

12. Whereas it is expedient to grant further Facilities for the building of Cottages for Labourers, Farm Servants, Artizans, and others residing on Entailed Estates in Scotland, and for that Purpose to amend the Act of the Twenty-third and Twenty-fourth Years of the Reign of Queen Victoria, Chapter Ninety-five: Be it therefore enacted, That it shall be sufficient Compliance with the Provisions of the said Act and of the Acts of the Tenth Year of the Reign of King George the Third, Chapter Fifty-one, the Eleventh and Twelfth Years of the Reign of Queen Victoria, Chapter Thirty-six, and the Sixteenth and Seventeenth Years of the Reign of Queen Victoria, Chapter Ninety-four, therein recited, if it be shown that the Cottages in respect of which a Charge is proposed to be created, or towards the Erection of which Monies are sought to be applied, have been completed in a proper and substantial Manner, and it shall not be necessary to prove that they are required for the Accommodation of the Labourers, Farm Servants, Artizans, and others employed on or connected with the Entailed Estate on which they have been or may be erected.

13. Where any Heir of Entail in possession of an Entailed Estate under an Entail dated prior to the First Day of August One thousand eight hundred and forty-eight shall have lawfully propelled, or shall hereafter lawfully propel, such Estate, under Reservation of his own Liferent, to the Heir entitled to succeed him therein, any Application which has been or shall be made under the Acts of the Eleventh and Twelfth Victoria, Chapter Thirty-six, and of the Sixteenth and Seventeenth Victoria, Chapter Ninety-four, and the Procedure following thereon, shall be equally Effectual in all respects, whether made in the Name of the Heir of Entail who has propelled the Estate or in the Name of the Heir to whom it has been propelled; and during the Lifetime of such last-mentioned Heir it shall be sufficient that the Consents of the Persons whose Consents would have been required to such Application if the Estate had not been propelled be obtained thereto; and provided also, that where the Application is presented in the Name of the Heir to whom the Entailed Estate has been propelled, the Presentation of such Application shall be sufficient Evidence of his Consent thereto.

14. So much of the Thirty-third Section of the Act of the Tenth Year of the Reign of George the Third, Chapter Fifty-one, as provides that not more than Thirty Acres of Arable Land, nor more than One hundred Acres of Lands consisting of Hills or other Grounds incapable or improper by their Nature for Culture by the Plough, of such Entailed Estates lying together in One Place or Plot shall be given in Exchange, and that an Equivalent in Land contiguous to the Entailed Estate with which the Exchange is to be made shall be received in place of the Land given in Exchange, is hereby repealed; and in lieu thereof it is enacted, that not more than Three hundred Acres of Lands of such Entailed Estates lying together in One Place or Plot shall be given in Exchange, and that an Equivalent in Land shall be received in place of the Land given in Exchange; and the said Section shall be read as if this last-mentioned Enactment was contained therein.

15. It shall be competent to any Heir of Entail, Trustee, or other Person interested in any Entail, to apply to the Court of Session for Warrant to register such Entail in the Books of Council and Session for Preservation, as well as in the Register of Entails for Publication, where not previously so registered; and it shall be lawful for the Court, under such Application, to cause such Registration to be made at the Expense of the Applicant, or of the Heir of Entail in possession, as the Court shall direct, and with a view to such Registration to order Production of such Entail, or grant Diligence for its Recovery.

16. It shall be lawful for the Court to pass such Act or Acts of Sederunt as they may deem proper for the further Regulation of the Forms of Procedure under this Act, and otherwise for rendering the same more effectual according to the true Intent and Meaning hereof.

17. From and after the passing of this Act, it shall be competent to constitute or reserve, by means of a Trust or otherwise, a Liferent Interest in Moveable and Personal Estate in Scotland in favour only of a Party in Life at the Date of the Deed constituting or reserving such Liferent, and where any Moveable or Personal Estate in Scotland shall, by virtue of any Deed dated after the passing of this Act (and the Date of any testamentary or mortis causa Deed shall be taken to be Date of the Death of the Grantor, and the Date of any Contract of Marriage shall be taken to be the Date of the Dissolution of the Marriage), be held in Liferent by or for Behoof of a Party of full Age born after the Date of such Deed, such Moveable or Personal Estate shall belong absolutely to such Party, and where such Estate stands invested in the Name of any Trust-

tees such Trustees shall be bound to deliver, make over, or convey such Estate to such Party: Provided always, that where more Persons than One are interested in the Moveable or Personal Estate held by Trustees as herein-before mentioned, all the Expenses connected with the Transference of a Portion of such Estate to any of the Beneficiaries in Terms of this Act shall be borne by the Beneficiary in whose Favour the Transference is made.

18. The Provisions of the Fifth and Sixteenth Sections of the said Act Eleventh and Twelfth

Victoria, Chapter Thirty-six, shall from and after the passing of this Act be extended to Entails dated on or after the First Day of August One thousand eight hundred and forty-eight, and shall apply to such Entails in the same Manner and to the same Effect in all respects as if these Provisions had been by the said Sections made to apply expressly to such Entails, as well as to Entails dated prior to the First Day of August One thousand eight hundred and forty-eight; and the Provisions of these Sections shall apply to all Trusts of whatever Date under which Land is held for the Purpose of being entailed.

SCHEDULE (A.)

Intimation is hereby given That A.B., Heir of Entail in possession of the Entailed Lands and Estate of _____ in the County of _____ has presented a Petition to the Lords of Council and Session (Division, _____ Lord Ordinary, Clerk), in Terms of the Acts Eleventh and Twelfth Victoria, Chapter Thirty-six, and Sixteenth and Seventeenth Victoria, Chapter Ninety-four, and (*this Act*), and relative Acts of Sede-

runt, for Authority to disentail the Lands and Estate of _____ in the County of _____ (or to charge the Lands of _____ in the County of _____ with the Sum of _____, or otherwise, as the Case may be). Date of Interlocutor ordering Intimation _____ Day of _____ One thousand eight hundred and _____ C.D., Agent of the Petitioner. Address and Date.

CAP. LXXXV.

Consolidated Fund (Appropriation).

ABSTRACT OF THE ENACTMENTS.

1. *There may be applied for the Service of the Year ending 31st March 1869 the Sum of 22,083,532l. 9s. 5d out of the Consolidated Fund.*
2. *Bank of England may advance 22,083,532l. 9s. 5d. on the Credit of this Act.*
3. *Interest on Advances.*
4. *Treasury may apply for the Service of the Year ending 31st March 1869, 537,217l. 10s. 7d. Surplus of Ways and Means.*
5. *47,983,148l. 19s. 9d. Schedule (A.) (Part I.)*
6. *Navy Services, Deficiency, 1866-7, 90,619l. 13s. 9d.*
7. *Army Services, Deficiency, 1866-7, 48,479l. 8s. 8d.*
8. *Civil Services, Deficiencies, 1866-7, 79,829l. 2s. 7d. Schedule (B.)*
9. *Inland Revenue, Deficiency, 1866-7, 8,381l. 1s. 1d.*
10. *Packet Service Deficiency, 1866-7, 1,089l. 13s. 8d.*
11. *Supplementary Grants for Civil Services to 31st March 1868, 134,000l. Schedule (C.)*
12. *Expedition to Abyssinia. 2,000,000l. 1867-8; 3,000,000l. 1868-9.*
13. *Navy Services, 11,157,290l. Schedule (D.)*
14. *Army Services, 15,455,400l. Schedule (E.)*
15. *Exchequer Bonds, 600,000l.*
16. *Appropriation to Civil Services, Class 1, of 1,256,965l. Schedule (F.)*
17. *Appropriation to Civil Services, Class 2, of 1,661,299l. Schedule (G.)*
18. *Appropriation to Civil Services, Class 3, of 3,579,686l. Schedule (H.)*

19. *Appropriation to Civil Services, Class 4, of 1,536,697l. Schedule (I.)*
20. *Appropriation to Civil Services, Class 5, of 486,277l. Schedule (J.)*
21. *Appropriation to Civil Services, Class 6, of 426,825l. Schedule (K.)*
22. *Appropriation to Civil Services, Class 7, of 169,256l. Schedule (L.)*
23. *Revenue Departments, 4,968,098l. Schedule (M.)*
24. *Post Office Packet Service, 1,089,349l.*
25. *Advances for new Courts of Justice, 106,000l.*
26. *Advances for Greenwich Hospital and School, 127,608l.*
27. *Supplies to be applied only for the Purposes aforesaid.*
28. *Sanction for Navy and Army Expenditure for 1866-7 unprovided for, 29 & 30 Vict. c. 91. s. 29. ; Navy Deficiency, 317,534l. 14s. 10d. ; Navy Surplus, 226,915l. 1s. 1d. ; Army Deficiency, 329,043l. 8s. 0d. ; Army Surplus, 280,563l. 19s. 4d.*
29. *Expenditure for Navy and Army Services respectively to be confined to the separate Services for which granted. (11,157,290l.—15,455,400l.) Treasury may, in certain Cases of Exigency, authorize Expenditure unprovided for ; provided that the aggregate Grants for the Navy Services and for the Army Services respectively be not exceeded.*
30. *Rules to be observed in the Application of the Sum granted for Half Pay. Not to prevent the receiving of Half Pay under any Act relating to the General or Local Militia, &c. Paymaster General, by Permission of the Treasury, may issue Half Pay to Officers appointed to Civil Offices since July 1828. An Account of the Number of Officers so receiving Half Pay to be laid before Parliament annually.*
31. *Treasury may authorize Military Officers in Civil Employments to receive Half Pay in certain Cases.*
32. *Half Pay Allowances to Chaplains of Regiments not holding Ecclesiastical Benefices derived from the Crown.*
33. *Declarations to be made before Receipt of Sums appropriated. Before whom such Declarations to be made. Schedules.*

An Act to apply a Sum out of the Consolidated Fund and the Surplus of Ways and Means to the Service of the Year ending the Thirty-first Day of March One thousand eight hundred and sixty-nine, and to appropriate the Supplies granted in this Session of Parliament. (31st July 1868.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal Subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the Supply which we have cheerfully granted to Your Majesty in this Session of Parliament, have resolved to grant unto Your Majesty the Sums herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. There may be issued and applied, for or towards making good the Supply granted to Her Majesty for the Service of the Year ending on the Thirty-first Day of March One thousand

eight hundred and sixty-nine, the Sum of Twenty-two million eighty-three thousand five hundred and thirty-two Pounds Nine Shillings and Fivepence out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and the Commissioners of Her Majesty's Treasury for the Time being are hereby empowered to issue and apply the same accordingly.

2. The Governor and Company of the Bank of England may make Advances to Her Majesty, upon the Credit of the Sum granted by this Act out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, to an Amount not exceeding in the whole the Sum of Twenty-two million eighty-three thousand five hundred and thirty-two Pounds Nine Shillings and Fivepence; and such Advances shall be made on the Application of the Commissioners of Her Majesty's Treasury, from Time to Time, in such Sums as may be required for the Public Service, and shall be placed to the Credit of the Account of Her Majesty's Exchequer at the Bank of England, and be available to satisfy the Orders for Credits granted or to be granted on the said Account, under the Provisions of the "Exchequer and Audit Departments Act, 1866," in respect of any Services voted by the Commons of the United Kingdom of Great Britain and Ireland in this present Session of Parliament.

3. The Advances made by the Bank of England from Time to Time under the Authority of this Act shall bear Interest not exceeding the Rate of Threepence Halfpenny per Centum per Diem, and the Principal and Interest of all such Advances shall be paid out of the growing Produce of the Consolidated Fund at any Period not later than the next succeeding Quarter to that in which the said Advances shall have been made.

4. There may be issued and applied, for or towards making good the Supply granted to Her Majesty for the Service of the Year ending the Thirty-first Day of March One thousand eight hundred and sixty-nine, the Sum of Five hundred and thirty-seven thousand two hundred and seventeen Pounds Ten Shillings and Sevenpence, being the Surplus of Ways and Means granted for the Service of preceding Years, and the Commissioners of Her Majesty's Treasury may issue and apply the same accordingly.

5. All the Moneys coming into the Exchequer of the United Kingdom of Great Britain and Ireland by the Acts set forth in Part I. of the Schedule (A.) to this Act, amounting in the aggregate to the Sum of Forty-seven million nine hundred and eighty-three thousand one hundred and forty-eight Pounds Nineteen Shillings and Ninepence, are hereby appropriated and may be issued and applied for or towards the several Purposes expressed in Part II. of the said Schedule, and herein-after more particularly set forth.

6. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding Ninety thousand six hundred and nineteen Pounds Thirteen Shillings and Ninepence to make good Deficiencies on certain Grants for Navy Services for the Year ended on the Thirty-first Day of March One thousand eight hundred and sixty-seven.

7. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding Forty-eight thousand four hundred and seventy-nine Pounds Eight Shillings and Eightpence to make good Deficiencies on certain Grants for Army Services for the Year ended on the Thirty-first Day of March One thousand eight hundred and sixty-seven.

8. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding Seventy-nine thousand eight hundred and twenty-nine Pounds Two Shillings and Sevenpence to make

good Deficiencies on certain Grants for Civil Services for the Year ended on the Thirty-first Day of March One thousand eight hundred and sixty-seven mentioned in the Schedule (B.) to this Act.

9. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding Eight thousand three hundred and eighty-one Pounds One Shilling and One Penny to make good the Deficiency on the Grant for the Inland Revenue Department for the Year ended on the Thirty-first Day of March One thousand eight hundred and sixty-seven.

10. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding One thousand and eighty-nine Pounds Thirteen Shillings and Eightpence to make good the Deficiency on the Grant for the Post Office Packet Service for the Year ended on the Thirty-first Day of March One thousand eight hundred and sixty-seven.

11. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding One hundred and thirty-four thousand Pounds to defray the Charge for certain Supplementary Grants for Civil Services for the Year ended on the Thirty-first Day of March One thousand eight hundred and sixty-eight mentioned in the Schedule (C.) to this Act.

12. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding Two million Pounds to defray the Expenses of the Expedition to Abyssinia beyond the ordinary Grants for the Year ended on the Thirty-first Day of March One thousand eight hundred and sixty-eight, and any Sum or Sums of Money not exceeding Three million Pounds to defray the Expenses of the said Expedition beyond the ordinary Grants for the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

13. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding Eleven million one hundred and fifty-seven thousand two hundred and ninety Pounds for or towards the Navy Services more particularly mentioned in the Schedule (D.) to this Act, to defray the Charges for the several Services specified in the said Schedule which will come in course of Payment during the Year ending on the Thirty-first

Day of March One thousand eight hundred and sixty-nine.

14. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding Fifteen million four hundred and fifty-five thousand and four hundred Pounds for or towards the Army Services more particularly mentioned in the Schedule (E.) to this Act, to defray the Charges for the several Services specified in the said Schedule, which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

15. Out of all or any the Aids or Supplies aforesaid there shall and may be issued and applied any Sum or Sums of Money not exceeding Six hundred thousand Pounds to pay off and discharge Exchequer Bonds which will become payable during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

16. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding the Sums respectively mentioned in the Schedule (F.) to this Act, to defray the Charges of the several Civil Services (Class I.) specified in the said Schedule, which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

17. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding the Sums respectively mentioned in the Schedule (G.) to this Act, to defray the Charges of the several Civil Services (Class II.) specified in the said Schedule, which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

18. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding the Sums respectively mentioned in the Schedule (H.) to this Act, to defray the Charges of the several Civil Services (Class III.) specified in the said Schedule, which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

19. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding the Sums

respectively mentioned in the Schedule (I.) to this Act, to defray the Charges of the several Civil Services (Class IV.) specified in the said Schedule, which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

20. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding the Sums respectively mentioned in the Schedule (J.) to this Act, to defray the Charges of the several Civil Services (Class V.) specified in the said Schedule, which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

21. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding the Sums respectively mentioned in the Schedule (K.) to this Act, to defray the Charges of the several Civil Services (Class VI.) specified in the said Schedule, which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

22. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding the Sums respectively mentioned in the Schedule (L.) to this Act, to defray the Charges of the several Civil Services (Class VII.) specified in the said Schedule, which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

23. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding the Sums respectively mentioned in the Schedule (M.) to this Act, to defray the Charges for the Services of the several Revenue Departments specified in the said Schedule, which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

24. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding One million eighty-nine thousand three hundred and forty-nine Pounds, to defray the Charge of the Post Office Packet Service which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand

eight hundred and sixty-nine, no Part of which Sum is to be applicable or applied in or towards making any Payment in respect of any Period subsequent to the Twentieth Day of June One thousand eight hundred and sixty-three to Mr. Joseph George Churchward, or to any Person claiming through or under him by virtue of a certain Contract, bearing Date the Twenty-sixth Day of April One thousand eight hundred and fifty-nine, made between the Lords Commissioners of Her Majesty's Admiralty (for and on behalf of Her Majesty) of the First Part, and the said Joseph George Churchward of the Second Part, or in or towards the Satisfaction of any Claim whatsoever of the said Joseph George Churchward by virtue of that Contract, so far as relates to any Period subsequent to the Twentieth Day of June One thousand eight hundred and sixty-three.

25. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding One hundred and six thousand Pounds, to defray the Charge for Advances for the Purchase of a Site and for other Expenses for the new Courts of Justice, and Offices belonging thereto, which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

26. Out of all or any the Aids or Supplies aforesaid there may be issued and applied any Sum or Sums of Money not exceeding One hundred and twenty-seven thousand six hundred and eight Pounds, to defray the Charge for Advances for Greenwich Hospital and School, which will come in course of Payment during the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine.

27. The said Aids and Supplies provided as aforesaid shall not be issued or applied to any Use, Intent, or Purpose whatsoever other than the Uses, Intents, and Purposes before mentioned or specified in the several Schedules referred to in this Act.

28. Whereas the Commissioners of the Treasury, under the Powers vested in them by the Act Twenty-ninth and Thirtieth Victoria, Chapter Ninety-one, Section Twenty-nine, have authorized Expenditure not provided for in the Sums appropriated to Naval and Military Services by the said Act to be temporarily defrayed out of Surpluses so far as such Surpluses will extend which have arisen by the Saving of Expenditure upon Votes within the same Department for the Year ended on the Thirty-first Day of March

One thousand eight hundred and sixty-seven, as follows:

1st, Three hundred and seventeen thousand five hundred and thirty-four Pounds Fourteen Shillings and Tenpence for Navy Services unprovided for in the Grants for Navy Services for the said Year, temporarily defrayed to the Extent of Two hundred and twenty-six thousand nine hundred and fifteen Pounds One Shilling and One Penny out of Surpluses, to the said last-mentioned Amount, which have arisen upon certain Votes for Navy Services for the same Year:

2d, Three hundred and twenty-nine thousand and forty-three Pounds Eight Shillings for Army Services unprovided for in the Grants for Army Services for the said Year, temporarily defrayed to the Extent of Two hundred and eighty thousand five hundred and sixty-three Pounds Nineteen Shillings and Fourpence out of Surpluses to the said last-mentioned Amount, which have arisen upon certain Votes for Army Services for the same Year:

It is enacted that the Application of the said Surpluses to cover so much of the said Deficiencies is hereby sanctioned.

29. The respective Departments charged with the detailed Application of the Sums granted by this Act for Navy and Army Services shall confine the Expenditure of their respective Departments within the particular Amounts appropriated to each of the separate Services comprised in the Sum of Eleven million one hundred and fifty-seven thousand two hundred and ninety Pounds granted by this Act for Naval Services, and in the Sum of Fifteen million four hundred and fifty-five thousand and four hundred Pounds granted by this Act for Army Services: Provided always, that if a Necessity shall arise for incurring Expenditure not provided for in the Sums appropriated to Naval and Military Services by this Act, and which it may be detrimental to the Public Service to postpone until Provision can be made for it by Parliament in the usual Course, the respective Departments shall forthwith make Application in Writing to the Commissioners of Her Majesty's Treasury for their Authority to defray temporarily such Expenditure out of any Surpluses which may have been or which may be effected by the Saving of Expenditure upon Votes within the same Department, and in such Applications the Departments shall represent to the Commissioners of the Treasury the Circumstances which may render such additional Expenditure necessary, and thereupon the said Commissioners may authorize the Expenditure unprovided for as aforesaid to be temporarily defrayed out of any Surpluses which may

have been or which may be effected as aforesaid upon Votes within the same Department; and a Statement showing all Cases in which the Naval and Military Departments shall have obtained the Sanction of the said Commissioners to any Expenditure not provided for in the respective Votes aforesaid, accompanied by Copies of the Representations made to them by the said Departments, shall be laid before the House of Commons not later than One Month after the Accounts of the Receipt and Expenditure for Navy and for Army Services for the Year shall respectively have been rendered to the Commissioners of Audit, if Parliament be then sitting, and if not then within One Week after Parliament shall be next assembled, in order that such Proceedings may be submitted for the Sanction of Parliament, and that Provision may be made for the Deficiencies upon the several Votes for the said Services in such Manner as Parliament shall determine: Provided also, that the Commissioners of the Treasury shall not authorize any Expenditure which may cause an Excess upon the aforesaid aggregate Sums granted by this Act for Naval Services and for Army Services respectively.

30. And as to the Sum granted by this Act for the Half Pay of Officers of Her Majesty's Forces, it is hereby enacted and declared, That the Rules hereafter prescribed shall be duly observed in the Application of the said Half Pay; (that is to say,) that no Person shall have or receive any Part of the same without making and subscribing a Declaration to such Purport and Effect as shall be required in that Behalf; that no Person shall have or receive any Part of the same who was under the Age of Sixteen Years at the Time when the Regiment, Troop, or Company in which he served was reduced; that no Person shall have or receive any Part of the same who did not do actual Service in some Regiment, Battalion, Troop, or Company in Her Majesty's Service, except in Cases in which the Commission was received under Circumstances which did not, according to the Regulations of the Army, require the Officer to serve; that no Person shall have or receive any Part of the same who has resigned his Commission, and has had no Commission since; that no Part of the same shall be allowed to any Person by virtue of any Warrant or Appointment, except to such Person as would have been otherwise entitled thereto as a Reduced Officer; that no Person shall have or receive any Part of the same for any Time during which he shall hold any other Military Place or Employment of Profit under Her Majesty, or in Her Majesty's Colonies or Possessions beyond the Seas, except on the Staff or in Garrison, and that in such excepted Cases, or in Cases of his holding any Military Place or Employment of Profit under another Government,

no Officer shall receive any Part of his Half Pay unless with Her Majesty's Approbation, to be signified by the Secretary of State for War to the Paymaster General, and the Officer claiming the Half Pay in pursuance of such Approbation shall specify in his Declaration the other Military Place or Employment of Profit on the Staff or in Garrison which he may hold or have held under Her Majesty, or in the Colonies or Possessions of Her Majesty beyond the Seas, or under any other Government; that no Person who shall, on or before the Twenty-eighth Day of July One thousand eight hundred and twenty-eight, have held any Civil Place or Employment of Profit under Her Majesty, or in the Colonies or Possessions of Her Majesty beyond the Seas, or under any other Government, shall have or receive any Part of the same for any Time during which he shall hold any such Civil Place or Employment of Profit under Her Majesty, or in the Colonies or Possessions of Her Majesty beyond the Seas, or under any other Government, except in Cases in which the same shall not exceed Three Times the Amount of the highest Rate of Half Pay attached to the Rank in virtue of which he claims to receive Half Pay or as herein-after mentioned, nor in any such excepted Cases unless Her Majesty's special Approbation be signified as aforesaid, and the Officer claiming the Half Pay in pursuance of such Approbation shall signify in his Declaration the Civil Place or Employment of Profit which he may hold or have held as aforesaid; but if the net annual Emoluments of such Civil Place or Employment shall exceed Three Times the Amount of Half Pay as aforesaid, and shall fall short of Four Times that Amount, then it shall be lawful for the Paymaster General, with Her Majesty's Approbation, signified by the Secretary of State for War as aforesaid, to issue, on or before the Twenty-fourth Day of December One thousand eight hundred and sixty-eight, so much of the Half Pay claimed by any such Officer as shall, together with the net annual Emoluments of the Civil Place or Employment, be equal to Four Times the Amount of such Half Pay, and the Officer claiming the Half Pay in pursuance of such Approbation shall specify in his Declaration the Civil Place or Employment of Profit which he may have held as aforesaid, and the actual Amount of the Emoluments thereof, in such Manner and Form, and calculated up to such Period or Periods, as shall be required by the Secretary of State for War; but no Person who, after the Twenty-eighth Day of July One thousand eight hundred and twenty-eight, has been appointed to any Civil Place or Employment of Profit (except in Her Majesty's Household) under Her Majesty, or in the Colonies or Possessions of Her Majesty beyond the Seas, or under any other Government, shall have or

receive any Part of the same for any Time during which he shall hold any such Civil Place or Employment of Profit (except as aforesaid) under Her Majesty beyond the Seas, or under any other Government, other than that of a Barrack Master under the Secretary of State for War, who shall, under the Restrictions before mentioned, be entitled to receive his Half Pay: Provided always, that nothing in this Act contained shall prevent any Person from receiving his Half Pay who shall be serving as an Adjutant in the Volunteer Force, or who shall be entitled to the same under any Act or Acts relating to the General or Local Militia, or to the Yeomanry, but that every such Adjutant shall receive the same on making and subscribing such Declaration as shall be specified in the Regulations made for the Volunteer Force under the Provisions of the Volunteer Act, 1863, and every other Person shall receive the same according to the Provision of any such Act or Acts; and also every Surgeon, Serjeant Major, Serjeant, Corporal, and Private serving in the General or Local Militia, or in any Corps of Yeomanry or Volunteers, in Great Britain or Ireland, may and shall receive any Half Pay, together with any Pay in the General or Local Militia, or Yeomanry or Volunteers, upon making and subscribing a Declaration in any Case in which an Oath or Declaration shall be required in and by any Act or Acts, or specified in any Warrant of Her Majesty, as the Case may be, and stating in such Declaration the Commission or Employment which he held in the General or Local Militia, the Yeomanry or Volunteers: Provided always, that from and after the First Day of January One thousand eight hundred and sixty-nine it shall be lawful for the Paymaster General to issue the Half Pay or any Portion thereof to any Officer appointed to Civil Place or Employment of Profit under Her Majesty or any other Government since the Twenty-eighth Day of July One thousand eight hundred and twenty-eight, if Her Majesty's Pleasure to that Effect be signified by the Commissioners of Her Majesty's Treasury through the Secretary of State for War, but such Permission to be granted under the Restrictions before mentioned: Provided always, that an Account shall be laid before Parliament in every Year on or before the First Day of April, if Parliament be then sitting, or if Parliament shall not then be sitting, on the First Day of the sitting of Parliament after the First Day of April, of the Number of Officers who are allowed to receive their Half Pay with Civil Emoluments, specifying the Names of such Officers, with the respective Amounts of their Half Pay, and the Emoluments of their respective Civil Employments, and distinguishing in every such Account the Officers to whom such Half Pay shall have been allowed subsequent to preceding Accounts.

31. The Commissioners of Her Majesty's Treasury may authorize the Receipt of Half Pay by Military Officers with Civil Employments in any Cases in which the said Commissioners shall be of opinion that the Employment of such Military Officers in the Colonies or elsewhere in Civil Situations of Responsibility with small Emoluments will be conducive to Economy, and thereby beneficial to the Public Service, and in every such Case the Officer authorized to receive Half Pay with the Salary or Emolument of any Civil Employment shall signify the same in his Declaration, specifying the Office, and the Authority under which he is so allowed to receive his Half Pay.

32. And whereas Chaplains of Regiments who have been placed upon Half Pay have not been allowed to receive such Half Pay in some Years in consequence of being in possession at the Time of certain Ecclesiastical Benefices or Preferments, though the same were not in the Patronage of the Crown: And whereas it has been judged fair and reasonable that they should be allowed to receive such Half Pay, though in possession of Ecclesiastical Preferment, provided the same was private Patronage, and not derived from the Crown, and that they should be entitled to receive the Arrears of Half Pay for such former Years as aforesaid: Be it therefore enacted, That all Chaplains who, after having been placed upon Half Pay, shall have been refused or been unable to receive such Half Pay in any Year in consequence of holding any Ecclesiastical Benefice not derived from or in the Gift of the Crown, shall be entitled to receive the Arrears of such Half Pay for such Year, upon making and subscribing a Declaration before the proper Officer for administering Declarations to Persons for entitling them to receive Half Pay that they held no Ecclesiastical Benefice or Preferment in any Year derived from the Crown, nor any Place or Employment of Profit under Her Majesty, and the making and subscribing the said Declaration shall, without making and subscribing any other Declaration, be sufficient to entitle such Chaplain to receive his Half Pay.

33. And as to the several Sums appropriated by this Act for defraying Army, Navy, or Civil non-effective Services, no Person shall receive any Part of the same without subscribing a Declaration to such Purport and Effect as shall be required in that Behalf; and such Declaration shall and may be made and subscribed before any of Her Majesty's Justices of the Peace, Notary Public, or Resident Minister in the United Kingdom of Great Britain and Ireland, or the Colonies or Dominions of Her Majesty; and when such Declarations are taken abroad they shall be made and subscribed before a British

Minister, Secretary of Embassy, Secretary of Legation, Consul, or British Chaplain, or before a Notary Public or some Magistrate or other Person competent to administer such Declarations; and as regards Naval Services before the Lord High Admiral or a Lord Commissioner or Secretary of the Admiralty, or a Superintendent of a Dockyard, Victualling or Medical Establishment, or before an Officer in command of One of Her Majesty's Ships, or a Chaplain serving on board One of Her Majesty's Ships;

and such Declarations for Army, Navy, and Civil Services may also be made and subscribed before any other Person now by Law authorized to administer or receive such Declarations, or before any of the Persons appointed to examine Vouchers in the Office of the Paymaster General, in the Manner, and under the Pains, Penalties, and Forfeitures, specified in an Act passed in the Fifth and Sixth Years of His late Majesty for the Abolition of unnecessary Oaths.

SCHEDULES to which this Act refers.

SCHEDULE (A).—WAYS AND MEANS.

PART I.

SCHEDULE of WAYS AND MEANS referred to in Section 5 of this Act; viz.:

Granted per Act 31 Vict. Cap. 1. for the Service of the Year ending 31st March 1868	£	s.	d.
	2,000,000	—	—
Granted per Act 31 Vict. Cap. 10. for the Service of the Years ending 31st March 1867 and 31st March 1868	362,398	19	9
Granted for the Service of the Year ending 31st March 1869; viz.:			
Per Act 31 Vict. Cap. 13.	6,000,000	—	—
Per Act 31 Vict. Cap. 16.	17,000,000	—	—
Per Section 1 of this Act	22,083,532	9	5
Per Section 4 of this Act (being Surplus Ways and Means granted for the Service of preceding Years)	537,217	10	7
	<hr/>		
Total Grants of WAYS AND MEANS to meet the following Supplies	£	s.	d.
	47,983,148	19	9
	<hr/>		

PART II.

ABSTRACT OF THE SUPPLIES GRANTED BY THIS ACT.

For the Year 1866-7 (Deficiencies):

Navy Services (Section 6)	£	s.	d.
	90,619	13	9
Army Services (Section 7)	48,479	8	8
Civil Services (Section 8, Schedule B.)	79,829	2	7
Inland Revenue Department (Section 9)	8,381	1	1
Post Office Packet Service (Sec. 10)	1,089	13	8

For the Year 1867-8 (Supplemental):

Expedition to Abyssinia (Sect. 12)	£	s.	d.
	2,000,000	—	—
Civil Services (Sect. 11, Schedule C.)	134,000	—	—

For the Year 1868-9:

Expedition to Abyssinia (Sect. 12.)	£	s.	d.
	3,000,000	—	—
Navy Services (Sec. 13, Schedule D.)	11,157,290	—	—
Army Services (Sec. 14, Schedule E.)	15,455,400	—	—
Exchequer Bonds (Sec. 15)	600,000	—	—

		£	£	s.	d.
Civil Services, Class I.	(Sec. 16, Schedule F.)	-	-	-	1,256,965
Class II.	(Sec. 17, Schedule G.)	-	-	-	1,661,299
Class III.	(Sec. 18, Schedule H.)	-	-	-	3,579,686
Class IV.	(Sec. 19, Schedule I.)	-	-	-	1,536,697
Class V.	(Sec. 20, Schedule J.)	-	-	-	486,277
Class VI.	(Sec. 21, Schedule K.)	-	-	-	426,825
Class VII.	(Sec. 22, Schedule L.)	-	-	-	169,256
Revenue Departments (Sec. 23, Schedule M.)	-	-	-	-	9,117,005
Post Office Packet Service (Sec. 24)	-	-	-	-	4,968,098
Advances for New Courts of Justice and Offices (Sec. 25)	-	-	-	-	1,089,349
Advances for Greenwich Hospital and School (Sec. 26)	-	-	-	-	106,000
					127,608
Total of SUPPLIES chargeable upon the above WAYS AND MEANS					47,983,148 19 9

SCHEDULE (B.)

SCHEDULE of SUMS comprised in the Sum of 79,829*l.* 2*s.* 7*d.* granted by Section 8 to make good Deficiencies on the several Grants for Civil Services herein particularly mentioned for the Year ended on the 31st Day of March 1867; viz.:-

		£	s.	d.
CLASS II.	Office of Works, &c.	-	-	1,199 14 3
	Inspectors of Factories, &c.	-	-	562 10 7
	Quarantine Expenses	-	-	306 15 7
	Printing and Stationery	-	-	16,831 2 8
CLASS III.	Law Charges, England	-	-	2,507 7 1
	Admiralty Court Registry	-	-	243 1 7
	Exchequer, Scotland, Legal Branch	-	-	393 10 1
	Law Charges, Ireland	-	-	9,285 10 4
	Bankruptcy Court, Ireland	-	-	1,182 0 0
CLASS V.	Maintenance of Prisoners	-	-	17,774 13 0
	Pitcairn's Islanders	-	-	87 5 10
CLASS VI.	Special Missions	-	-	10,224 17 5
	Relief of Distressed British Seamen	-	-	16,942 17 7
CLASS VII.	Ecclesiastical Commission	-	-	202 6 3
	Miscellaneous Expenses formerly Civil Contingencies	-	-	241 1 0
	Anglo-Chinese Flotilla	-	-	1,844 9 4
TOTAL		-	-	£ 79,829 2 7

SCHEDULE (C.)

SCHEDULE of SUMS comprised in the Sum of 134,000*l.* granted by Section 11 to defray Charges for certain Supplementary Grants for Civil Services for the Year ended on the 31st Day of March 1868; viz.:-

		£	s.	d.
CLASS I.	Landguard Point—Works	-	-	2,000 - -
CLASS II.	Inspectors of Factories, &c.	-	-	5,000 - -
	Quarantine Expenses	-	-	4,000 - -
CLASS III.	Law Charges, England	-	-	11,000 - -
	Law Charges, Ireland	-	-	36,000 - -
	Court of Chancery, Ireland	-	-	14,000 - -
	Maintenance of Prisoners	-	-	12,000 - -

		£	s.	d.
CLASS VII.	Temporary Commissions - - - - -	21,000	-	-
	Local Dues under Treaties of Reciprocity - - - - -	11,000	-	-
	Agricultural Statistics - - - - -	8,000	-	-
	Cape Haytien Bombardment—Compensation - - - - -	4,000	-	-
	Shannon River Survey - - - - -	6,000	-	-
TOTAL - - - - -		£ 134,000	-	-

SCHEDULE (D.)—SUPPLIES.

NAVY.

SCHEDULE of SUMS comprised in the Sum of 11,157,290*l.* granted by Section 13 of this Act to defray the Charges of the NAVY SERVICES herein particularly mentioned, which will come in course of Payment during the Year ending on the 31st Day of March 1869; viz. :—

No.		Sums not exceeding
		£
1.	For Wages to 67,120 Seamen and Marines - - - - -	3,036,634
2.	For Victuals and Clothing for Seamen and Marines - - - - -	1,335,842
3.	For Salaries of the Officers and Contingent Expenses of the Admiralty Office - - - - -	182,364
4.	For Salaries and Expenses of the Coast Guard Service, the Royal Naval Coast Volunteers, and Royal Naval Reserve - - - - -	243,926
5.	For Salaries of the Officers and Contingent Expenses of the several Scientific Departments of the Navy - - - - -	63,565
6.	For Salaries of the Officers and Contingent Expenses of Her Majesty's Dockyards and Naval Yards at home and abroad - - - - -	1,223,562
7.	For Salaries of the Officers and Contingent Expenses of Her Majesty's Victualling Yards and Transport Establishments at home and abroad - - - - -	87,179
8.	For Naval Medical Establishments at home and abroad - - - - -	64,824
9.	For Royal Marine Divisions - - - - -	20,709
10.	For Naval Stores for the building, Repair, and Outfit of the Fleet - - - - -	892,908
10.	For Steam Machinery for Her Majesty's Ships and Vessels, and for Payments to be made for Ships and Vessels building or to be built by Contract - - - - -	1,092,500
11.	For New Works, Buildings, Machinery, and Repairs in the Naval Establishments - - - - -	814,237
12.	For Medicines and Medical Stores - - - - -	78,164
13.	For Martial Law and Law Charges - - - - -	20,365
14.	For divers Naval Miscellaneous Services - - - - -	175,800
15.	For Half Pay, Reserved Half Pay, and Retirement to Officers of the Navy and Royal Marines - - - - -	700,166
16.	For Military Pensions and Allowances - - - - -	550,447
16.	For Civil Pensions and Allowances - - - - -	223,498
17.	For Freight of Ships, for the victualling and Conveyance of Troops, on account of the Army - - - - -	350,600
TOTAL NAVY SERVICES - - - - -		£ 11,157,290

SCHEDULE (E.)—SUPPLIES.

ARMY.

SCHEDULE of SUMS comprised in the Sum of 15,455,400*l.* granted by Section 14 of this Act to defray the Charges of the ARMY SERVICES herein particularly mentioned, which will come in course of Payment during the Year ending on the 31st Day of March 1869; viz. :—

No.		Sums not exceeding
		£
1.	For the General Staff and Regimental Pay, Allowances, and Charges of Her Majesty's Land Forces at home and abroad, exclusive of India	5,749,2 <i>l.</i>
2.	For the Commissariat Establishment, Services, and Movement of Troops	1,292,5 <i>l.</i>
3.	For Clothing Establishments, Services, and Supplies	496,9 <i>l.</i>
4.	For the Barrack Establishment, Services, and Supplies	706,3 <i>l.</i>
5.	For Divine Service	42,8 <i>l.</i>
6.	For Martial Law	23,0 <i>l.</i>
7.	For the Hospital Establishment, Services, and Supplies	380,9 <i>l.</i>
8.	For the Militia and Inspection of Reserve Forces	986,8 <i>l.</i>
9.	For the Yeomanry	88,0 <i>l.</i>
10.	For the Volunteers	385,1 <i>l.</i>
11.	For the Enrolled Pensioners and Army Reserve Forces	64,6 <i>l.</i>
12.	For the Military Store Departments, and for Supply of Warlike Stores, including	
13.	Manufacturing Departments	1,491,4 <i>l.</i>
14.	For the Superintending Establishment of, and the Expenditure for, Works, Buildings, and Repairs at home and abroad	968,4 <i>l.</i>
15.	For Military Education	169,3 <i>l.</i>
16.	For the Surveys of the United Kingdom	113,6 <i>l.</i>
17.	For Miscellaneous Services	142,7 <i>l.</i>
18.	For the Administration of the Army	224,6 <i>l.</i>
19.	For Rewards for Distinguished Services	26,7 <i>l.</i>
20.	For the Pay of General Officers	72,0 <i>l.</i>
21.	For the Pay of Reduced and Retired Officers	470,2 <i>l.</i>
22.	For Widows Pensions and Compassionate Allowances	157,0 <i>l.</i>
23.	For Pensions and Allowances to Wounded Officers	23,8 <i>l.</i>
24.	For Chelsea and Kilmainham Hospitals, and the In-Pension thereof	33,6 <i>l.</i>
25.	For the Out-Pensioners of Chelsea Hospital, &c.	1,184,6 <i>l.</i>
26.	For Superannuation Allowances, &c.	135,2 <i>l.</i>
27.	For the Non-effective Services of the Militia, Yeomanry Cavalry, and Volunteer Corps	90,7 <i>l.</i>
TOTAL ARMY SERVICES		15,455,4 <i>l.</i>

SCHEDULE (F.)—SUPPLIES.

CIVIL SERVICES,—CLASS I.

SCHEDULE of SUMS granted by Section 16 of this Act to defray the Charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of Payment during the Year ending on the 31st Day of March 1869; viz. :—

No.		Sums not exceeding
		£
1.	For the British Embassy Houses at Constantinople, China, and Japan	64,2 <i>l.</i>
2.	For a Contribution towards the Establishment and Maintenance of a Fire Brigade in the Metropolis	10,0 <i>l.</i>
3.	For the Erection of a House for Her Majesty's Mission at Tehran	8,0 <i>l.</i>
4.	For constructing certain Harbours of Refuge	116,6 <i>l.</i>

	Sums not exceeding
No.	£
5. For erecting and maintaining certain Lighthouses abroad - - -	42,310
6. For the Maintenance and Repair of the Royal Palaces - - -	56,238
7. For the Maintenance and Repair of Public Buildings; for providing the necessary Supply of Water for the same; for Rents of Houses for the temporary Accommodation of Public Departments, and Charges attendant thereon - - -	117,905
8. For the Supply and Repair of Furniture in the Public Departments - - -	15,000
9. For maintaining and keeping in repair the Royal Parks, Pleasure Gardens, &c. - -	137,524
0. For Works and Expenses at the Houses of Parliament - - -	54,936
1. For the Maintenance and Repairs of Embassy Houses abroad - - -	2,135
2. For Fittings and Furniture for the new Office for the Secretary of State for Foreign Affairs - - -	22,512
3. For the Purchase of Land and Houses near Downing Street Site for Public Offices -	42,760
4. For Expenses connected with the Probate Court and Registries - - -	13,764
5. For enlarging the Public Record Repository, and providing the necessary Fittings -	24,000
6. Towards the Purchase of a Site for the Enlargement of the National Gallery - -	50,000
7. For erecting a Building for the Use of the University of London - - -	25,000
8. For the Repair and Restoration of the Chapter House at Westminster - - -	10,000
9. For Purchase of Lands for New Palace at Westminster, and further Embankment of the Thames - - -	29,400
0. For adapting Burlington House for the Occupation of various Learned Bodies -	55,000
1. For One Half of the Expense of erecting, improving, and maintaining Court Houses or Offices for the Sheriff Courts in Scotland - - -	26,905
2. For Contributions in aid of Local Assessments for the Relief of the Poor in respect of certain Descriptions of Government Property - - -	36,252
3. For Expenses of Inland Revenue and Post Office Buildings, &c. - - -	89,470
4. For erecting Offices in Downing Street for the Secretaries of State for the Home and Colonial Departments - - -	10,000
5. For a Grant in aid of Buildings for the University of Glasgow - - -	20,000
6. Towards the Expense of the Wellington Monument - - -	4,200
7. For the Erection of the Palmerston Monument - - -	2,000
8. For erecting, repairing, and maintaining the several Public Buildings in the Department of the Commissioners of Public Works in Ireland - - -	149,259
9. For the Purchase or Erection of Buildings for the Queen's University in Ireland -	7,000
0. For the Restoration of the Works of the Ulster Canal - - -	5,300
1. For Works and Expenses at Portland Harbour - - -	8,500
TOTAL CIVIL SERVICES, CLASS I. - £	1,256,965

SCHEDULE (G.)—SUPPLIES.

CIVIL SERVICES.—CLASS II.

SCHEDULE of SUMS granted by Section 17 of this Act to defray the Charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of Payment during the Year ending on the 31st Day of March 1869; viz. :—

	Sums not exceeding
No.	£
1. For Salaries and Expenses of the Department of Her Majesty's Treasury - - -	52,609
2. For Her Majesty's Foreign and other Secret Services - - -	32,000
3. For Salaries and Expenses of the Office of Her Majesty's Secretary of State for the Home Department - - -	89,410
4. For Salaries and Expenses in the Department of Her Majesty's Secretary of State for Foreign Affairs - - -	74,452

No.		Sums not exceeding
		£
5.	For Salaries and Expenses in the Department of Her Majesty's Secretary of State for the Colonies	32,990
6.	For Salaries and Expenses in the Office of the Committee of Privy Council for Trade, and of the Subordinate Departments	97,725
7.	For Salaries of the Officers and Attendants of the Household of the Lord Lieutenant of Ireland	6,176
8.	For Salaries and Expenses of the Offices of the Chief Secretary to the Lord Lieutenant of Ireland in Dublin and London	22,927
9.	For Salaries and Expenses in the Department of Her Majesty's Paymaster General in London and Dublin	19,646
10.	For Salaries of the Department of the Queen's and Lord Treasurer's Remembrancer in the Exchequer, Scotland, of certain Offices in Scotland, and other Expenses formerly paid from the Hereditary Revenue	6,136
11.	For Salaries and Expenses of the Office of the Commissioners of Her Majesty's Works and Public Buildings	34,700
12.	For Salaries and Expenses of the Office of Public Works in Ireland	26,546
13.	For Salaries and Expenses in the Offices of the House of Commons	54,354
14.	For Salaries and Expenses in the Department of Her Majesty's Most Honourable Privy Council	42,585
15.	For Salary of the Lord Privy Seal, and the Salaries and Expenses of his Establishment	2,918
16.	For conducting the Business of the Civil Service Commission	9,407
17.	For Salaries and Expenses in the Exchequer and Audit Department	38,500
18.	For Salaries and Expenses of the Office of Woods, Forests, and Land Revenues	26,958
19.	For Salaries and Expenses of the Department of Public Records	21,926
20.	For Expenses connected with the Administration of the Laws relating to the Poor	209,183
21.	For the Establishment of the Mint, including Expenses of the Coinage	45,820
22.	For the Expense of the Copyhold, Inclosure, and Tithe Commission	20,294
23.	For the Imprest Expenses of the Inclosure and Drainage Acts	11,200
24.	For Salaries and Expenses in the Department of the Registrar General of Births, &c., in London	40,961
25.	For Salaries and Expenses in the National Debt Office	16,132
26.	For Salaries and Expenses of the Establishments under the Public Works Loan Commissioners, and the West India Islands Relief Commissioners	4,429
27.	For certain Expenses of the Office of the Commissioners in Lunacy in England	4,820
28.	For Salaries and Expenses in the Departments of the Registrars of Friendly Societies in England, Scotland, and Ireland	2,449
29.	For Salaries and Expenses of the Charity Commission for England and Wales	18,438
30.	For Salaries and Expenses connected with the Patent Law Amendment Act	32,071
31.	For Stationery, Printing, and Binding and Printed Books for the several Public Departments, and for Stationery, Printing, &c. for the Two Houses of Parliament, including the Expense of the Stationery Office	395,909
32.	For Salaries and Expenses connected with the Administration of the Poor Law in Scotland	16,867
33.	For Salaries and Expenses in the Department of the Registrar General of Births, &c., Scotland	7,608
34.	For Salaries and Expenses of the Lunacy Board in Scotland	6,206
35.	For Salaries and Expenses of the Board of Fisheries in Scotland	13,223
36.	For Salaries and Expenses of the Public Record Office, &c., Ireland	4,296
37.	For the Administration of the Laws relating to the Poor in Ireland	95,267
38.	For Salaries and Expenses of the Department of the Registrar General of Births, &c., and for Expenses of collecting Agricultural and Emigration Statistics in Ireland	21,722
39.	For Charges connected with the Boundary Survey, Ireland	250
40.	For Salaries and Expenses of the Commissioners of Charitable Donations and Bequests for Ireland	2,188
TOTAL CIVIL SERVICES, CLASS II.		1,661,299

SCHEDULE (H.)—SUPPLIES.

CIVIL SERVICES.—CLASS III.

SCHEDULE of SUMS granted by Section 18 of this Act to defray the Charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of Payment during the Year ending on the 31st Day of March 1869; viz. :—

	Sums not exceeding
to.	£
1. For Law Charges, and for Salaries, Allowances, and incidental Expenses, including Prosecutions relating to Coin, in the Department of the Solicitor for the Affairs of Her Majesty's Treasury - - - - -	43,100
2. For Prosecutions at Assizes and Quarter Sessions, formerly paid out of County Rates, including Adjudications under the Criminal Justice Act, Sheriffs' Expenses, Salaries in lieu of Fees to Clerks of Assize and other Officers, and for Compensation to Clerks of the Peace under the same Act, and other Expenses of the same Class - - - - -	188,776
3. For Police in Counties and Boroughs in England and Wales, and for Police in Scotland - - - - -	266,000
4. For Salaries and Expenses of Superior Courts of Common Law - - - - -	56,283
5. For Miscellaneous Legal Charges - - - - -	21,346
6. For Maintenance of Prisoners in County and Borough Prisons, Reformatory Institutions, and Industrial Schools, and of Criminal Lunatics in Private Asylums in Great Britain - - - - -	240,070
7. For Salaries and Expenses of the County Courts - - - - -	493,674
8. For Salaries and Expenses of the Police Courts of London and Sheerness - - - - -	31,950
9. For the Metropolitan Police - - - - -	190,524
0. For the Convict Establishments in the Colonies - - - - -	150,891
1. For the Expense of Criminal Prosecutions and other Law Charges in Ireland - - - - -	106,314
2. For Salaries and Expenses of the Superior Courts of Common Law in Ireland - - - - -	28,421
3. For certain Miscellaneous Legal Expenses in Ireland - - - - -	9,020
4. For Maintenance of Prisoners in County Prisons in Ireland - - - - -	9,000
5. For Salaries and incidental Expenses connected with Criminal Proceedings in Scotland - - - - -	67,484
6. For Salaries and Expenses of the Officers of the Courts of Law and Justice in Scotland - - - - -	49,378
7. For Salaries and Expenses of the Offices in Her Majesty's General Register House, Edinburgh - - - - -	16,909
8. For Salaries and Expenses in the Offices of the Registrar and Marshal of the High Court of Admiralty - - - - -	13,705
9. For Salaries and Expenses of the Courts of Probate and Divorce and Matrimonial Causes in England - - - - -	89,979
0. For Salaries and Expenses of the Office of Land Registry - - - - -	5,470
1. For Government Prisons in England, and Expenses of Transportation - - - - -	296,332
2. For Maintenance of Criminal Lunatics in Broadmoor Criminal Lunatic Asylum, England - - - - -	33,929
3. For Management of Prisons in Scotland and for Maintenance of Prisoners in Prisons at Perth, Ayr, &c. - - - - -	24,267
4. For Salaries and Expenses of certain Officers of the Court of Chancery in Ireland - - - - -	45,171
5. For Salaries and Expenses in the Office for the Registration of Judgments in Ireland - - - - -	3,171
6. For Salaries and Expenses of the Office for the Registration of Deeds in Ireland - - - - -	14,200
7. For Salaries and the incidental Expenses of the Court of Bankruptcy and Insolvency in Ireland - - - - -	8,400
8. For Salaries and Expenses of the Court of Probate and of the District Registries in Ireland - - - - -	11,272
9. For Salaries and Expenses of the Landed Estates Court in Ireland - - - - -	12,906
0. For Salaries of the Commissioners of Police, and for the Expense of the Police Courts and of the Metropolitan Police, Dublin - - - - -	95,488

No.	Sums not exceeding
31. For the Constabulary Force, Ireland - - - - -	£ 883,751
32. For Expenses of the Four Courts Marshalsea Prison, Dublin - - - - -	2,530
33. For Superintendence of Prisons and Reformatory Schools, and Maintenance of Convicts in Government Prisons, and of Juvenile Offenders in Reformatory Schools in Ireland - - - - -	63,399
34. For Maintenance of Criminal Lunatics in Dundrum Criminal Lunatic Asylum, Ireland - - - - -	4,376
35. For Salaries and Expenses of the Admiralty Court Registry in Ireland - - - - -	2,200
TOTAL CIVIL SERVICES, CLASS III. - - - £	3,579,656

SCHEDULE (I).—SUPPLIES.

CIVIL SERVICES.—CLASS IV.

SCHEDULE of SUMS granted by Section 19 of this Act to defray the Charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of Payment during the Year ending on the 31st Day of March 1869; viz. :—

No.	Sums not exceeding
1. For Grants in aid of the Expenditure of certain Learned Societies in Great Britain - - - - -	£ 11,800
2. For the Purchase of the Antiquarian Collection of the late Dr. Petrie - - - - -	1,530
3. For the Queen's Colleges in Ireland - - - - -	4,265
4. For the Royal Irish Academy - - - - -	1,784
5. For Salaries of the Theological Professors, and the incidental Expenses of the General Assembly's College at Belfast - - - - -	2,050
6. For Grants to Scottish Universities - - - - -	17,949
7. On account of the Annuity to the Board of Manufactures in Scotland, in discharge of Equivalents under the Treaty of Union, and for the Exhibition of the Torrie Collection, and for other Purposes - - - - -	4,200
8. For Public Education in Great Britain - - - - -	781,324
9. For the Salaries and Expenses of the Department of Science and Art, and of the Establishments connected therewith - - - - -	218,690
10. For the University of London - - - - -	9,063
11. For a Grant to the Trustees of the British Museum in aid of the Expenses of that Establishment - - - - -	99,280
12. For Salaries and Expenses of the National Gallery, including the Purchase of Pictures - - - - -	16,992
13. For the Formation of the British Historical Portrait Gallery - - - - -	1,800
14. For Public Education in Ireland under the Commissioners of National Education in Ireland - - - - -	360,195
15. For the Expenses of the Office of the Commissioners of Education in Ireland - - - - -	730
16. For the Queen's University in Ireland - - - - -	3,155
17. For Salaries and Expenses of the National Gallery of Ireland, and for the Purchase of Pictures - - - - -	2,740
TOTAL CIVIL SERVICES, CLASS IV. - - - £	1,536,697

SCHEDULE (J.)—SUPPLIES.

CIVIL SERVICES.—CLASS V.

SCHEDULE of SUMS granted by Section 20 of this Act to defray the Charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of Payment during the Year ending on the 31st Day of March 1869; viz. :—

No.	Sums not exceeding
	£
1. On account of the Treasury Chest - - - - -	10,701
2. For Bounties on Slaves and Tonnage Bounties, and for Expenses of the Liberated African Department - - - - -	28,656
3. For Expenses connected with the Emigration of Coolies from India to French Colonies - - - - -	1,200
4. For Salaries and Expenses of the Mixed Commissions established under the Treaties with Foreign Powers for suppressing the Traffic in Slaves - - - - -	7,360
5. For the Consular Establishments abroad - - - - -	171,178
6. For the Establishments in China, Japan, and Siam - - - - -	117,615
7. For the Extraordinary Disbursements of Her Majesty's Embassies and Missions abroad - - - - -	56,314
8. For the Salaries and Allowances of Governors, &c., and for other Expenses in certain Colonies - - - - -	74,950
9. For the Orange River Territory (Cape of Good Hope) and the Island of St. Helena - - - - -	4,072
10. For the Emigration Board and Emigration Officers at the different Ports of this Kingdom, and for certain other Expenses connected with Emigration - - - - -	14,231
TOTAL CIVIL SERVICES, CLASS V. - - - £	486,277

SCHEDULE (K.)—SUPPLIES.

CIVIL SERVICES.—CLASS VI.

SCHEDULE of SUMS granted by Section 21 of this Act to defray the Charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of Payment during the Year ending on the 31st Day of March 1869; viz. :—

No.	Sums not exceeding
	£
1. For Miscellaneous, Charitable, and other Allowances in Great Britain - - - - -	7,083
2. For Pensions to Masters and Seamen of the Merchant Service, and to their Widows and Children, under the Merchant Seamen's Fund Act, and for Compensation to the late Officers of the Trustees of the Merchant Seamen's Fund - - - - -	51,040
3. For the Relief of distressed British Seamen abroad - - - - -	45,400
4. For Superannuation and Retired Allowances to Persons formerly employed in the Public Service - - - - -	255,867
5. For the Support of certain Hospitals and Infirmaries, Ireland - - - - -	19,134
6. For certain Miscellaneous, Charitable, and other Allowances in Ireland - - - - -	6,915
7. For Non-conforming, Seceding, and Protestant Dissenting Ministers in Ireland - - - - -	41,386
TOTAL CIVIL SERVICES, CLASS VI. - - - £	426,825

SCHEDULE (L.)—SUPPLIES.

CIVIL SERVICES.—CLASS VII.

SCHEDULE of SUMS granted by Section 22 of this Act to defray the Charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of Payment during the Year ending on the 31st Day of March 1869; viz. :—

No.		Sums not exceeding
		£
1.	For Salaries and Expenses of temporary Commissions - - -	40,000
2.	For the Expense of the Telegraphic Cable laid down between Malta and Alexandria, and of the Balmoral Telegraph - - -	780
3.	For certain Miscellaneous Expenses - - -	39,377
4.	For Payments on account of the Difference of Dues payable by British or Foreign Vessels under Treaties of Reciprocity - - -	47,399
5.	For encouraging the Cultivation of Flax in Ireland - - -	4,000
6.	For Compensation to Portpatrick Railway Company - - -	20,000
7.	For Compensation for Losses by Explosion at Clerkenwell - - -	7,500
8.	For Cost of accelerating Registration under the Reform Acts - - -	10,000
TOTAL CIVIL SERVICES, CLASS VII. - - - £		169,256

SCHEDULE (M.)—SUPPLIES.

REVENUE DEPARTMENTS.

SCHEDULE of SUMS granted by Section 23 of this Act to defray the Charges of the several REVENUE DEPARTMENTS herein particularly mentioned, which will come in course of Payment during the Year ending on the 31st Day of March 1869; viz. :—

No.		Sums not exceeding
		£
1.	For the Salaries and Expenses of the Customs Department - - -	1,024,653
2.	For the Salaries and Expenses of the Inland Revenue Department - - -	1,574,210
3.	For Post Office Services and the Collection of the Post Office Revenue - - -	2,369,255
TOTAL REVENUE DEPARTMENTS - - - £		4,968,118

CAP. LXXXVI.

Policies of Marine Assurance Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. Assignees of Marine Policies may sue thereon in their own Names.
 2. Assignment by Endorsement.
 3. Interpretation of Terms.
 4. Short Title.
- Schedule.

An Act to enable Assignees of Marine Policies to sue thereon in their own Names. (31st July 1868.)

WHEREAS it is expedient that the Assignees of Marine Policies of Insurance should be enabled to sue thereon in their own Names :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. Whenever a Policy of Insurance on any Ship, or on any Goods in any Ship, or on any Freight, has been assigned, so as to pass the beneficial Interest in such Policy to any Person entitled to the Property thereby insured, the Assignee of such Policy shall be entitled to sue thereon in his own Name; and the Defendant in any Action shall be entitled to make any Defence which he

would have been entitled to make if the said Action had been brought in the Name of the Person by whom or for whose Account the Policy sued upon was effected.

2. It shall be lawful to make any Assignment of a Policy of Insurance by Endorsement on the Policy in the Words or to the Effect set forth in the Schedule hereto.

3. For the Purposes and in the Construction of this Act the Term "Policy of Insurance" or "Policy" shall mean any Instrument by which the Payment of Money is assured or secured on the happening of any of the Contingencies named or contemplated in the Instrument of Assurance known as "Lloyd's Policy," or in any other Form adopted for insuring Ships, Freights, and Goods carried by Sea.

4. This Act may be cited for all Purposes as the "Policies of Marine Assurance Act, 1868."

SCHEDULE.

FORM OF ASSIGNMENT.

I *A.B.* of, &c., do hereby assign unto *C.D.*, &c., his Executors, Administrators, and Assigns, the within Policy of Assurance on the Ship, Freight, and the Goods therein carried [or on Ship or Freight or Goods, as the Case may be].

In witness whereof, &c.

CAP. LXXXVII.

Vaccination Amendment (Ireland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Construction of Act.*
3. *Vaccination not Parochial Relief so as to disqualify.*
4. *Penalty upon Persons inoculating with Smallpox.*

An Act to amend the Act of the Twenty-sixth and Twenty-seventh Years of the Reign of Her present Majesty, Chapter Fifty-two, intituled "An Act to further extend and make compulsory the Practice of Vaccination in Ireland." (31st July 1868.)

WHEREAS an Act was passed in the Session of Parliament held in the Twenty-sixth and Twenty-seventh Years of the Reign of Her present

Majesty, intituled "An Act to further extend and make compulsory the Practice of Vaccination in Ireland:"

And whereas it is expedient to amend the same :
Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited for all Purposes as the "Vaccination Amendment (Ireland) Act, 1868."

2. This Act shall be construed as One with the said Act, Twenty-sixth and Twenty-seventh Victoria, Chapter Fifty-two.

3. The Vaccination, or the Surgical or Medical Assistance incident to the Vaccination, of any Person in a Union or Parish, heretofore or hereafter performed or rendered under the said Act, Twenty-sixth and Twenty-seventh Victoria, Chapter Fifty-two, shall not be considered to be Parochial Relief, Alms, or charitable Allowance to such Person or his Parent, and no such Person or his Parent shall by reason thereof be deprived of any Right or Privilege, or be subject to any Disability or Disqualification.

4. Any Person who shall after the passing of this Act produce or attempt to produce in any Person by Inoculation with Variolous Matter, or by wilful Exposure to Variolous Matter, or to any Matter, Article, or Thing impregnated with Variolous Matter, or wilfully by any other Means whatsoever produce the Disease of Smallpox in any Person, shall be guilty of an Offence, and shall be liable to be proceeded against summarily before Two or more Justices of the Peace in Petty Sessions assembled, and upon Conviction to be imprisoned for any Term not exceeding Six Months.

CAP. LXXXVIII.

Courts of Chancery and Exchequer (Ireland) Fee Funds.

ABSTRACT OF THE ENACTMENTS.

1. *Sale of Stock and Transfer of Produce to Consolidated Fund.*
2. *Demands of Suitors to be made good by Treasury.*
Schedule.

An Act for transferring the Fee and other Funds of the Courts of Chancery and Exchequer in Ireland to the Consolidated Fund.

(31st July 1868.)

WHEREAS by "The Chancery (Ireland) Act, 1867," it was provided that the Income of all Suitors Fee and other Funds should be accounted for and paid into the Exchequer in such Manner as the Commissioners of Her Majesty's Treasury might direct:

And whereas the Income of the Funds above mentioned arises from the Dividends on the Sum of One hundred and forty-six thousand two hundred and eighty-five Pounds Nine Shillings New Three per Cent. Stock, standing in the Name of the Accountant General of the High Court of Chancery in Ireland to the Credit of the "Compensation and Fee Fund of the Suitors" of the Court of Chancery in Ireland," and from the Dividends on the further Sum of Twenty-seven thousand three hundred and eleven Pounds Fifteen Shillings and Fivepence New Three per Cent. Stock, standing in the Name of the said Accountant General of the High Court of Chancery in Ireland to the Credit of the "Compensation and Fee Fund of the Suitors of the Court of Exchequer in Ireland:"

And whereas there are now no Government

Securities standing to the Credit of the "Suitors" Fee Fund Account of the Court of Chancery "in Ireland," but there is a Sum of Three thousand three hundred and seventy-four Pounds and Elevenpence in Cash standing in the Bank of Ireland to the Credit of that Account:

And whereas under the Provisions of the Acts mentioned in the Schedule to this Act annexed various Sums of Money have from Time to Time been advanced and paid out of the said Consolidated Fund in order to meet and defray therewith a Portion of the Charges for or in respect of the Compensations in the said Acts respectively mentioned in aid of the said Funds, and such Advances amount now to the Sum of One hundred and fourteen thousand three hundred and eighty-three Pounds Eight Shillings and One Penny:

And whereas under the Provisions of "The Chancery Appeal Court (Ireland) Act, 1856," various other Sums of Money have from Time to Time been advanced and paid out of the said Consolidated Fund in aid of the said "Suitors Fee Fund Account," and such last-mentioned Advances and Payments amount to the Sum of Three hundred and eight thousand eight hundred and fifty Pounds, which last-mentioned Sum is now (under the Provisions of the said Act) a Charge in favour of the Crown against the said "Suitors Fee Fund Account:"

And whereas the said Two Sums of One hun-

dred and fourteen thousand three hundred and eighty-three Pounds Eight Shillings and One Penny and Three hundred and eight thousand eight hundred and fifty Pounds, making together the Sum of Four hundred and twenty-three thousand two hundred and thirty-three Pounds Eight Shillings and One Penny, are still due and owing to the Consolidated Fund of the United Kingdom :

And whereas it is expedient that the said Two Funds, that is to say, "The Compensation and " Fee Fund of the Suitors of the Court of Chancery in Ireland," and "The Account of the " Compensation and Fee Fund of the Court of " Exchequer in Ireland," should be forthwith sold or converted into Cash, and the Produce thereof, and the said Sum of Three thousand three hundred and seventy-four Pounds and Elevenpence, be transferred to Her Majesty's Exchequer as a Set-off, so far as the same extends, against the said Advances thus made from Time to Time out of the Consolidated Fund as aforesaid :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows ; that is to say,

1. The said Sum of One hundred and forty-six thousand two hundred and eighty-five Pounds Nine Shillings New Three per Cent. Stock now standing in the Name of the Accountant General of the High Court of Chancery in Ireland to the Credit of the Compensation and Fee Fund of the Suitors of the said Court of

Chancery in Ireland, and the said Sum of Twenty-seven thousand three hundred and eleven Pounds Fifteen Shillings and Fivepence New Three per Cent. Stock now standing in the Name of the Accountant General of the High Court of Chancery in Ireland to the Credit of the Compensation and Fee Fund of the Suitors of the Court of Exchequer in Ireland, shall respectively as soon as may be after the passing of this Act be transferred and entered in the Books of the Bank of England into the Account of the Commissioners for the Reduction of the National Debt, and be by such Commissioners sold or converted into Cash, and the Produce of such Sale or Conversion, together with the said Sum of Three thousand three hundred and seventy-four Pounds and Elevenpence, be carried in such Manner as the Commissioners of Her Majesty's Treasury may direct to and form Part of the said Consolidated Fund.

2. If at any Time the whole or any Part of the said Sums of One hundred and forty-six thousand two hundred and eighty-five Pounds Nine Shillings New Three per Cent. Stock and Twenty-seven thousand three hundred and eleven Pounds Fifteen Shillings and Fivepence New Three per Cent. Stock shall be wanted to answer any of the Demands of the Suitors of the said Court of Chancery, then and in such Case the whole or any Part of the said Sums that shall be wanted to answer the said Demands as aforesaid shall be chargeable upon and paid out of the said Consolidated Fund or the growing Produce thereof.

SCHEDULE.

4 & 5 Will. 4. c. 78.
6 & 7 Will. 4. c. 74.

6 & 7 Vict. c. 55.
13 & 14 Vict. c. 51.

CAP. LXXXIX.

Tithe Commutation, &c. Acts Amendment.

ABSTRACT OF THE ENACTMENTS.

1. *Security for Costs of Inquiries to be taken by Commissioners.*
2. *Valuations to be stamped.*
3. *Costs of Taxation, how to be recovered.*
4. *Power to Commissioners to enforce Production of Documents belonging to Inclosure.*
5. *Commissioners to ascertain and allow proportionate Payment to Valuer or Surveyor.*
6. *Commissioners to prepare a Table of Fees.*

An Act to alter certain Provisions in the Acts for the Commutation of Tithes, the Copyhold Acts, and the Acts for the Inclosure, Exchange, and Improvement of Land; and to make Provision towards defraying the Expense of the Copyhold, Inclosure, and Tithe Office. (31st July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

1. That, notwithstanding any Provisions in the said Acts contained, in all Proceedings upon Applications made under any of the said Acts by any Person or Persons interested within the Meaning of the same, in which it is necessary or expedient, in the Opinion of the Commissioners, that an Inquiry should be made by an Assistant Commissioner, and a Meeting held by him, the Commissioners, before they refer the same to such Assistant Commissioner, shall take such Security as they shall deem right for the Payment of any Costs which they may incur in the Matter of such Inquiry and Meeting, including all Expenses of such Assistant Commissioner's Attendance: Provided always, that it shall not be necessary for the Commissioners to take Security for the Costs which they may incur relating to any Inquiry which they may think it right to make under Section Twenty-two of "The Copyhold Act, 1852."

2. In all Cases of Exchanges, Partitions, or Divisions of intermixed Lands proposed to be effected under the said Acts, the Commissioners shall not proceed to carry the same into effect unless the Valuations required to be furnished to them shall be duly stamped with a Stamp, as required by the Acts in force for the Time being for levying Stamp Duties on Appraisements; and all Valuations attached to the Reports of any University or College Surveyor, made for the Purpose of Transactions to which the Consent of the Commissioners is required, under the Universities and College Estates Acts, shall in like Manner be stamped before the Commissioners shall issue their Order authorizing such Transaction.

3. In all Cases in which any Dispute as to the Expenses incidental to an Enfranchisement, or as to the Compensation to be paid to the Steward, shall be referred to the Commissioners for their Certificate, the Costs incurred by them in ascertaining the same shall be paid to the Commissioners, either by the Person making such Refer-

ence or applying for such Certificate, or by the Person whose Costs are so taxed, as the Commissioners, by Order under their Hands and Seal, may direct, and such Order shall state the Amount of such Costs; and the Commissioners shall have Power, by Application to any County Court, to recover the same from the Person liable under such Order, together with all Costs of such Application, and such Order shall be conclusive Evidence of such Debt.

4. In any Case in which an Inclosure has been authorized by Parliament, and a Valuer appointed, it shall be lawful for the Commissioners, at any Time they shall see Occasion, by an Order under their Hands and Seal, to require such Valuer, or any other Person who shall have Charge of or be in possession of any Schedule, Valuation, Plan, Report, Award, or other Document relating to such Inclosure, to deliver the same to them at their Office; and in default of such Delivery, within the Time named in such Order it shall be lawful for the Commissioners to summons such Valuer or other Person before the Judge of the County Court for the County in which the Land or any Part thereof authorized to be inclosed shall be situate; and the Judge of such Court shall, upon Production of the Order of the Commissioners, give such Direction to enforce such Order, at the Expense of the Person neglecting or refusing to obey the same, as he is now by Law enabled to give to compel the Production of Papers and Documents before such Court.

5. Where any such Order has been made as aforesaid, or where any Valuer has been removed under the Provisions of the said Acts, the Commissioners shall, upon the Application of the Valuer or Surveyor, his Executors, Administrators, or Assigns, take such Steps as they may see fit to ascertain the Progress which has been made towards the Completion of the Inclosure, and determine and award under their Hands and Seal the Sum to be paid to such Valuer or Surveyor, his Executors, Administrators, or Assigns, in respect of his Services, and the Sum so awarded, together with all Costs incurred by the Commissioners in ascertaining and determining the same, shall be a Charge upon the Landowners, and shall form Part of the Expenses of such Inclosure, and shall be raised and defrayed in the same Manner as the other Expenses of said Inclosure.

6. The Commissioners shall, as soon as conveniently may be after the passing of this Act, prepare a Table or Tables of Fees to be taken in respect of the Business transacted under the Acts administered by them, and such Table of Fees shall be subject to the Approval of the Lords Commissioners of Her Majesty's Treasury; and

the Commissioners may, with the like Approval, from Time to Time alter, amend, add to, or reduce such Fees or any of them; and every such Table of Fees, and every such Alteration, Amendment, Addition, or Reduction into or of the same, shall be published in the *London Gazette*, and shall be laid before Parliament; and all Fees payable in accordance with such Table or Tables shall be received by Stamps denoting the Amount of Fee payable, and not in Money.

When any Fee is payable in respect of any Document, a Stamp denoting the Amount of Fee shall be affixed to or impressed upon such Document.

The Commissioners of Inland Revenue shall provide everything that is necessary for the Collection of the Monies hereby directed to be paid by Stamps, and shall keep a separate Account of such Stamps; and the Provisions in

the several Acts for the Time being in force relating to Stamps under the Care or Management of the Commissioners of Inland Revenue shall apply to the Stamps to be provided in pursuance of this Act, and to any Document on which such Stamps may be affixed or impressed, and be applied and put into execution for collecting and securing the Sums of Money denoted thereby, and for detecting, preventing, and punishing all Frauds, Forgeries, and other Offences relating thereto, as fully and effectually, to all Intents and Purposes, as if such Provisions had been herein repeated and specially enacted with reference to such last-mentioned Stamps.

The Provisions herein enacted relating to Fees shall be applicable to and take the Place of the Enactments relating to Fees contained in the Ninetieth and following Section of "The Improvement of Land Act, 1864."

CAP. XC.

Public Departments Payments.

ABSTRACT OF THE ENACTMENTS.

1. *Treasury, &c. may, on Death of Persons in Civil Service entitled to Sums under 100l., direct Payment thereof without Production of Letters of Administration.*
2. *Extension of Powers of War Department as to such Payments to Sums under 100l.*
3. *Indemnity.*

An Act to empower certain Public Departments to pay otherwise than to Executors or Administrators small Sums due on account of Pay or Allowances to Persons deceased.

(31st July 1868.)

WHEREAS by several Acts of Parliament Power is given to the Commissioners of the Admiralty and the Secretary of State for War and the Commissioners of Chelsea Hospital to cause to be paid to Persons who may not have been authorized by Law to act as Executors or Administrators of deceased Persons limited Sums of Money due in respect of Naval and Military Services to such deceased Persons:

And whereas it is expedient to extend the Power so given, so far as the Military Service is concerned, and to provide for the similar Payment of Sums due in respect of Civil Services:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. On the Death of any Person or Persons to whom respectively any Sum or Sums of Money not exceeding One hundred Pounds may be payable by a Public Department in respect of Civil Pay or Allowances or Annuities granted under Authority of Parliament, it shall be lawful for the Commissioners of Her Majesty's Treasury, or for such Departments as may be deputed by such Commissioners to exercise like Powers in reference to Claims payable upon their Orders respectively, on being satisfied of the Expediency of dispensing with Probate or Letters of Administration, to authorize the Payment of such Sum or Sums to such Person or Persons as the said Commissioners or Departments may consider entitled thereto, without requiring the Production of Probate or of Letters of Administration, Payment to be made under such Regulations as to the said Commissioners may seem fit.

2. In the Case of any Civil or Military Allowances chargeable to the Army Votes and of Army Prize Money, the Sum, not exceeding One hundred Pounds, due at the Death of a Claimant, may be dealt with by the Secretary of State for War, or the Commissioners of Chelsea

Hospital, in accordance with the Enactments already in force with respect to Sums of lesser Amount similarly due.

3. Any Payment made in pursuance of this

Act shall be valid against all Persons whatever, and all Persons acting under its Provisions shall be absolutely discharged from all Liability in respect of any Monies duly paid or applied by them under this Act.

CAP. XCI.

Sir Robert Napier's Annuity.

ABSTRACT OF THE ENACTMENTS.

1. *Annuity of 2,000l to Sir Robert Napier, G.C.B., G.C.S.I., and his next surviving Heir Male.*

An Act to settle an Annuity upon Lieutenant General Sir Robert Napier, G.C.B., G.C.S.I., and the next surviving Heir Male of his Body, in consideration of his eminent Services.
(31st July 1868.)

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal Subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, duly considering the Approbation graciously signified by Your Majesty of the eminent and distinguished Services rendered by Sir Robert Napier, Lieutenant General in Your Majesty's Army, and Commander-in-Chief of the Army of Bombay, and particularly in the Conduct of the recent Expedition into Abyssinia, do most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. An Annuity of Two thousand Pounds shall be paid to Lieutenant General Sir Robert Napier, G.C.B. and G.C.S.I., and the next surviving Heir Male of his Body, for the Term of their natural Lives; and the said Annuity shall issue and be payable out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and shall be deemed to have commenced and taken effect from the Ninth Day of July One thousand eight hundred and sixty-eight, and the first Payment of a proportionate Part thereof respectively for the Period from such Commencement to the Tenth Day of October One thousand eight hundred and sixty-eight shall be made on the said Tenth Day of October One thousand eight hundred and sixty-eight, and such Annuity shall thereafter be paid quarterly on the usual Quarter Days; and the Receipt of the said Sir Robert Napier, and after his Decease the Receipt of the next surviving Heir Male of his Body, or of such other Person or Persons as shall be duly authorized and appointed to receive the said Annuity, shall be a good and sufficient Discharge for the Payments thereof; and the said Annuity shall be clear of all Taxes and all other Charges whatsoever, except Income Tax.

CAP. XCII.

New Zealand Assembly's Powers.

ABSTRACT OF THE ENACTMENTS.

1. *General Assembly to have, and to be deemed to have had, Power to abolish any Province, to withdraw therefrom any Territory, and to make Laws for such Territory.*

An Act to declare the Powers of the General Assembly of New Zealand to abolish any Province in that Colony, or to withdraw from any such Province any Part of the Territory thereof.

(31st July 1868.)

WHEREAS by the Third Section of an Act of the Session holden in the Twenty-fifth and Twenty-sixth Years of Her Majesty, intituled "An Act respecting the Establishment and Government of Provinces in New Zealand, and to enable the Legislature of New Zealand to repeal the Seventy-third Section of an Act, intituled 'An Act to grant a Representative Constitution to the Colony of New Zealand,'" it was provided, that it should be lawful for the General Assembly of New Zealand, by any Act or Acts to be by them from Time to Time passed, to establish or provide for the Establishment of new Provinces in the Colony of New Zealand, and to alter or to provide for the Alteration of the Boundaries of any Provinces for the Time being existing in the said Colony, and to make Provision for the Administration of any such Provinces, and for the passing of Laws for the Peace, Order, and good Government thereof: And whereas Doubts are entertained whether the said General Assembly has Power under the above-recited Enactments, or otherwise, to abolish any such Province now or hereafter to be established, or to withdraw from such Province any Part of the Territory comprised therein, except

for the Purpose of including the same within the Limits of some other such Province, and it is expedient that such Doubts should be removed: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. The General Assembly of New Zealand shall be deemed to have, and since the passing of the afore-mentioned Act to have had, the Power of abolishing any Province at any Time heretofore or hereafter to be established in New Zealand, or of withdrawing therefrom the whole or any Part of the Territory comprised therein, and of passing Laws for the Peace, Order, and good Government of the Territory so withdrawn from or ceasing to form Part of the Territory of any such Province, whether such Territory shall or shall not be included within the Limits of any other Province of New Zealand, and also the Power of making from Time to Time such Provision, as to such General Assembly shall seem expedient, relating to the Effect and Operation of any such Withdrawals of Territory in or with respect to the Province from which such Territory shall have been withdrawn, and the Superintendent and Members of the Provincial Council thereof for the Time being in Office, and the Laws in force in such Province at the Time of such Withdrawals of Territory therefrom.

CAP. XCIII.

New Zealand Company.

ABSTRACT OF THE ENACTMENTS.

Recital of 9 & 10 Vict. c. cccclxxii. s. 51. Recital of 14 & 15 Vict. c. 86. Doubts as to Position of certain Equitable Estates.

1. *Equitable Estates, &c. referred to in sec. 51 of 9 & 10 Vict. c. cccclxxii. subject to Laws of Colony.*

An Act to remove Doubts respecting the Operation of the New Zealand Company's Act of the Ninth and Tenth Years of Victoria, Chapter Three hundred and eighty-two (Local and Personal).

(31st July 1868.)

WHEREAS by an Act passed in the Session of Parliament holden in the Ninth and Tenth Years of Her Majesty, intituled "An Act to grant

certain Powers to the New Zealand Company," after reciting that divers Land Orders or Contracts for the Sale or Conveyance of Lands, Tenements, and Hereditaments in New Zealand had from Time to Time been issued and made by the said Company, it was, by the Fifty-first Section, amongst other things, enacted that a Conveyance by the said Company, or their Trustees in whom the same should be vested, of the Lands, Tenements, and Hereditaments to which any such Land Order or Contract should relate, should be

deemed both at Law and in Equity, as well in the Colony of New Zealand as elsewhere, a full and complete Performance by and on the Part of the Company of the Contract or Obligation contained in or resulting from such Land Order to convey the said Lands, Tenements, and Hereditaments, and should exonerate the Company, their Successors and Assigns, from all Responsibility as to the Disposition of such Lands, Tenements, and Hereditaments, or any of them, or any other Matter or Thing consequent on or resulting from such Conveyance, but, notwithstanding any Rule of Law or Equity to the contrary prevailing in the Colony of New Zealand or elsewhere, the Lands, Tenements, and Hereditaments comprised in any such Conveyance should continue and be subject to such equitable Estates, Charges, and Liens, if any, created by the Purchaser or Purchasers named in the Land Order or Contract to which the same should relate, or any Person deriving Title from, through, or under him, her, or them, as at the Date of such Conveyance should be subsisting, or be then or thereafter capable of taking effect, and the Rights and Interests of the Parties interested as or through the Purchaser or Purchasers named in such Land Order or Contract (inter se) should remain unaffected thereby :

And whereas by an Act passed in the Session of Parliament holden in the Fourteenth and Fifteenth Years of Her Majesty, intituled "An Act to regulate the Affairs of certain Settlements established by the New Zealand Company in New Zealand," after reciting, amongst other things, that all the Lands, Tenements, and Hereditaments of the said Company in the Colony of New Zealand had reverted to and

become vested in Her Majesty as Part of the Demesne Lands of the Crown in New Zealand, it was, amongst other things, enacted, that thenceforth in all Cases falling within the Provisions of the Fifty-first Section of the herein-before recited Act of Ninth and Tenth of Victoria a Grant or Conveyance by Her Majesty, Her Successors or Assigns, should have the like Force and Effect in all respects as a Conveyance by the New Zealand Company has or would have had by virtue of the said Act in case the Company had continued in full Exercise of their Functions :

And whereas Doubts have been entertained as to whether the Equitable Estates, Charges, and Liens in the said Fifty-first Section referred to have been, are, or will be affected by the Provisions affecting or relating to Equitable Estates, Charges, and Liens contained in any Law of the Colony which has been or may hereafter be made; and it is expedient that such Doubts should be removed :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. Nothing in the said first-recited Act contained shall be deemed or taken to prevent any of the said Equitable Estates, Charges, or Liens therein referred to from being subject to and affected by any Laws which have been since the passing of the said first-recited Act or which may hereafter be made by the Legislature of the Colony of New Zealand, affecting Equitable Estates, Charges, and Liens in and on Lands, Tenements, and Hereditaments in the said Colony.

CAP. XCIV.

The Railway Companies (Ireland) Temporary Advances Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*

2. *Public Works Loan Commissioners may consent that Time for Repayment of Advances may be further extended.*

An Act to authorize the further Extension of the Period for Repayment of Advances made under the Railway Companies (Ireland) Temporary Advances Act, 1866. (31st July 1868.)

WHEREAS by the Railway Companies (Ireland) Temporary Advances Act, 1867, the Time

for Repayment of Advances made by the Public Works Loan Commissioners under the Railway Companies (Ireland) Temporary Advances Act, 1866, was authorized to be extended as therein mentioned, and it is expedient that the Time for Repayment of the said Advances should be further extended :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and

Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited as "The Railway Companies (Ireland) Temporary Advances Act, 1868."

2. On the Application of any Railway Company to whom any Advance has been made under the Provisions of the Railway Companies (Ireland) Temporary Advances Act, 1866, and with the Approbation of the Commissioners of Her Majesty's Treasury, and subject to such Terms and Conditions (if any) as to Payment of Interest or otherwise as the last-mentioned Commissioners may think proper to impose, it shall be lawful for the Public Works Loan Commissioners, by any Writing under the Hand of their Secretary for the Time being, to consent that the Time for Repayment of all or any Part of the Principal Money

remaining due in respect of any such Advance shall be extended to any Day not later than Twelve Calendar Months from the Day when the same Advance shall become due by the Terms of the Debenture or other Security given for securing the same, or to any Day not later than Twelve Months from the Day when the same Advance shall become due under any Extension of Time granted under the Authority of the recited Act; and after any such Consent shall have been given, and for all the Purposes of the Railway Companies (Ireland) Temporary Advances Act, 1866, the Principal Money secured by any Debenture or other Security given under that Act shall be deemed to have become due only on the Day to which the Time for Repayment of such Principal Money shall be extended by any Consent to be given as provided by this Act, and all Powers and Provisions for recovering and compelling Payment of such Principal Money shall be read and have Effect accordingly.

CAP. XCV.

Court of Justiciary (Scotland).

ABSTRACT OF THE ENACTMENTS.

1. *Quorum at Trials in High Court of Justiciary.*
 2. *Judges holding Circuit Courts may sit and act separately, and Proceedings to be held good.*
 3. *Case of protracted Sittings of Circuit Court.*
 4. *Accused Persons may be cited to Two Diets of Compareance, and may be called on at First Diet to plead Guilty or Not Guilty.*
 5. *Pleading Diets at Circuit Towns.*
 6. *When List of Assize to be served on the Panel.*
 7. *Pleas in Bar and Objections to Relevancy competent only at First Diet.*
 8. *Reserving an accused Person's Rights under the Act 1701, c. 6.*
 9. *Form of Proceedings for summoning Parties and Witnesses.*
 10. *Jurors in Criminal Cases to be cited by registered Post Letter.*
 11. *Letters of Diligence may be issued by the Clerk on Requisition by Lord Advocate, Crown Agent, &c.*
 12. *Previous Conviction for Theft may be libelled and proved as Aggravation of Crime of Robbery, and vice versâ.*
 13. *Execution of Warrant for transmitting Prisoners.*
 14. *Interlocutor and Sentences to be final.*
 15. *Proceedings under this Act to be as nearly as possible the same as those now in use.*
 16. *Court may make Acts of Adjournal.*
 17. *Act not to affect Trials upon Criminal Letters or where First Diet is at Circuit Court.*
 18. *Citation of Persons liberated on Bail.*
 19. *Amendment of 31 Vict. c. 24. s. 13.*
 20. *Repeal of Acts.*
 21. *Commencement of Act.*
- Schedules.*

An Act to amend the Procedure in the Court of Justiciary and other Criminal Courts in Scotland.

(31st July 1868.)

WHEREAS it is expedient that the Procedure in the Court of Justiciary and also in the Criminal Courts of the Sheriffs in Scotland should be amended :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. The Lord Justice General, Lord Justice Clerk, or any One Lord Commissioner of Justiciary may preside alone at the Trial of any Panel before the High Court of Justiciary, and when so presiding shall constitute a Quorum of said High Court: Provided that in any Trial of Difficulty or Importance it shall be competent for Two or more Judges of Justiciary to preside thereat.

2. Wherever it is expedient for the greater Despatch of Business before any Circuit Court of Justiciary, it shall be lawful for the Two Judges holding the said Court to sit in separate Court-rooms, and to perform separately the Duties and despatch the Business of the said Court, or such Part thereof as it may be desirable so to perform ; and each of the said Judges so sitting apart shall possess all the Powers which would belong to the said Judges sitting and judging together ; and all the Proceedings of the said Judges, whether sitting separately or together, shall be held as Proceedings in the said Circuit Court of Justiciary.

3. Notwithstanding the Continuance of the Sitting of the Circuit Court of Justiciary at any Circuit Town, it shall be competent for One of the Lords Commissioners of Justiciary on such Circuit to proceed to the next Circuit Town, and there to open the Court and despatch the Business thereof.

4. In Criminal Trials proceeding on Indictment before the High Court of Justiciary it shall be competent for Her Majesty's Advocate, in any Case where he may consider it expedient, to cause the Person accused to be cited to Two Diets of Compareance according to the Form No. 1 in the Schedule (A.) hereto annexed ; and it shall not be necessary to cite any Witnesses or Jurors for the Trial of such Person to the first of said Diets : And if at the first of such Diets (which shall not be sooner than Fifteen clear Days from the Service of the Libel) the Person accused shall plead Guilty, the Court may proceed to pass Sentence as heretofore ; but in the event of the

Person accused pleading Not Guilty, it shall be competent to the Court, on the Motion of Her Majesty's Advocate, or of his Depute, either to remit the Case to be tried before the next ensuing Circuit Court of Justiciary, which shall be competent to try the Accused, and shall be held not sooner than Ten clear Days after said First Diet (in which Case the Citation of the Accused to appear at the Second Diet at the High Court of Justiciary to which he had been cited shall be held to be discharged) ; or to ordain the Accused to appear in the said High Court at the Second Diet of Compareance, which Second Diet shall not be sooner than Ten clear Days after the First Diet : And at such Circuit Court, or at such Second Diet of the High Court, the Person accused shall again be called on to plead to the Libel ; and if such Person shall, at such Circuit Court, or such Second Diet of the High Court, plead Guilty, the Sentence of the Court may be forthwith pronounced ; and if such Person shall plead Not Guilty, the Trial may then be proceeded with, in Terms of Law, unless the Diet shall be adjourned or deserted, according to the existing Law and Practice : Provided always, that it shall not be necessary to serve any new Indictment upon such accused Person ; but the Trial before the said Circuit Court, or at such Second Diet of the said High Court, or Adjournment thereof, may proceed upon the same Indictment on which the Accused was called to plead at said First Diet.

5. Wherever it is considered expedient for the due Administration of Justice, it shall be competent for One of the Lords Commissioners of Justiciary to sit at any Time in the Criminal Court House in any Circuit Town in Scotland, and there to receive the Pleas of Persons indicted to the High Court of Justiciary as provided for in the Fourth Section hereof, and to pronounce Sentence upon such Persons as plead Guilty as accords of Law ; and such Lord Commissioner of Justiciary so sitting and judging shall have for the Purposes aforesaid all the Powers of the High Court of Justiciary, and shall be deemed to be the High Court of Justiciary in Terms of the said Fourth Section hereof.

6. It shall not be necessary to lodge in Court, or to serve upon the Person accused, a List of Assize or Jurors before the said First Diet ; but where the accused Person shall be remitted for Trial to a Circuit Court, a Notice of Compareance before such Circuit Court, in the Form No. 5 in the said Schedule (A.), along with a Copy of the List of Assize or Jurors for such Circuit, shall be served on such accused Person not less than Six clear Days before the Day of Trial ; and where the Person accused shall be ordained to appear at the Second Diet of the High Court as before

mentioned, a List of the Assize for the Trial of the accused Persons at that Diet shall be served upon him in the Form No. 3 in the said Schedule (C.), not less than Six clear Days before such Diet.

7. After the Panel has pleaded at said First Diet, it shall not be competent to state any Plea in bar of Trial (except in respect of Circumstances which have occurred since the said First Diet, or in such Plea or Objection has been reserved to the Judge), or to state any Objection to the relevancy of the Libel: Provided always, that nothing herein contained shall affect the Right of the Court at any Stage of the Proceedings to enquire as to the Panel's Sanity, according to the present Law and Practice.

8. If at the said First Diet the Panel shall plead Not Guilty, it shall be competent for the High Court to ordain him to be conveyed to such Prison as the said Court shall direct, therein to be detained in the meantime: Provided always, that nothing contained in this Act shall prejudice the Right of any accused Person to apply, according to the present Law and Practice, to be liberated on Bail; nor shall it prejudice his Right to apply for and follow forth Letters of Intimation or Liberation under the Act of the Scottish Parliament, passed in the Year One thousand seven hundred and one, Chapter Six, intitled "An Act for preventing wrongous Imprisonment, and against undue Delay in Trials;" both of which Rights shall continue the same after the said accused Party has pleaded Not Guilty at said First Diet, as before such Plea was given or recorded.

9. When it is necessary to summon Witnesses at the Trial of any Person who has been ordained to appear at a Second Diet of the High Court, or who has been remitted for Trial by the Circuit Court under the Authority of this Act, the Proceedings for summoning such Witnesses shall be, as nearly as may be, the same as those in use for summoning Witnesses to the High Court or Circuit Courts of Justiciary according to the present Law and Practice: Provided always, that the Letters of Diligence for citing Parties and Witnesses for such Trials, and for citing Parties at a First Diet of the High Court, shall be, as early as may be, in the Forms contained in Schedule (B.) to this Act annexed.

10. The present Mode of citing Jurors for the Trial of Criminal Cases before the High Court or Circuit Court of Justiciary or before any Sheriff in Scotland shall be discontinued; and in place thereof the Sheriff Clerk of the County of Edinburgh or his Depute, where the Trial is to take place before the High Court of Justiciary, or the

Sheriff Clerk of the County in which any Juror is to be cited, or his Depute, where the Citation is for a Trial before a Circuit Court of Justiciary or before a Sheriff, shall fill up and sign a proper Citation addressed to each such Juror, and shall cause the same to be transmitted to him in a registered Post Letter, directed to him at his Place of Residence as stated in the Roll of Jurors; and a Certificate under the Hand of such Sheriff Clerk, or his Depute, of the Citation of any Jurors or Juror in manner herein provided, shall have the like Force and Effect as an Execution of Citation according to the present Law and Practice.

11. In addition to the Provisions contained in the Second Section of the Act 11 & 12 Vict. Cap. 79. it shall be lawful for the Clerk of Justiciary to issue Letters of Diligence at the Instance of Her Majesty's Advocate, for the Citation of accused Persons and of Witnesses, either upon a Requisition containing the necessary Information, signed by Her Majesty's Advocate or any of his Deputies, or by the Crown Agent for the Time being, or the First or Second Clerk in the Office of the Crown Agent in Edinburgh.

12. It shall be competent in any Criminal Letters or in any Indictment before the High Court or Circuit Court of Justiciary charging any Person with the Crime of Robbery, to libel, and in the course of the Trial proceeding on such Criminal Letters or Indictment as aforesaid to prove a previous Conviction of the Person accused for the Crime of Theft as an Aggravation of the said Crime of Robbery; and in like Manner it shall be competent to libel and prove a previous Conviction for the Crime of Robbery as an Aggravation of the Crime of Theft.

13. It shall be competent for the Governor or Keeper of any Prison in Scotland, or for any of the Warders therein, to execute any Warrant issued forth of the Court of Justiciary in Scotland for transmitting any Prisoner or Prisoners in such Prison to any other Prison in Scotland, in order to Trial before the High Court or any Circuit Court of Justiciary competent to try such Prisoner or Prisoners: Provided also, that it shall be competent for the Managers of the General Prison at Perth appointed by or under the Authority of the "Prisons (Scotland) Administration Act, 1860," and they are hereby required, to make Regulations as to the Mode in which and the Officers by whom such Warrants shall be executed: Provided also, that nothing herein contained shall make it incompetent to execute such Warrants according to the present Law and Practice.

14. All Interlocutors and Sentences pronounced by the High Court or by any Circuit Court of

Justiciary under the Authority of this Act shall be final and conclusive, and not subject to Review by any Court whatsoever, and it shall be incompetent to stay or suspend any Execution or Diligence issuing forth of the Court of Justiciary under the Authority of the same.

15. Except where inconsistent with the Provisions of this Act, all the Proceedings at Criminal Trials conducted under the Authority hereof, or with a view to such Trials, and all Execution to follow thereon, shall be the same, as nearly as may be, as those now in use in the High Court and Circuit Courts of Justiciary in Criminal Prosecutions proceeding on Indictment carried on according to the present Law and Practice.

16. It shall be lawful for the said Court of Justiciary and the said Court is hereby required from Time to Time to make all such Rules and Regulations, by Act or Acts of Adjournal, as may be necessary for carrying out the Purposes and accomplishing the Objects of this Act: Provided always, that Copies of all such Acts of Adjournal shall, within Fourteen Days after the making thereof, be laid before both Houses of Parliament, if Parliament shall be then sitting; and, if not, within Fourteen Days after the Commencement of the then next Session of Parliament.

17. Nothing herein contained shall affect the Proceedings at or with a view to any Criminal Trial before the High Court or any Circuit Court of Justiciary proceeding upon Criminal Letters, or the Proceedings at or with a view to any Criminal Trial before any Circuit Court of Justiciary proceeding upon Indictment, where the Diet of Compareance contained in the Indictment shall be at such Circuit Court, all which Proceedings shall continue in all respects the same as before the passing hereof, except as provided

in the First, Second, Third, Tenth, Eleventh, Twelfth, and Thirteenth Sections hereof.

18. All Bail Bonds whatsoever received in order to the Liberation of accused Persons from Custody shall specify the Domicile at which such Persons may thereafter be cited for Trial before the Court of Justiciary or any other Criminal Court in Scotland; and it shall not be necessary to cite any Person liberated under such Bail Bond edictally at the Market Cross of the Head Burgh of the Shire.

19. The Thirteenth Section of the Act Third first Victoria, Chapter Twenty-four, shall be read and construed as if the Words "in lieu of the Provisions contained in the Fifth Section hereof" were substituted for the Words "in lieu of the Provisions contained in the Sixth Section hereof" therein contained.

20. All Laws, Statutes, Regulations, and Usages inconsistent or at variance with the Provisions of this Act, shall be and the same are hereby repealed; Provided always, that the same shall continue in force in all other respects whatsoever.

21. Excepting in so far as regards the Provisions contained in the Second, Third, and Thirteenth Sections hereof (which shall take effect from and after the passing hereof), this Act shall take effect on and after the Fifteenth Day of October One thousand eight hundred and eighty-eight: Provided always, that nothing herein contained shall affect the Proceedings in any Criminal Case begun before the Commencement hereof, and such Proceedings shall be continued and completed according to the existing Law and Practice.

SCHEDULE (A.)

No. 1.

Form of Citation to the High Court of Justiciary.

A.B., take notice that you will have to compare before the High Court of Justiciary within the Criminal Court House at Edinburgh [or, at the Criminal Court House at (*here specify the Circuit Town*)], to answer to the Criminal Libel to which this Notice is attached, on the _____ Day of _____ at _____ o'Clock, for the First Diet; and also, if, required, upon the _____ Day of _____ at _____ o'Clock at the Criminal Court House at Edinburgh for the Second Diet.

This Notice served by me on the _____ Day of _____ in the Year _____ C.D., Macer (or Messenger-at-Arms or Sheriff Officer).

E.F., Witness.

No. 2.

Execution of Citation.

A Copy of a Criminal Libel containing Charge of Theft (or whatever the Crime may be as described in the Diligence,) consisting of _____ Pages, and having annexed to it a List of Witnesses, was on the _____ Day of _____ served by me upon *A.B.*

delivering the same to him personally (or as the Case may be), on which Copy was marked a Notice of Comparance on the _____ Day of _____ at _____ o'Clock for the First Diet, and also, if required, upon the _____ Day of _____ at _____ o'Clock for the Second Diet.
C.D., Macer (or Messenger-at-Arms or Sheriff Officer).

No. 3.

Form of Service of the List of Assize on an accused Person ordained to appear at a Second Diet.

A.B., take notice that the foregoing is a Copy of the List of Assize for the Trial of all accused Persons ordained to appear before the High Court of Justiciary on the _____ Day of _____ being the Second Diet to which you have been cited, to answer to the Libel raised at the Instance of Her Majesty's Advocate for Her Majesty's Interest against you.

This Notice served by me on the _____ Day of _____ in the Year _____ C.D., Macer (or Messenger-at-Arms or Sheriff Officer).

E.F., Witness.

No. 4.

Execution of Service of List of Assize.

A Copy of the List of Assize for the Trial of all accused Persons before the High Court of Justiciary on the _____ Day of _____ being the Second Diet to which A.B. had been cited to appear before the said High Court to answer to the Libel raised at the Instance of Her Majesty's Advocate for Her Majesty's Interest against him, was on the _____ Day of _____ served by me upon the said A.B., by delivering the same to him personally (or as the Case may be).

C.D., Macer (or Messenger-at-Arms or Sheriff Officer),

No. 5.

Form of Notice where the Accused, has been remitted to the Circuit.

A.B., take notice that you will have to appear before the Circuit Court of Justiciary to be holden within the Criminal Court House of _____ on the _____ Day of _____ at _____ o'Clock, to answer to the Criminal Libel raised against you at the Instance of Her Majesty's Advocate for Her Majesty's Interest before the High Court of Justiciary, which was

on the _____ Day of _____ remitted for Trial to the said Circuit Court, and that the foregoing is a Copy of the List of Assize for the said Circuit Court of Justiciary.

This Notice served by me on the _____ Day of _____ in the Year _____

C.D., Macer (or Messenger-at-Arms or Sheriff Officer).

E.F., Witness.

No. 6.

Execution of Citation and Service.

A Copy of the List of Assize for the ensuing Circuit Court of Justiciary to be holden at _____ was on the _____ Day of _____ served by me on A.B., on which Copy was marked a Notice of Comparance before the said Circuit Court within the Criminal Court House of _____ upon the _____ Day of _____ at _____ o'Clock

noon, to answer to the Criminal Libel raised against him at the Instance of Her Majesty's Advocate for Her Majesty's Interest before the High Court of Justiciary, which was on the _____ Day of _____ remitted for Trial to the said Circuit Court.

C.D., Macer (or Messenger-at-Arms, or Sheriff Officer).

SCHEDULE (B.)

No. 1.

Letters of Diligence for citing accused Parties to a First and Second Diet, and Witnesses to a Second Diet of the High Court.

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, to

Macers of Our Court of Justiciary, Messengers-at-Arms, Sheriff or Steward's Officers of the County or Stewartry within which these Our Letters shall be executed, Our Sheriffs in that Part, conjunctly and severally, specially constituted, greeting: Whereas it is humbly meant and shown to Us by Our Right Trusty _____ Our Advocate

for Our Interest, that he has raised an Indictment at his Instance against _____ in manner mentioned in the said Indictment, the Diets whereof stand fixed before Our Lords Justice General, Justice Clerk, and Commissioners of Justiciary, Place and Dates after mentioned, and that it is necessary for the Complainer to have these Our Letters of Diligence at his Instance in manner underwritten as is alleged: Our Will is herefore, and We charge you, that on Sight hereof ye pass, and in Our

Name and Authority lawfully summon, warn, and charge, the above-named accused to compare before Our said Lords Justice General, Justice Clerk, and Commissioners of Justiciary in a Court of Justiciary to be holden within the Criminal Court House of Edinburgh [or, at the Criminal Court House at (*here specify the Circuit Town*),] upon the Day of

in the Hour of Cause (Half-past Nine o'Clock Forenoon) for the First Diet, there to plead Guilty or Not Guilty and to underlie the Law, conform to the Conclusion of the said Indictment and the Laws of this Realm; and also, if required, upon the Day of

at Half-past Nine o'Clock Forenoon for the Second Diet, again to plead Guilty or Not Guilty, and to underlie the Law as aforesaid; as also, if required for the Second Diet, that ye summon such Witnesses as best know the Verity of the Premises, whose Names shall be given to you in a List subscribed by the said Complainer, personally or at their respective Dwelling Places, all to compare before Our said Lords, Time and Place of said Second Diet; the said Witnesses to bear leal and soothfast witnessing in so far as they know or shall be asked at them anent the said Accused's Guilt in the Premises, each Witness under the Pain of One hundred Merks Scots; according to Justice, as ye will answer to us thereupon. The which to do, We commit to you full Power by these Our Letters, delivering them by you duly executed and indorsed again to the Bearer. Given at Edinburgh the Day of

in the Year of Our Reign, 186 .

No. 2.

Letters of Diligence for citing accused Parties and Witnesses to a Circuit Court to which such Parties have been remitted for Trial.

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, to

Macers of Our Court of Justiciary, Messengers-at-Arms, Sheriff or Steward's Officers of the County or Stewartry within which these Our Letters shall be executed, Our Sheriffs in that Part, conjunctly and seve-

rally, specially constituted: Whereas it is humbly meant and shown to us by Our Right Trusty

Our Advocate for Our Interest, that he raised an Indictment at his Instance before the High Court of Justiciary against

accusing him of the Crime of in manner mentioned in the said Indictment, the Diet whereof stood fixed before the said High Court to the Day of , on which Day, the Libel having been found relevant, the Panel pleaded Not Guilty, and the Court remitted the Case to be tried before the next Circuit Court of Justiciary to be holden at

; in consequence whereof it is necessary for the Complainer to have these Our Letters of Diligence at his Instance in manner underwritten as is alleged: Our Will is therefore, and We charge you, that on Sight hereof ye pass, and in Our Name and Authority serve a Copy of the List of Assize for the said Circuit Court of Justiciary on the above-named Accused, and lawfully summon, warn, and charge him to compare before Our said Lords Justice General, Justice Clerk, and Commissioners of Justiciary in a Circuit Court of Justiciary to be holden by them, or by any One or more of their Number, within the Criminal Court House of upon the Day of , in

the Hour of Cause (), there to underlie the Law, conform to the Conclusion of the said Indictment and Laws of this Realm; as also that ye summon such Witnesses as best know the Verity of the Premises, whose Names shall be given to you in a List subscribed by the said Complainer personally or at their respective Dwelling Places, all to compare before Our said Lords, Day, Place, and Hour above mentioned, to bear leal and soothfast witnessing in so far as they know or shall be asked at them anent the said Accused's Guilt in the Premises, each Witness under the Pain of One hundred Merks Scots. According to Justice as ye will answer to Us thereupon. The which to do, We commit to you full Power by these Our Letters, delivering them by you duly executed and indorsed again to the Bearer. Given at Edinburgh the Day of in the Year of Our Reign, 18 .

CAP. XCVI.

Ecclesiastical Buildings and Glebes (Scotland) Act.

ABSTRACT OF THE ENACTMENTS.

1. *Interpretation of Terms.*
2. *Short Title.*
3. *Heritors dissatisfied with Determinations of Presbyteries in regard to Churches, Mansees, Glebes, &c. may remove Proceedings by Appeal to Sheriff.*
4. *Appeal, how to be taken.*
5. *Intimation of Appeals.*
6. *No written Pleadings unless specially ordered.*
7. *Proceedings for rebuilding of Church or Manse.*
8. *Proceedings for rebuilding or repairing of Church or Manse.*
9. *Where Parties differ or delay as to erecting or repairing, Sheriff to cause Buildings or Repairs to be executed.*
10. *Proceedings for building or repairing Churchyard Walls.*
11. *Proceedings for designing or exchanging Glebes, &c.*
12. *Mode of declaring a "Free Manse."*
13. *Sheriff, if required, personally to inspect Premises or Locality.*
14. *Decrees, &c. of Sheriff to be final.*
15. *Sheriff or Lord Ordinary may dispose of Questions of Expenses.*
16. *Form of Note of Appeal.*
17. *Not competent to appeal after Twenty Days from Date of Judgment, &c.*
18. *Effect of Appeals under this Act.*
19. *Notice of Appeal.*
20. *Form of bringing Appeals to Lord Ordinary.*
21. *Certain Provisions of 8 & 9 Vict. c. 19. and 23 & 24 Vict. c. 106. incorporated with this Act.*
22. *Mode of calling Meetings of Heritors.*
23. *All Parochial Assessments to be imposed according to the real or valued Rent.*
24. *Act not to increase existing Burdens.*
25. *Repeal of Statutes, &c. so far as inconsistent with this Act.*

An Act to amend the Procedure in regard to Ecclesiastical Buildings and Glebes in Scotland.

(31st July 1868.)

WHEREAS it is expedient to amend the Procedure in regard to Ecclesiastical Buildings and Glebes in Scotland: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. Where not inconsistent with the Context, the following Expressions shall in this Act have the Meanings herein-after assigned to them:

The Expression "Church" shall include all necessary Fencing of the Site whereon the Church is built, in so far as the Heritors are now by Law bound to provide the same:

The Expression "Manse" shall include all necessary and usual Offices, Garden and Garden Walls, which the Heritors are now by Law bound to provide:

The Expression "Parish" shall include united Parishes:

The Expression "Glebe" shall include Grass Glebe or Ministers Grass:

The Expression "Lands and Heritages" shall have the Meaning assigned to it in the Act Seventeenth and Eighteenth Victoria, Chapter Ninety-one, intituled "An Act for the Valuation of Lands and Heritages in Scotland:"

The Expression "the Lord Ordinary" shall mean the Lord Ordinary in Teind Causes in the Court of Session:

The Expression "Sheriff" shall include Sheriff Substitute:

The Expression "Heritor" shall mean any Proprietor of Lands and Heritages at present liable in the Assessments which may be imposed according to the real or valued Rents thereof, as the Case may be, for the Purposes set forth in the Third Section hereof:

The Expression "valued Rent" shall in the County and Lordship of Zetland mean and include "Number of Merks Land."

2. This Act may be cited as the "Ecclesiastical Buildings and Glebes (Scotland) Act."

3. From and after the passing of this Act, if, in the course of any Proceedings before any Presbytery of the Church of Scotland relating to the building, rebuilding, repairing, adding to, or other Alteration of Churches or Manse, or to the designing or exchamping of Sites therefor, or to the designing or exchamping of Glebes or Additions to Glebes, or to the designing or exchamping of Sites for or Additions to Churchyards, and the suitable Maintenance thereof (including the building or repairing of Churchyard Walls), any Heritor or the Minister of the Parish shall be dissatisfied with any Order, Finding, Judgment, Interlocutor, or Decree pronounced by such Presbytery, it shall be competent for such Heritor or Minister, within Twenty Days of the Date of such Order, Finding, Judgment, Interlocutor, or Decree, to stay such Proceedings by appealing the whole Cause as herein-after provided; and such Appeal, on being duly intimated to the Clerk of the said Presbytery, shall have the Effect of staying the Presbytery from taking any further Steps in connection with said Proceedings: Provided always, that if no such Appeal is taken and duly intimated within the Period aforesaid, every such Order, Finding, Judgment, Interlocutor, or Decree not appealed from as aforesaid shall be final and not subject to Review: Provided also, that if the Heritor or Minister taking any Appeal as aforesaid shall unduly delay to follow forth the same, it shall be competent for any other Heritor, or for the Minister of the Parish, or for the Clerk of the Presbytery of the Bounds by the Authority of the said Presbytery, or for the Clerk of the Heritors by the Authority of the Heritors, to sist himself as a Party to said Appeal, and to follow forth the same as the original Appellant could have done.

4. An Appeal under this Act shall be taken by the Appellant or his Agent presenting a summary Petition to the Sheriff of the County in which the Parish concerned is situated, praying him to stay the Proceedings before the Presbytery, and to dispose of the same himself: Provided that where the Parish is situated within more than One County the Petition may be presented to the Sheriff of either County; and the Sheriff to whom the first Application is made shall have the same Power, Authority, and Jurisdiction as if the whole of the Parish were situated within his County.

5. All Appeals under this Act shall, within Ten Days of their Presentation, be intimated by Circular, transmitted by the Appellant or his Agent through the Post Office, addressed to

each Heritor or his known Factor or Agent, to the Clerk of the Heritors, if there be such Clerk, to the Minister of the Parish (if the Benefice is full at the Time), and to the Clerk of the Presbytery of the Bounds: Provided always, that where the Number of Heritors of the Parish exceeds Forty it shall not be necessary to address a Circular to each Heritor or his Factor or Agent, but it shall be sufficient if a Copy of the Petition of Appeal is affixed to the most patent Door of the Church for Two successive Sundays next following the Presentation of the Petition, and if Notice of the Presentation of the Petition is inserted in a Newspaper circulating in the County during each of Two successive Weeks.

6. Upon any Petition of Appeal under this Act being considered by the Sheriff he shall satisfy himself that the Intimation before mentioned has been made, and, if not duly made, he shall order such Intimation as he shall consider necessary, and thereafter he shall inquire into the Circumstances, and hear the Parties by themselves or their Agents, without any written Pleadings, unless the same shall be specially ordered by him; but he shall take a Note of the Proceedings and of any Evidence which may be led before him, and shall dispose of the Petition as shall be just.

7. In any Proceedings for the rebuilding of a Church or Manse the Sheriff shall, unless the Matter has been decided by the Presbytery by a Judgment or Finding final under the Third Section hereof, *primo loco*, consider whether, in accordance with the Law as at present existing, a new Edifice should be erected, or whether the existing Buildings should be repaired, and for that Purpose he may take such Evidence and make such Remits to Architects or other professional Persons as he shall think right, and he shall pronounce a Finding accordingly: Provided always, that, if the Sheriff see Cause, he may dismiss the Petition.

8. In any Proceedings for the Building or repairing of a Church or Manse the Sheriff shall inquire, with such Assistance of Architects or other professional Persons as he shall think proper, into the Truth of the Allegations contained in the Petition; and if he shall be satisfied that, in accordance with the Law as at present existing, a Church or Manse should be built or that Repairs are necessary, he shall pronounce a Finding accordingly: Provided always, that, if he see Cause, the Sheriff may dismiss the Petition.

9. Where the Sheriff shall find that, in accordance with the Law as at present existing,

a Church or Manse must be built, rebuilt, or repaired, but the Heritors shall delay or refuse to give Effect to it, he shall remit to an Architect or other professional Person to prepare Plans and Specifications for such building, rebuilding, or Repairs, and after hearing any Objections thereto he shall approve of or modify the same, and ordain the same to be executed, and, if need be, he shall remit to an Architect or other professional Person to receive Tenders for the Execution of said Plans and Specifications, to accept of such Tenders as shall seem best, and to superintend their Execution; and the Sheriff shall find the Heritors who are now liable in the Expense of such building, rebuilding, or Repairs, and shall assess and allocate the same, together with a sufficient Sum to cover the Expenses of Collection, upon them, according to their respective Real Rents, as these shall appear on the Valuation Roll or Rolls in force at the Date of such Assessment and Allocation, or according to their valued Rents, as the Case may be, and shall grant Decree for Payment thereof in such Instalments and under such Conditions as he shall direct.

10. In any Proceedings for building or repairing Churchyard Walls the Sheriff shall inquire as to the Truth of the Petitioner's Allegations, and if he shall find that the Walls should be built or repaired, but the Heritors shall refuse or delay to give Effect to such Finding, he shall remit to some Person to prepare the necessary Specifications (on which, if required, he shall hear Parties), and he shall approve of or modify the same, and, if need be, remit to some Person to take and accept Tenders, and superintend the Execution thereof, and he shall assess, allocate, and decern for the Expenses thereof, as in the Case of building, rebuilding, or repairing a Church or Manse.

11. In any Proceedings for designing a Glebe or Churchyard, or the Site of a Church or Manse, or Additions to any of the same, or for excambing a Glebe, Churchyard, Site of a Church or Manse, or any Portions thereof, the Sheriff shall inquire into the Truth of the Petitioner's Allegations, and for that Purpose may take such Evidence, and make such Remits to Land Valuers, Surveyors, or other Persons of Skill, as shall seem necessary, and shall dispose of the Petition in accordance with the Law as at present existing, and shall assess and allocate the Expense of acquiring Land (including any Buildings thereon) for such Glebe or Churchyard, or for the Site of such Church or Manse, or for Additions to any of the same, and decern therefor, as in the Case of building, rebuilding, or repairing a Church or Manse: Provided always, that the Sheriff's Decree of Designation or Excambion

shall have the same Force and Effect as a Decree of Designation or Excambion pronounced by a Presbytery before the passing of this Act, except as herein-after provided: Provided also, that it shall not be competent for the Sheriff to pronounce any Decree of Excambion, unless it shall appear, under the Hand of the Clerk of the Presbytery of the Bounds, that the Presbytery have given their Consent to such Excambion.

12. After the Completion of the Works ordered in the course of any Proceedings for the building, rebuilding, or repairing of any Manse, it shall be competent for any Heritor of the Parish to move the Sheriff to declare it a "Free Manse;" and if the Sheriff shall be satisfied that the Manse is in a State of thorough Repair, he shall find and declare accordingly, and his Decree shall have the same Force and Effect as a Decree in similar Terms pronounced by a Presbytery: before the passing of this Act would have had: Provided always, that such Decree shall have Effect only till the Expiration of Fifteen Years from its Date, or until the Appointment of a new Minister to the Parish, whichever Event shall first happen.

13. In any Proceedings for the building, rebuilding, or repairing of any Church or Manse, or for the Designation of any Glebe, Churchyard, Site of any Church or Manse, or of any Additions thereto, or for the Excambion of any Glebe, Churchyard, Site of any Church or Manse, or of any Portions thereof, it shall be competent for the Parties, or any of them, to require the Sheriff to make a personal Inspection of the Premises or Locality, as the Case may be; and the Sheriff shall comply with such Requisition.

14. All Orders, Findings, Judgments, Interlocutors, or Decrees pronounced by any Sheriff under the Authority of this Act shall be final and conclusive, and not subject to Review by any Court whatsoever, unless an Appeal shall be taken to the Lord Ordinary against the same in manner herein-after mentioned.

15. The Lord Ordinary or the Sheriff, as the Case may be, shall be entitled to dispose of all Questions of Expenses, and to grant Decree therefor.

16. An Appeal to the Lord Ordinary under this Act may, when otherwise competent, be taken by a Note of Appeal written at the End or on the Margin of the Order, Finding, Judgment, Interlocutor, or Decree appealed from, or by a separate Note of Appeal lodged with the Sheriff Clerk; and such Note of Appeal may be in the following or similar Terms:

"The Petitioner [or Respondent] appeals to
"the Lord Ordinary in Teinds Causes:"

And the said Note shall be signed by the Appellant or his Agent, and shall bear the Date on which it is signed.

17. It shall not be competent to take or sign any Note of Appeal after the Expiration of Twenty Days from the Date of the Order, Finding, Judgment, Interlocutor, or Decree complained of in any Proceedings before the Sheriff under this Act, and during such Period of Twenty Days Extract shall not be competent; but on the Expiration of the foresaid Period, if no Appeal shall have been taken, the Clerk of Court may give out the Extract.

18. Such Appeal shall be effectual to submit to the Review of the Lord Ordinary the whole Orders, Findings, Interlocutors, Judgments, or Decrees pronounced by the Sheriff in the Cause, in so far as not final, as herein-before provided, not only at the Instance of the Appellant, but also at the Instance of every other Party appearing in the Appeal, to the Effect of enabling the Lord Ordinary to do complete Justice without the Necessity of any Counter Appeal; and an Appellant shall not be at liberty to withdraw or abandon an Appeal without Leave of the Lord Ordinary; and an Appeal may be insisted in by any Party in the Cause other than the Appellant, in the same Manner and to the like Effect as if it had been taken by himself.

19. The Sheriff Clerk shall, within Two Days after the Date of any Appeal being taken, send written Notice of such Appeal to the Respondent or his Agent: Provided that the Failure to give such Notice shall not invalidate the Appeal, but the Lord Ordinary may give such Remedy for any Disadvantage or Inconvenience thereby occasioned as may in the Circumstances be thought proper.

20. Within Two Days after the Appeal shall have been taken the Sheriff Clerk shall transmit the Process to the Depute Clerk of Session attached to the Bar of the Lord Ordinary, who shall subjoin to the Appeal a Note of the Day on which it is received; and it shall be lawful for either the Appellant or the Respondent at any Time after the Expiry of Eight Days from the Date of such Note to enrol the Appeal; and when the Appeal is called in the Roll, it shall be competent for the Lord Ordinary to order the Note of Appeal and any other Papers or Productions to be printed, or the Lord Ordinary may dispense with the printing of the same; and in case the Papers ordered to be printed shall not be printed by the Appellant, or in case he shall not move in the Appeal, it shall be lawful for the Lord Ordinary, on a Motion by any other

Party in the Cause, to grant an Order authorizing the Party moving to print the Papers aforesaid, and to insist in the Appeal as if it had been taken by himself: Provided always, that when any Appeal is taken to the Lord Ordinary, he shall have the whole Powers which are herein-before conferred on the Sheriff: Provided also, that all Orders, Findings, Interlocutors, Judgments, or Decrees pronounced by the Lord Ordinary shall be final, and not subject to Review.

21. The Provisions of the "Lands Clauses Consolidation (Scotland) Act, 1845," and the "Lands Clauses Consolidation Acts Amendment Act, 1860," with respect to the Purchase and taking of Lands by Agreement, or otherwise than by Agreement, shall be incorporated with this Act; and for the Purposes of this Act the Expression "the Promoters of the Undertaking," wherever used in the said Acts, shall mean the Heritors of any Parish under this Act: Provided always, that the Provisions in the said Acts "with respect to the Purchase and taking of "Lands otherwise than by Agreement" shall have Effect only in respect of such Lands as the Sheriff of the County shall have designated as above provided for: Provided farther, that the Provisions in the said Acts with respect to Lands acquired "by the Promoters of the Undertaking "under the Provisions of this or the Special "Act, or any Act incorporated therewith, but "which shall not be required for the Purposes "thereof," shall not be restricted in Operation to any fixed Period after the Purchase of such Lands.

22. Notwithstanding any Law, Statute, or Usage to the contrary, Meetings of Heritors for any Purpose whatsoever may be called in the following Manner; that is to say, on the Requisition of the Clerk of the Heritors, or of any Heritor or Heritors possessed of Lands yielding One Fourth Part of the total Real Rental of the Parish as the same shall appear on the Valuation Roll or Rolls then in force, or valued at One Fourth Part of the total valued Rent of such Parish, as the Case may be, or when he shall himself think such Meeting expedient or necessary, the Minister of the Parish shall cause an Intimation of the Meeting to be given immediately after Divine Service in the Forenoon, and Circular Letters containing a similar Intimation to be sent to all Heritors of the Parish at least Twenty-one free Days before such Meeting shall take place; provided that where in any Parish the Number of Heritors exceeds Forty it shall not be necessary to send Circular Letters as before provided, but in lieu thereof Intimation of the Meeting shall be given by the Minister by Advertisement in a Newspaper circulating in

the County once during each of Two successive Weeks between the Intimation from the Pulpit before mentioned and the Day for which the Meeting has been called.

23. All Assessments for the Purpose of defraying Expenses connected with the building, rebuilding, or repairing of Churches or Manse, or the designing or excavating of Sites therefor, or the designing or excavating of Glebes or Additions to Glebes, or the designing or excavating of Sites for Additions to Churchyards, and the suitable Maintenance thereof (including the building, rebuilding, or repairing of Churchyard Walls), in any Parish, shall be imposed in manner after mentioned upon all Lands and Heritages within such Parish according to the yearly Value thereof as the same shall appear on the Valuation Roll or Rolls in force in such Parish at the Time when such Assessments are made, or according to the valued Rent of such Lands and Heritages, as the Case may be; and such Assessments shall be imposed and recovered

according to the present Law and Practice: Provided always, that when the Area of any Parish Church heretofore erected has been allocated among the Heritors according to their respective valued Rents, all Assessments for the Repair thereof shall be imposed on such Heritors according to such valued Rent.

24. Nothing herein contained shall have the Effect of extending or increasing the Burdens which now by Law rest upon the Minister or Heritors of any Parish in respect of any of the Matters above set forth. Nothing contained in this Act shall exempt from or render liable to Assessment any Person or Property not previously exempt from or liable to Assessment.

25. All Laws, Statutes, and Usages shall be and the same are hereby repealed, in so far as they are at variance or inconsistent with the Provisions of this Act: Provided always, that the same shall continue in force in all other respects.

CAP. XCVII.

The Lunatic Asylums (Ireland) Accounts Audit Act, 1868.

ABSTRACT OF THE ENACTMENTS.

- . *Short Title.*
- . *Commencement of Act.*
- . *Sects. 14 and 15 of 1 & 2 G. 4. c. 33. repealed.*
- . *Interpretation of Terms.*
- . *A yearly Abstract of the Account of the Funds and Expenditure of every Asylum shall be laid before Inspectors.*
- . *Audit of Accounts.*
- . *Duties of Auditor.*
- . *Recovery of Sums disallowed.*
- . *Power of Auditor to summon Witnesses, &c.*
- . *Penalties for giving false Evidence or refusing to give Evidence.*
- . *Remuneration of Auditor.*
- . *Notice of Audit, &c.*
- . *Publication of Accounts.*
- . *Inspectors to make annual Return to Parliament as to Audit.*

1 Act to make Provision for the Audit of Accounts of District Lunatic Asylums in Ireland. (31st July 1868.)

WHEREAS under the Provisions of an Act passed the Session of Parliament holden in the First Second Years of the Reign of His late Majesty King George the Fourth, intituled "An Act to make more effectual Provision for the Establishment of Asylums for the Lunatic

" Poor, and for the Custody of Insane Persons " charged with Offences, in Ireland," and of the several Acts amending the same, District Lunatic Asylums have been established in Ireland:

And whereas by the said Act of the First and Second George the Fourth Provision was made for auditing the Accounts of all the Funds intrusted to the Governors or Directors of every such Lunatic Asylum respectively, for the Benefit of every such Asylum:

And whereas it is expedient to repeal the same, and to make other Provision for the Audit of the said Accounts :

And whereas by an Act passed in the First and Second Years of the Reign of Her present Majesty, intituled "An Act for the more effectual "Relief of the destitute Poor in Ireland," Provision was made for the Appointment by the Poor Law Commissioners for the Time being in Ireland of Auditors to audit the Accounts of all Persons liable to account under that Act in manner therein mentioned :

And whereas it is expedient that the Auditors for the Time being appointed by the said Poor Law Commissioners in Ireland under the Provisions of the said Act should be the Auditors for the Time being to audit the Accounts of all the Funds intrusted to the Governors or Directors of every District Lunatic Asylum in Ireland, for the Benefit of every such Asylum :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited for all Purposes as "The Lunatic Asylums (Ireland) Accounts Audit Act, 1868."

2. This Act shall commence and take effect on the Thirty-first Day of December One thousand eight hundred and sixty-eight.

3. From and after the Commencement of this Act, Sections Fourteen and Fifteen of the Act First and Second George the Fourth, Chapter Thirty-three, shall be and the same are hereby repealed.

4. In this Act—

The Word "Asylum" means any District Lunatic Asylum established in Ireland under the Provisions of the Act First and Second George the Fourth, Chapter Thirty-three, and of the several Acts amending the same :

The Word "Inspectors" means the Inspectors of Lunatics in Ireland for the Time being.

5. Before the Twentieth Day of March in each Year after the Commencement of this Act, the Governors or Directors of every Asylum in Ireland, or the Resident Medical Superintendent or other proper Officer of such Asylum respectively, shall make out and deliver or transmit to the Inspectors a Return containing a Statement and an Abstract of the Accounts of all the Funds intrusted to the Governors or Directors of every such Asylum respectively for the Benefit of every such Asylum, and of the Application of such Funds, for the Year ending on the Thirty-first Day of December preceding such Twentieth Day

of March, with the Balances of the Debts and Credits, and of the whole Funds of every such Asylum respectively, on such Thirty-first Day of December; and also the Number of Patients or Persons received into and sent out of every such Asylum respectively during such preceding Year, and the Number of Patients remaining therein at the Time of such Return, and the Number and Names of the Physicians, Surgeons, Officers, Servants, and other Persons employed in or about the Management of every such Asylum respectively, and all such other Matters and Things relating to the Management, Revenue, and Expenditure of every such Asylum respectively, as shall from Time to Time be required by the said Inspectors for the full Disclosure of the State of every such Asylum respectively; and the said Returns, Statements, and Abstracts of Accounts shall be signed by the Resident Medical Superintendent or Chief Officer for the Time being of every such Asylum respectively, and shall be duly authenticated by the Signature of Three Governors or Directors of every such Asylum respectively.

6. From and after the Commencement of this Act, the Accounts of the Receipts and Expenditure of each and every Asylum in Ireland shall be audited and examined once in every Year, as soon as can be after the Twenty-fifth Day of March, by the Auditor of Accounts relating to the Relief of the Poor for the Union in which such Asylum is situate, unless such Auditor be a Contractor for any Articles or Things supplied to, or be a Member of the Board of Governors or Directors of, such Asylum, in either or any of which Cases such Accounts shall be audited by such Auditor of Accounts relating to the Relief of the Poor for any other Union as may from Time to Time be appointed by the Lord Lieutenant or other Chief Governor or Governors of Ireland for that Purpose; and Abstracts of the said Accounts shall, on or before the Twenty-fifth Day of March in every Year, be transmitted by the Inspectors to the Auditor by whom the same are to be audited.

7. Every Auditor acting in pursuance of this Act shall examine into the Matter of every Account which is to be audited by him, and shall disallow and strike out of every such Account all Payments, Charges, and Allowances made by any Person and charged upon the Funds of any Asylum contrary to Law, or which he shall deem to be unfounded, and shall reduce such as he shall deem to be exorbitant, and shall specify in the Foot of such Account every Payment, Charge, or Allowance, and its Amount, which he shall disallow, reduce, or insert, and the Cause for which the same is disallowed, reduced, or

inserted; and all Balances found by any such Auditor to be due from any Person having the Control of the said Funds, or accountable for such Balances, may be recovered in the Manner by this Act provided.

8. In every Case of Disallowance or Reduction by the Auditor in the Accounts of any Asylum the Auditor shall make and sign a Certificate of such Disallowance or Reduction on the Face of the Book or Account wherein the Charges so disallowed or reduced shall appear, and shall debit the Amount disallowed to the Governor or Governors by whose Signature or Initials the Expenditure of the Sum so disallowed shall have been authorized, or if not authorized by the Governors, then to the Officer or Officers by whom such Expenditure shall have been made, and the Sum so disallowed shall be payable by the Person or Persons debited therewith to the Credit of the Governors of the Asylum in the Bank at which the Accounts of such Asylum are kept, and the said Auditor may summon the Person or Persons so debited to appear before any Two Justices of the County in which the Asylum shall be situate, and the said Justices shall, on the Production of the said Certificate of Disallowance or Reduction, inquire whether the Sum disallowed has been so paid to the Credit of the Governors, and on Failure of due Proof thereof by or on the Part of the Person or Persons so debited as aforesaid, and after satisfying themselves that the Sum so debited is properly due, shall adjudge the said Person or Persons to pay the said Sum, together with the Costs of the Application, to the said Auditor; and on Failure of such Payment forthwith, shall cause the said Sum and Costs to be levied by Warrant of Distress upon the Goods and Chattels of the said Person or Persons, wheresoever the same may be found, and to be paid to the said Auditor, who shall thereupon pay over the Sum so disallowed and recovered to the aforesaid Account.

9. For the Purpose of any Audit of Accounts under this Act, every Auditor may, by Summons in Writing, require the Production before him of all Books, Deeds, Contracts, Accounts, Vouchers, and all other Documents and Papers which he may deem necessary, and may require any Person holding or accountable for any such Books, Deeds, Contracts, Accounts, Vouchers, Documents, or Papers to appear before him at any such Audit or any Adjournment thereof, and, if thereunto required by such Auditor to verify on Oath (which Oath every such Auditor is hereby authorized to administer) the Truth of all such Accounts and Statements from Time to Time respectively, or subscribe a Declaration as to the Correctness of the same.

10. If any Person, upon any Examination under the Authority of this Act, shall wilfully give false Evidence, or wilfully make or subscribe a false Declaration, he shall, on being convicted thereof, suffer the Pains and Penalties of Perjury; and if any Person shall refuse or wilfully neglect to attend in obedience to any Summons of any Auditor, or to give Evidence, or shall wilfully alter, suppress, conceal, destroy, or refuse to produce any Books, Deeds, Contracts, Accounts, Vouchers, Documents, or Papers, or Copies of the same, which may be required to be produced for the Purposes of this Act, to any Auditor authorized by this Act to require the Production thereof, every Person so offending shall be deemed guilty of a Misdemeanor.

11. Every Auditor shall in respect of each Audit under this Act be paid, out of the Funds of the Asylum in respect of which such Audit shall have been held, such reasonable Remuneration, not being less than Two Guineas for every Day in which he is employed in such Audit, as the Governors or Directors of such Asylum may from Time to Time appoint, together with his Expenses of travelling to and from the Place of Audit.

12. Before each Audit of the Accounts of any Asylum under this Act,—

1. The Auditors shall give Twelve Days Notice of the Time and Place at which the same will be made, by Advertisement in some One or more of the public Newspapers circulated in the District in which such Asylum is situate; and
2. The Inspectors shall cause a Copy of the Accounts which are to be audited, together with all Books, Deeds, Contracts, Accounts, Bills, Vouchers, and Receipts mentioned or referred to in such Accounts, to be deposited in the Office of the Clerk and Storekeeper, or other proper Officer, of every such Asylum, and the same shall be open, during Office Hours thereat, to the Inspection of all Persons interested for Seven Days before the Audit; and all such Persons shall be at liberty to take Copies of or Extracts from the same without Fee or Reward, and the Production of the Newspaper containing such Notice shall be deemed to be sufficient Proof of the Notice of Audit on any Proceeding whatever.

13. Within Fourteen Days after the Completion of the Audit of the Accounts of any Asylum the Auditor shall report upon the Accounts audited and examined, and shall deliver or transmit such Report, with an Abstract of the Accounts, to the Inspectors, and a Copy of the same to the Secre-

tary of the Grand Jury of each County or Riding liable to contribute to the Expense of maintaining such Asylum to be laid before the Grand Jury, and also a Copy of the same to the Governors or Directors of such Asylum, and the said Governors or Directors shall cause the same to be deposited in the Office of the Resident Medical Superintendent, or other proper Officer, of such Asylum, and shall publish an Abstract of such Accounts in some One or more of the Newspapers circulated in the District in which such Asylum is situate.

14. The Inspectors shall, in addition to the

Matters now by Law required, state in their annual Reports to be laid before Parliament, the Date of the auditing of the Accounts of every Asylum, and also all Charges and Payments in the Accounts of any Asylum which have been disallowed, reduced, or inserted by the Auditor at the then last Audit, together with the Amount of any Disallowances, Reductions, or Insertions which have been recovered and paid to the Credit of the Governors of any Asylum previous to such Report, and any Steps which have been taken at Law for the Recovery of any Sums disallowed, reduced, or inserted by the Auditors.

CAP. XCVIII.

Clerks of the Peace, &c. (Ireland).

ABSTRACT OF THE ENACTMENTS.

1. *Power to Lord Lieutenant to order Salary to be paid to Clerk of Peace or Clerk of Crown in certain Boroughs.*
2. *Borough Fund charged with Payment of Salaries under this Act.*
3. *Clerk of the Peace, &c. ordered Salary under this Act to discharge Duties in Person.*

An Act to make Provision for the Payment of Salaries to Clerks of the Peace and Clerks of the Crown in certain Boroughs in Ireland.

(31st July 1868.)

WHEREAS by an Act passed in the Session of Parliament held in the Third and Fourth Years of the Reign of Her present Majesty, intituled "An Act for the Regulation of Municipal Corporations in Ireland," it is enacted that in every Borough, not being a County of a City or County of a Town, to which a separate Commission of the Peace should be granted, it should be lawful for the Lord Lieutenant to grant from Time to Time to any Person the Offices of Clerk of the Peace and Clerk of the Crown, or either of them; but no Provision is made by the said Act for the Payment of any Salary to any such Clerk of the Peace or Clerk of the Crown as aforesaid:

And whereas it is expedient to make Provision for the Payment of such Salaries:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. It shall be lawful for the Lord Lieutenant

and he is hereby authorized and empowered from Time to Time to order and declare by Writing under his Hand (such Writing to be published in the *Dublin Gazette*, and in some Newspaper circulating in the County in which the Borough to which it relates is situate,) the Sum which is henceforth to be paid by any Borough to which a separate Commission of the Peace has been or shall be granted by way of Salary to any Clerk of the Peace or Clerk of the Crown for any such Borough to whom such Office has been or shall be granted under the Provisions of the recited Act, and such Salary shall be paid to such Clerk of the Peace or Clerk of the Crown by the Treasurer of such Borough out of the Borough Fund.

2. From and after the Publication of any such Order in the *Dublin Gazette* the Borough Fund of the Borough to which it relates shall (subject to any lawful Charges then affecting the same) be charged with the Payment of the Salary thereby ordered to be paid.

3. Every Clerk of the Peace or Clerk of the Crown to whom a Salary shall be ordered under this Act shall be bound to discharge his Duty in Person, and not by Deputy, unless in case of Illness or other adequate Cause, to be certified to and allowed by the Lord Lieutenant or other Chief Governor of Ireland.

CAP. XCIX.

The Annual Turnpike Acts Continuance Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Repeal of certain Turnpike Acts. Schedule 1.*
2. *Expiration of certain Turnpike Acts. Schedule 2.*
3. *Continuance of certain Turnpike Acts. Schedules 3 & 4.*
4. *Repeal of certain Turnpike Acts. Schedules 5 & 6.*
5. *Continuance of all other Turnpike Acts.*
6. *Extension of the Operation of the Act of 12 & 13 Vict. c. 46.*
7. *If Road in repair, Compensation may be given to Officers of expired Trust.*
8. *Sect. 3. of 30 & 31 Vict. c. 121. to apply to Roads which previously became ordinary Highways.*
9. *Short Title.*

An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further Provision concerning Turnpike Roads. (31st July 1868.)

WHEREAS it is expedient to continue for limited Times some of the Acts herein-after specified, and to repeal others :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. The Acts specified in the First Schedule annexed hereto shall be repealed on and after the Thirty-first Day of December One thousand eight hundred and sixty-eight.

2. The Acts specified in the Second Schedule annexed hereto shall expire at the Time in that Behalf mentioned in "The Annual Turnpike Acts Continuance Act, 1867."

3. The Acts specified in the Third and Fourth Schedules annexed hereto shall continue in force until the Thirtieth Day of June One thousand eight hundred and seventy, unless Parliament in the meantime otherwise provides.

4. The Acts specified in the Fifth and Sixth Schedules annexed hereto shall be repealed on and after the Thirtieth Day of June One thousand eight hundred and seventy, unless Parliament in the meantime otherwise provides.

5. All other Acts now in force for regulating, making, amending, or repairing any Turnpike Road in Great Britain which will expire at or before the End of the next Session of Parliament shall continue in force until the First Day of November One thousand eight hundred and

sixty-nine, and to the End of the then next Session of Parliament.

6. Whereas Provision is made by the Act of the Session of the Twelfth and Thirteenth Years of the Reign of Her present Majesty for the Union of Turnpike Trusts in Cases where the General Annual Meetings of the Trustees of Two or more Turnpike Roads have been held at the same Place, or Places distant not more than Ten Miles from each other: And whereas it is expedient to extend the Operation of the said Act: Be it enacted, That the First Section of the said Act shall be construed as if the Word "Twenty" were substituted therein for the Word "Ten."

7. Where a Turnpike Road shall have become an ordinary Highway, then, upon a Certificate being given by Two Justices that such Road was at the Time at which it became a Highway in complete and effectual Repair, the Trustees or Commissioners of such Road, at any Meeting held by them in pursuance of the Third Section of "The Annual Turnpike Acts Continuance Act, 1865," may, out of any Balances remaining in their Hands after Payment of all Liabilities, award, if they see fit, to any Person or Persons whose Offices expire with the Trust, and who have held such Offices for not less than Ten Years immediately preceding such Meeting, such Compensation as they may think just, not exceeding in any Case the Amount of Three Years Salary.

8. The Third Section of the Act of the Session of the Thirtieth and Thirty-first Years of Her present Majesty, Chapter One hundred and twenty-one, shall apply to all Roads which, having been Turnpike Roads, have become ordinary Highways previous to the passing of the said Act.

9. This Act may be cited for all Purposes as "The Annual Turnpike Acts Continuance Act, 1868."

SCHEDULES.

FIRST SCHEDULE.

Acts which are to be repealed on and after the 31st of December 1868.

Date of Act.	Title of Act.
11 G. 4. c. cxiii. - - <i>Limited to expire at End of Session after 1 November 1868.</i>	An Act for more effectually repairing the Road from the Town of Rickmersworth in the County of Hertford, through the Village of Pinner, to or near the Swan Public House at Sudbury Common in the Turnpike Road leading from Harrow to London.
1 & 2 Vict. c. xlviii. - <i>Limited to expire at End of Session after 4 July 1869.</i>	An Act for repairing and maintaining the Road from Quebec to Homefield Lane End, all in the Parish of Leeds, in the West Riding of the County of York, with a Bridge or Bridges on the Line of such Road.
17 Vict. c. xlviii. - - <i>Limited to expire at End of Session 2 June 1876.</i>	An Act to renew the Term and continue the Powers of an Act passed in the Ninth Year of the Reign of His Majesty King George the Fourth, intituled "An Act for more effectually repairing and improving the " Roads from Kippings Cross to Wilsley Green, and from a Place near " Goudhurst Gore to Stilebridge, and from Underden Green to Wans- " hutts Green, all in the County of Kent," <i>so far as the same relates to the Kippings Cross to Wilsley Green, or First District of Roads.</i>

SECOND SCHEDULE.

Acts which are to expire at the Date (1st November 1868) mentioned in 30 & 31 Vict. c. 121.

Date of Act.	Title of Act.
55 G. 3. c. li. - -	An Act for amending the Road from Keighley to Bradford, and for making and maintaining a Branch therefrom, all in the West Riding of the County of York.
57 G. 3. c. xxvii. -	An Act for more effectually improving the Road from Richmond in the County of York to Lancaster in the County of Lancaster, and the Road from Richmond to Lucy Cross, and from Gilling to the Turnpike Road on Gatherley Moor, in the County of York, <i>so far as the same relates to the Richmond and Lancaster Road, Eastern District.</i>
1 G. 4. c. lxix. - -	An Act for repairing and improving several Roads leading into and from Devizes in the County of Wilts.
3 G. 4. c. lxxxviii. -	An Act for more effectually repairing and improving the Road from a Place called the Old Gallows, in the Parish of Sonning, otherwise Sunning, in the County of Berks, through Wokingham, New Bracknowl, and Sunninghill, to Virginia Water in the Parish of Egham in the County of Surrey.
7 G. 4. c. cxxxi. -	An Act for more effectually repairing the Road from Sudbury in the County of Suffolk to Bury St. Edmunds in the said County.
1 & 2 W. 4. c. lxiii. -	An Act for more effectually repairing the Road from Aylesbury in the County of Buckingham to Hockliffe in the County of Bedford.
2 W. 4. c. lxxvi. - -	An Act for repairing, maintaining, and improving the Road from Stevenage in the County of Hertford to Biggleswade in the County of Bedford, and a Branch therefrom to Arlsey in the said County of Bedford.

Date of Act.	Title of Act.
4. W. 4. c. x.	An Act for more effectually repairing and maintaining the Road from Crouch Hill in the Parish of Henfield to Ubley's Corner in the Parish of Albourne, and from the King's Head Inn in Albourne, through the Town of Hurstperpoint, to the Cross Roads in the Town of Ditcheling, and also for making and maintaining a Branch of Road from the Town of Hurstperpoint to Poynings Common, all in the County of Sussex.
5 W. 4. c. xxii.	An Act for improving certain Roads within the County of Hereford communicating with the City of Hereford, so far as the same relates to "The Hereford District of Roads."

THIRD SCHEDULE.

(Turnpike Trusts out of Debt and continued by the Annual Turnpike Acts Continuance Acts.)

Acts which are to continue until the 30th of June 1870, unless Parliament in the meantime otherwise provides.

County.	Name of Trust.	No. of Act.
Bedford	Bedford and Newport Pagnell	7
	Puddlehill	6
Cambridge	Arrington	15
	Hauxton and Dunsbridge	62
	Newmarket Heath	66
	Paper Mills	8
Chester	Frodsham and Wilderspool	57
	Washway (from Crossford Bridge to Altrincham), united with Stockport and Warrington Trust. See No. 27. in Fifth Schedule.	58
Cumberland	Kingstown and Weslinton Bridge	55
	Longtown	71
Durham	West Auckland	96
Gloucester	Cheltenham and Tewkesbury	17
	Crickley Hill and Campsfield, Gloucestershire District	30
	Maisemore	95
	Northgate	54
	Over	95
	Stow and Moreton (united)	10, 21, 32, 42, 82
	Tewkesbury	53
Hants	Portsmouth and Sheetbridge	27
	Southampton, South District	36
	Winchester, Upper District. See also No. 6. in Fourth Schedule.	13
Hereford	Leominster	11
Hertford	Cheshunt	93
	Wadesmill	23
Kent	Ashford and Maidstone	105
	Dover to Barham Downs	39
	Sevenoaks	100, 104

County.	Name of Trust.	No. of Act.
Kent—cont.	Tonbridge - - - - -	103, 107
	Tonbridge and Maidstone - - - - -	67
	Whitstable - - - - -	44
	Wrotham Heath - - - - -	65
	Wrotham and Maidstone - - - - -	60
Lancaster - - -	Crossford Bridge and Manchester - - - - -	76, 110
	Manchester and Salter's Brook - - - - -	49, 97
Leicester - - -	Bridgford Lane and Kettering, South Part of Northern Division. - - - - -	38
	Melton Mowbray - - - - -	47
Lincoln - - -	Bourn. <i>See also No. 14. in Fourth Schedule</i> - - - - -	40
	Deeping and Morcott - - - - -	68
	Foston Bridge and Witham Common - - - - -	73
	Leadenham and Southwell, Eastern District - - - - -	51
Monmouth - - -	Chepstow - - - - -	31
Norfolk - - -	Aylsham and Cromer - - - - -	77
	Lynn, East Gate - - - - -	78
	Lynn and Wisbech - - - - -	37
	New Buckenham - - - - -	91
	Norwich, Swaffham, and Mattishall - - - - -	101
	Norwich and Watton - - - - -	89
	Thetford - - - - -	12
Northampton - - -	Buckingham and Hanwell, Lower Division - - - - -	85
	Dunchurch - - - - -	56
	Market Harborough and Welford - - - - -	34
	Warwick and Northampton - - - - -	88
Northumberland - - -	Alnmouth and Hexham, Eastern District - - - - -	28
	Alnwick and Eglingham - - - - -	52
	Wooler and Adderstone - - - - -	46
Nottingham - - -	Bawtry and Scrooby - - - - -	3
	Bingham - - - - -	26
	Dunham Ferry - - - - -	4
	Foston Bridge to Little Drayton - - - - -	25
	Nottingham and Kettering, Northern Division - - - - -	38
Oxford - - -	Burford, Chipping Norton, Banbury, &c. - - - - -	82
	Drayton Lane to Edgehill - - - - -	33
	Gosford Road - - - - -	29
Rutland - - -	Nottingham and Kettering, Southern Division - - - - -	38
	Oakham - - - - -	14
Somerset - - -	Radstock - - - - -	72
Stafford - - -	Birmingham and Wednesbury - - - - -	81
	Lichfield (United) - - - - -	87
	Streetway and Wordsley Green, and Wolverhampton and Cannock. - - - - -	69
	Tamworth - - - - -	86
	Walsall (United) - - - - -	75
	Walton-in-Stone to Eccleshall - - - - -	108
	Wolverhampton, Old District - - - - -	79
Suffolk - - -	Bury St. Edmunds and Newmarket - - - - -	99
	Claydon, Blakenham, Brockford, &c. - - - - -	1, 2
	Ipswich to South Town, &c. - - - - -	63
Surrey - - -	Limpsfield - - - - -	5
Sussex - - -	Broil Park Gate to Battle - - - - -	24
	Cowfold and Henfield (Branch) - - - - -	74
	Horsebridge and Horeham - - - - -	35
	Lewes and Brighton - - - - -	94
	Midhurst and Sheetbridge - - - - -	45

County.	Name of Trust.	No. of Act.
Warwick	Birmingham and Sperial Ash	61
	Birmingham and Watford Gap, Kingsbury Branch	50
	Dunchurch and Stonebridge	43
	Great Kington and Wellesbourne	92
	Wellesbourn and Stratford	90
Wilts	Beckhampton	19
	Chippenham	18
	Corsham	70
	Fisherton, Wilton, Heytesbury, Willoughby Edge, and Redhorne.	9
Worcester	Evesham, Pershore Division	32
	Worcester :	
	Barbourn Road (7th Dist.)	102, 109
	Bransford Road (4th ")	
	Broadwas Road (5th ")	
	Henwick and Martley Road (6th ")	
	London and Stonebow Road (1st ")	
	Powick Road (3rd ")	
	Upton Road (2nd ")	
York	Birstal and Huddersfield	64, 106
	Boroughbridge and Durham (part). <i>See also No. 32. in Fourth Schedule.</i>	84
	Doncaster to Bawtry	83
	Harrogate and Boroughbridge	20
	Leeds and Wakefield	22
	Malton and Pickering	48
	Tadcaster Bridge to Hob Moor Lane End	98
	Wakefield and Austerlands	80
	Wetherby and Knaresbrough	41
	York and Boroughbridge	16
	York to Kexby Bridge, and Grimston to Stone Dale	59

Date of Act.	Title of Act.
33 G. 3. c. cxxviii.	1. An Act for more effectually repairing the Roads from Ipswich to the Scole Inn Road, and from Claydon to the Bury St. Edmund's Road, at the End of the Bounds of the Parish of Hawleigh, and from Yaxley Bull to Eye, and from Eye to Lanthorn Green, in the County of Suffolk.
51 G. 3. c. cviii.	2. An Act for enlarging the Term and Powers of an Act of His present Majesty, for repairing the Roads from Ipswich to the Scole Inn Road, and from Claydon to the Bury St. Edmund's Road, and from Yaxley Bull to Eye and Lanthorn Green, in the County of Suffolk.
35 G. 3. c. xi.	3. An Act for enlarging the Term and Powers of Two Acts of His present Majesty, for repairing and widening the Road from Bawtry in the County of York to East Markham Common in the County of Nottingham, and from Little Drayton to Twyford Bridge in the said County of Nottingham.
53 G. 3. c. xii.	4. An Act for enlarging the Term and Powers of Two Acts of His present Majesty, for repairing and widening the Road from Dunham Ferry to the South End of Great Markham Common in the County of Nottingham.
53 G. 3. c. xliii.	5. An Act for enlarging the Term and Powers of Two Acts of His present Majesty, for repairing the Road from the Eaton Bridge Turnpike

Date of Act.	Title of Act.
	Road at Cockham Hill in the Parish of Westerham in the County of Kent to the Turnpike Road from Croydon to Godstone in the County of Surrey.
54 G. 3. c. cxxi. -	6. An Act for continuing and amending an Act of His present Majesty, for repairing the Road from Dunstable to Hockliffe in the County of Bedford.
54 G. 3. c. cxxiv. -	7. An Act for repairing the Road from Saint Lloyds in the Town of Bedford in the County of Bedford to the Turnpike Road leading from Olney to Newport Pagnell in the County of Buckingham.
55 G. 3. c. xlix. -	8. An Act for more effectually repairing the Road from Jesus Lane in the Town of Cambridge to Newmarket Heath in the County of Cambridge.
55 G. 3. c. lxii. -	9. An Act for enlarging the Term and Powers of Four Acts of His present Majesty, for repairing several Roads leading from Fisherton, Wilton, Heytesbury, and other Places in the County of Wilts, and for diverting the Line of Part of the said Roads.
56 G. 3. c. i. -	10. An Act for enlarging the Term and Powers of Two Acts of His present Majesty, for repairing the Road from Chapel on the Heath in the County of Oxford to Bourton on the Hill in the County of Gloucester.
56 G. 3. c. xxxi. -	11. An Act for continuing the Term and altering and enlarging the Powers of an Act of the Fortieth Year of His present Majesty, for improving the Roads leading from the Town of Leominster in the County of Hereford.
56 G. 3. c. lxxviii. -	12. An Act for enlarging the Term and Powers of several Acts for amending the Road from the End of the Town Close in the County of the City of Norwich to the Chalk Pits near Thetford in the County of Norfolk.
57 G. 3. c. xxvi. -	13. An Act for amending the Roads leading from Basingstone near Bagshot, through Farnham in the County of Surrey, and Alton and New Alresford, to Winchester in the County of Southampton; <i>so far as the same relates to the Upper District of Roads.</i>
57 G. 3. c. xlvi. -	14. An Act for continuing and amending an Act of His present Majesty, for repairing the Road from Stamford in the County of Lincoln, through Oakham, to the Great North Road in the Parish of Greetham in the County of Rutland.
57 G. 3. c. lxxviii. -	15. An Act for enlarging the Term and Powers of an Act of His present Majesty, for repairing the Road from Cambridge to the Old North Road, near Arrington Bridge in the County of Cambridge.
58 G. 3. c. ii. -	16. An Act to continue the Terms and alter and enlarge the Powers of Three Acts passed in the Twenty-third Year of the Reign of His late Majesty King George the Second, and in the Eleventh and Thirty-seventh Years of His present Majesty's Reign, for repairing the Road from the City of York to Boroughbridge in the County of York.
58 G. 3. c. v. -	17. An Act for enlarging the Term and Powers of Two Acts of His present Majesty, for repairing the Roads leading from the City of Gloucester towards Cheltenham and Tewkesbury in the County of Gloucester.
58 G. 3. c. xliii. -	18. An Act for more effectually repairing and improving the Road leading from Studley Bridge through the Borough of Chippenham to Pickwick, and from the East End of Chippenham Bridge to Lower Stanton, and from the East End of the said Bridge to join the Road at Draycot Cerne in the County of Wilts.
58 G. 3. c. lxxxii. -	19. An Act to continue the Term and enlarge the Powers of an Act of His present Majesty, for repairing the Road at or near Beck-hampton and other Roads in the said Act mentioned in the County of Wilts.

Date of Act.	Title of Act.
59 G. 3. c. i. - -	20. An Act to continue the Term and alter and enlarge the Powers of Three Acts of His late and present Majesty's Reign, for repairing the Roads therein respectively mentioned and described, in the County of York, so far as the said Acts relate to the Road leading from the South-west Corner of the Inclosures of Harrogate, through Knaresborough, to Boroughbridge.
59 G. 3. c. cxxiv. -	21. An Act for enlarging the Term and Powers of an Act passed the Thirty-fourth Year of the Reign of His present Majesty, for repairing the Roads leading from the Town of Tewkesbury in the County of Gloucester, and other Roads therein mentioned, so far as such Act relates to the Road from Stump Cross in the Parish of Didbrook to Stow-on-the-Wold in the County of Gloucester.
1 & 2 G. 4. c. v. -	22. An Act for amending and repairing the Road from Leeds to Wakefield in the County of York.
1 & 2 G. 4. c. xvii. -	23. An Act for continuing and amending Four Acts of their late Majesties King George the Second and King George the Third, for repairing the Roads leading from Wades Mill in the County of Hertford to Barley and Royston in the said County.
1 & 2 G. 4. c. xxvii. -	24. An Act for more effectually making, repairing, and improving the Road from near the Place where the Broil Park Gate formerly stood to the Horsebridge Turnpike Road on the Dicker, and from the Blacksmith's Shop in Horsebridge Street to the Town of Battle in the County of Sussex.
1 & 2 G. 4. c. xxix. -	25. An Act for continuing the Term and amending, altering, and enlarging the Powers of an Act of His late Majesty's Reign for more effectually repairing the Road from Foston Bridge in the County of Lincoln to Little Drayton in the County of Nottingham.
1 & 2 G. 4. c. xxx. -	26. An Act for more effectually repairing and improving the Road from Newark-upon-Trent in the County of Nottingham to join the Road from Nottingham to Grantham in the County of Lincoln, near the Guide Post on the Foss Road near Bingham in the said County of Nottingham.
1 & 2 G. 4. c. lvi. -	27. An Act to continue the Term and alter and enlarge the Powers of Two Acts for repairing the Roads from Sheet Bridge to Portsmouth, and from Petersfield to the Alton Turnpike Road near Ropley, in the County of Southampton.
1 & 2 G. 4. c. lxxxiv. -	28. An Act for repairing the Road from Alemouth, through Alnwick and Rothbury, to Hexham, and a Branch from the said Road between Alnwick and Rothbury to Jockey's Dike Bridge, all in the County of Northumberland; <i>so far as the same relates to the Eastern District.</i>
1 & 2 G. 4. c. lxxxvi. -	29. An Act to continue and amend Two Acts for repairing the Road from the Turnpike Road near the Town of Weston-on-the-Green in the County of Oxford to the Turnpike Road on Kidlington Green in the said County.
1 & 2 G. 4. c. cix. -	30. An Act to continue the Term and alter and enlarge the Powers of Three Acts, so far as relates to the Roads from the Top of Crickley Hill in the County of Gloucester, to and through Northleach, Burford, and Witney, to Campsfield, and the Turnpike Road at or near Enslow Bridge in the County of Oxford.
3 G. 4. c. ii. - -	31. An Act for repairing and maintaining certain Roads leading to and from Chepstow and other Places in the Counties of Monmouth and Gloucester, called the District of Chepstow and the New Passage District.
3 G. 4. c. lxix. - -	32. An Act for repairing and amending several Roads leading to and from the Borough of Evesham in the County of Worcester, and several other Roads in the Counties of Worcester and Gloucester; <i>so far as the same relates to the Second District, and to the Pershore Division of the First District.</i>

Date of Act.	Title of Act.
3 G. 4. c. xc. - -	33. An Act for more effectually repairing the Road from the Guide Post near the End of Drayton Lane near Banbury in the County of Oxford to the House called the Sun Rising, at the Top of Edge Hill in the County of Warwick.
3 G. 4. c. c. - -	34. An Act for amending, widening, and keeping in repair the Roads leading from the Town of Northampton to Chain Bridge, near the Town of Market Harborough, and from the Direction Post in Kingsthorpe to Welford Bridge, all in the County of Northampton.
4 G. 4. c. xii. - -	35. An Act for more effectually making, repairing, and improving the Roads from Union Point near Uckfield to the Sea Houses in Eastbourne, and from Horsebridge to Cross in Hand, all in the County of Sussex.
4 G. 4. c. xv. - -	36. An Act for repairing and improving the Roads from the Town of Stockbridge to the City of Winchester, and from the said City of Winchester to the Top of Stephen's Castle Down near the Town of Bishop's Waltham in the County of Southampton, and from the said City of Winchester, through Otterborne, to Bar Gate in the Town and County of the Town of Southampton, and certain Roads adjoining thereto; <i>so far as the same relates to the South District of the Southampton Road.</i>
4 G. 4. c. lv. - -	37. An Act for more effectually amending the Roads from the Little Bridge over the End of the Drain near Wisbeach River, lying between Roper's Fields and the Bell Inn in Wisbeach in the Isle of Ely, to the West End of Long Bridge in South Lynn in the Borough of King's Lynn in the County of Norfolk, and for amending, improving, and keeping in repair certain other Roads therein mentioned, in the said County of Norfolk.
4 G. 4. c. lvi. - -	38. An Act for continuing the Term and Powers of an Act of His late Majesty's Reign, for repairing the Road from the North End of Bridgford Lane in the County of Nottingham to the Bowling Green at Kettering in the County of Northampton.
4 G. 4. c. lxxxi. - -	39. An Act for amending and keeping in repair the Roads from Dover to Barham Downs, and from Dover to the Town of Folkestone, and from thence through the Parish of Folkestone to Sandgate in the County of Kent; <i>so far as the same relates to the Dover to Barham Downs Road.</i>
4 G. 4. c. cxi. - -	40. An Act for more effectually repairing the Road from Wansford Bridge in the County of Northampton to Stamford, and from Stamford to Bourn in the County of Lincoln; <i>so far as the same relates to the Bourn District.</i>
5 G. 4. c. viii. - -	41. An Act for amending, improving, and keeping in repair the Roads leading from Wetherby to Knaresborough in the West Riding of the County of York.
5 G. 4. c. ix. - -	42. An Act for amending and maintaining the Roads from the Hand and Post at the Top of Burford Lane in the County of Gloucester to Stow-on-the-Wold, and from thence to Paddlebrook; and from the Cross Hands on Salford Hill in the County of Oxford to the Hand and Post in the Parish of Withington in the County of Gloucester.
5 G. 4. c. xliii. - -	43. An Act for repairing the Road from Dunchurch to Stonebridge in the County of Warwick.
5 G. 4. c. lxxxviii. - -	44. An Act for more effectually repairing the Roads leading from Saint Dunstan's Cross to North Lane near to the City of Canterbury, and to the Sea Side at Whitstable in the County of Kent, and for widening and improving the Road from North Lane aforesaid, over West Gate Bridge, to the West Gate of the said City, and for making a Foot Bridge on each Side of the said Bridge and Gate into the said City.

Date of Act.	Title of Act.
G. 4. c. xi. -	45. An Act for making and maintaining a Turnpike Road from Midhurst in the County of Sussex to the London and Portsmouth Turnpike Road between the Fifty-second and Fifty-third Milestones near Sheet Bridge in the County of Southampton.
G. 4. c. xxviii. -	46. An Act for more effectually amending, widening, improving, and keeping in repair the Road from Wooler to the Great North Turnpike Road at or near to Adderstone Lane in the County of Northumberland.
G. 4. c. lxxxi. -	47. An Act for more effectually repairing, widening, altering, and improving the Road from Melton Mowbray in the County of Leicester to the Guide Post in Saint Margaret's Field, Leicester, and the Road branching from the said Road, at or near a certain Place in the Lordship of Barkby in the said County called the Round Hill, to the Town of Barkby.
G. 4. c. clviii. -	48. An Act for amending and maintaining the Road from the North End of Old Malton Gate in the Town and Borough of New Malton to the Town of Pickering in the County of York.
G. 4. c. xvi. -	49. An Act for more effectually repairing and improving the Roads from Manchester in the County Palatine of Lancaster to Salter's Brook in the County Palatine of Chester, and for making and maintaining several Extensions or Diversions of Road, and a new Branch of Road to communicate therewith.
G. 4. c. xxii. -	50. An Act for repairing the Road from Birmingham to Watford Gap in the Parish of Sutton Coldfield in the County of Warwick, and other Roads communicating therewith; <i>so far as the same relates to the Kingsbury Branch Road.</i>
G. 4. c. xxiv. -	51. An Act for more effectually repairing the Roads from Littlegate at the Top of Leadenham Hill in the County of Lincoln to Newark-upon-Trent, and from Newark-upon-Trent to Mansfield, and from Southwell to the South End of the Town of Oxtun in the County of Nottingham; <i>so far as the same relates to the Eastern District.</i>
G. 4. c. lxxv. -	52. An Act for more effectually amending, widening, altering, improving, and maintaining the Road from the Town of Alnwick in the County of Northumberland, by Eglington and Chatton, to the Great North Turnpike Road, near to Haggerston Toll Bar in the County of Durham.
G. 4. c. lxxviii. -	53. An Act for making, maintaining, and repairing certain Roads leading into and from the Town of Tewkesbury in the County of Gloucester, towards the Cities of Gloucester and Worcester, and the Towns of Cheltenham, Stow-on-the-Wold, Evesham, and Pershore, and certain other Roads therein mentioned, in the Counties of Gloucester and Worcester.
7 & 8 G. 4. c. xvi. -	54. An Act for more effectually repairing the Roads from the City of Gloucester to the Top of Birdlip Hill, and from the Foot of the said Hill to the Top of Crickley Hill, in the County of Gloucester.
7 & 8 G. 4. c. li. -	55. An Act for amending, improving, and maintaining in repair the Road between the Point at which the Great Roads from the City of Carlisle to the Cities of Edinburgh and Glasgow respectively separate, and Westlinton Bridge in the County of Cumberland.
7 & 8 G. 4. c. liv. -	56. An Act for repairing the Road from Dunchurch to Hillmorton in the County of Warwick, and from thence to Saint James's End in the Parish of Duston in the County of Northampton.
7 & 8 G. 4. c. lxii. -	57. An Act for more effectually repairing and improving the Road from Frodsham to the South End of Wilderspool Causeway, within Appleton, in the County Palatine of Chester; and for making and maintaining a certain Extension or new Branch of Road to communicate therewith.

Date of Act.	Title of Act.
7 & 8 G. 4. c. xc.	58. An Act for more effectually repairing and otherwise improving the Road from Crossford Bridge in the County Palatine of Lancaster to Altrincham in the County Palatine of Chester.
7 & 8 G. 4. c. xcix.	59. An Act for repairing the Road from the City of York to Kexby Bridge, and from Grimston to the Upper End of Stone Dale, in the County of York.
9 G. 4. c. xviii.	60. An Act for more effectually repairing the Road from Footscray, by Wrotham Heath, to Maidstone, and from the said Road into the Road from Mereworth to Hadlow, and for making and maintaining a Road from the said Road at Wrotham Heath to Teston, and from the said Road from Mereworth to Hadlow to Saint Leonard's Street in the Parish of West Malling, all in the County of Kent.
9 G. 4. c. xxxiv.	61. An Act for repairing the Road from Spernal Ash in the County of Warwick, through Studley, to Birmingham.
9 G. 4. c. xxxvi.	62. An Act for more effectually repairing the Roads from the Town of Cambridge to the Wadesmill Turnpike Road in the Parishes of Great Chishill and Little Chishill in the County of Essex, and from the said Town of Cambridge to Royston in the County of Cambridge.
9 G. 4. c. xlv.	63. An Act for repairing the Road leading from Ipswich to South Town, and from the said Road, at or near Beech Lane in the Parish of Darsham, to Bungay in the County of Suffolk.
9 G. 4. c. lxxxiii.	64. An Act for amending, diverting, and improving the present Roads, and making and maintaining certain new Roads between the Towns of Birstal and Huddersfield, in the West Riding of the County of York.
10 G. 4. c. xx.	65. An Act for more effectually improving and repairing the Road leading from the Turnpike Road at Wrotham Heath in the County of Kent to the Turnpike Road leading from Croydon to Godstone in the County of Surrey.
10 G. 4. c. liii.	66. An Act for repairing the Road from the East End of the Town of Newmarket over Newmarket Heath to the Turnpike Road to Stump Cross in the Counties of Cambridge and Suffolk, and the Road branching out of the aforesaid Road near the Devil's Ditch on Newmarket Heath to the present Turnpike Road to Cambridge.
10 G. 4. c. lxii.	67. An Act for repairing the Road leading from Tonbridge to Maidstone in the County of Kent.
10 G. 4. c. lxxviii.	68. An Act for more effectually repairing the Road from James Deeping Stone Bridge to Peter's Gate in Stamford in the County of Lincoln, and from thence to the South End of the Town of Morcott in the County of Rutland.
10 G. 4. c. lxxix.	69. An Act for improving and maintaining certain Roads in the Counties of Worcester, Warwick, Stafford, and Salop, called "The Dudley, Birmingham, Wolverhampton, and Streetway District;" <i>so far as the same relates to the Streetway and Wordsley Green and Wolverhampton and Cannock Roads.</i>
10 G. 4. c. lxxxiii.	70. An Act for consolidating the Trusts of certain Roads called "The Blue Vein and Bricker's Barn Turnpike Roads," in the Counties of Wilts and Somerset, and for more effectually repairing and improving the same.
11 G. 4. c. ix.	71. An Act for more effectually repairing the Roads to and from Longtown, and certain other Roads communicating therewith, in the County of Cumberland.
11 G. 4. c. xxxiv.	72. An Act for more effectually repairing and otherwise improving several Roads from Radstock to Buckland Dinham, Kilmerdon, Babington, and Hallastrow, and from Norton Down to Norton St. Philip, in the County of Somerset.

Date of Act.	Title of Act.
G. 4. & 1 W. 4. c. xc.	73. An Act for repairing the Road from Foston Bridge to the Division Stone on Witham Common in the County of Lincoln.
G. 4. c. civ. - -	74. An Act for more effectually repairing the Roads from Hand Cross, through Cowfold, to Corner House, and from thence to the Turnpike Road from Horsham to Steyning, and from Corner House aforesaid to the Maypole in the Town of Henfield, and certain Branches therefrom, all in the County of Sussex; <i>so far as the same relates to the Branch Road.</i>
G. 4. & 1 W. 4. c. cvi.	75. An Act for improving and maintaining the Road leading from Walsall to Muckley Corner near Lichfield, and other Roads in the County of Stafford.
W. 4. c. vii. - -	76. An Act for more effectually maintaining the Road from Crossford Bridge to the Town of Manchester in the County Palatine of Lancaster, and for making a Branch Road to communicate therewith.
& 2 W. 4. c. xiv. -	77. An Act for more effectually repairing the Road from Norwich to Cromer in the County of Norfolk, and Two Branches of Road leading towards Holt and towards Wolterton in the said County.
& 2 W. 4. c. xxi. -	78. An Act for more effectually repairing the Roads from the Borough of King's Lynn, and other Roads therein mentioned, and for making a new Line of Road at Castle Rising, all in the County of Norfolk.
& 2 W. 4. c. xxv. -	79. An Act for repairing and improving certain Roads in the Counties of Stafford and Salop, leading to and from the Town of Wolverhampton in the County of Stafford.
& 2 W. 4. c. xxxvii. -	80. An Act for maintaining the Road from Wakefield to Austerlands in the West Riding of the County of York.
W. 4. c. vi. - -	81. An Act for more effectually maintaining and improving the Roads from Birmingham to Wednesbury and to Great Bridge, and from thence to the Portway adjoining the Bilston and Wednesbury Turnpike Road, and to Nether Trindle near Dudley, and from Trowse Lane in the Parish of Wednesbury to Darlaston, in the Counties of Warwick, Stafford, and Worcester; and for making new Branches of Road communicating therewith.
W. 4. c. xvi. - -	82. An Act for more effectually improving the Road from Burford to Banbury in the County of Oxford, and from Burford to the Road leading to Stow in the County of Gloucester, and from Swerford Gate in the County of Oxford to the Road in Aynho in the County of Northampton; and for making a new Branch of Road to communicate with the same.
W. 4. c. xx. - -	83. An Act for more effectually repairing and otherwise improving the Road from Doncaster to Bawtry in the County of York.
W. 4. c. xxii. -	84. An Act for more effectually repairing the Road leading from Boroughbridge in the County of York to the City of Durham, and for making and maintaining certain Deviations therein; <i>so far as the same relates to that Part of the Road situate in the County of York.</i>
W. 4. c. xxxiv. -	85. An Act for more effectually repairing the Road from the Sessions House in the Town of Buckingham to Hanwell in the County of Oxford; <i>so far as the same relates to the Lower Division.</i>
W. 4. c. li. - -	86. An Act for maintaining several Roads leading to and from the Town of Tamworth in the Counties of Stafford and Warwick.
W. 4. c. lxxi. -	87. An Act for more effectually repairing the First District of the Road from Coleshill, through the City of Lichfield and the Town of Stone, to the End of the County of Stafford in the Road leading towards Chester, and several other Roads in the Counties of Warwick and Stafford and City and County of the City of Lichfield.
W. 4. c. xcvi. - -	88. An Act for repairing and improving the Road from the Great Bridge in the Borough of Warwick, through Southam and Daventry, to the Town of Northampton.

Date of Act.	Title of Act.
3 W. 4. c. xv. - -	89. An Act for more effectually repairing the Road from the City of Norwich to the Windmill in the Town of Watton in the County of Norfolk, and for making a new Branch of Road to communicate therewith.
3 W. 4. c. xvi. - -	90. An Act for repairing the Road from Wellsbourn Mountfort to Stratford-upon-Avon in the County of Warwick.
3 W. 4. c. xxxix. - -	91. An Act for more effectually repairing, altering, widening, and otherwise improving the Road from Ber Street Gates in the City of Norwich to New Buckenham in the County of Norfolk.
3 W. 4. c. xli. - -	92. An Act for repairing the Road from Upton in Ratley to Great Kington and Wellesbourne Hastings in the County of Warwick.
3 W. 4. c. xlii. - -	93. An Act for more effectually repairing the several Roads leading from the Towns of Hertford and Ware and other Places in the County of Hertford.
3 W. 4. c. xliii. - -	94. An Act for more effectually repairing the Road from Lewes to Bright-helmston in the County of Sussex.
3 W. 4. c. lv. - -	95. An Act for more effectually repairing the Roads leading from the City of Gloucester towards the City of Hereford, and also towards Newent and Newnham in the County of Gloucester, Ledbury in the County of Hereford, and Upton-upon-Severn in the County of Worcester.
3 W. 4. c. lvi. - -	96. An Act for more effectually repairing the Road from the North End of the Road called the Coal Road, near West Auckland in the County of Durham, to the Elsdon Road, near Elishaw in the County of Northumberland.
3 W. 4. c. lvii. - -	97. An Act to amend an Act passed in the Seventh Year of the Reign of His late Majesty King George the Fourth, for repairing the Roads from Manchester to Salter's Brook, and for making several Roads to communicate therewith; and also for making a certain new Extension or Diversion of the said Roads instead of a certain Extension or Diversion by the said Act authorized to be made.
3 & 4 W. 4. c. lxxxiii. -	98. An Act for repairing, maintaining, and improving the Road from Tadcaster Bridge within the County of the City of York to Hob Moor Lane End.
3 & 4 W. 4. c. xcvi. - -	99. An Act for more effectually repairing the Road from Bury Saint Edmunds to Newmarket in the Counties of Suffolk and Cambridge.
5 W. 4. c. xx. - -	100. An Act for repairing the Road from Farnborough to Riverhill in the Parish of Sevenoaks in the County of Kent, and for making several Diversions in the said Road.
5 W. 4. c. xl. - -	101. An Act for more effectually repairing the Road from Saint Benedict's Gate in the County of the City of Norwich to Swaffham in the County of Norfolk, and from Halfpenny Bridge in Honingham to the Bounds of Yaxham, and also a Lane called Hangman's Lane, near the Gates of the said City.
5 & 6 W. 4. c. lxi. - -	102. An Act for improving and more effectually repairing the several Roads leading into and from the City of Worcester; so far as the same relates to the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Districts of Roads.
5 & 6 W. 4. c. lxiv. - -	103. An Act for repairing the Roads from Sevenoaks Common to Woodsgate, Tunbridge Wells, and Kipping's Cross, and from Tunbridge Wells to Woodsgate, in the County of Kent.
6 W. 4. c. ii. - -	104. An Act to amend an Act passed in the Fifth Year of the Reign of His present Majesty, for repairing the Road from Farnborough to Riverhill in the Parish of Sevenoaks in the County of Kent; and for making a new Line of Road to communicate therewith.
6 W. 4. c. i. - -	105. An Act for the more effectually repairing, improving, and maintaining the Road from the Town of Ashford to the Town of Maidstone in the County of Kent.

Date of Act.	Title of Act.
W. 4. c. lxxv.	106. An Act to amend an Act passed in the Ninth Year of the Reign of King George the Fourth, for diverting, improving, and maintaining the Roads between the Towns of Birstal and Huddersfield in the West Riding of the County of York.
W. 4. c. xvii.	107. An Act for amending an Act of His present Majesty, for repairing the Roads from Sevenoaks Common to Woodsgate, Tunbridge Wells, and Kipping's Cross, and from Tunbridge Wells to Woodsgate in the County of Kent.
& 7 Vict. c. xxvi.	108. An Act for repairing and improving certain Roads in the Neighbourhood of Trentham and Stone in the County of Stafford, and for making and maintaining a new Road from Trentham Inn to the Newcastle-under-Lyme and Market Drayton Turnpike Road in the same County, and another new Piece of Road in the Parish of Trentham aforesaid; so far as the same relates to the <i>Walton in Stone to Eccleshall or Second District of Roads</i> .
1 & 12 Vict. c. cxxxvii.	109. An Act to enable the Trustees of the Worcester Turnpike Road to make certain new Roads, and to improve and more effectually maintain the several Roads leading into and from the City of Worcester; so far as the same relates to the <i>First, Second, Third, Fourth, Fifth, Sixth, and Seventh Districts of Roads</i> .
1 & 12 Vict. c. cxlvi.	110. An Act for altering and amending an Act passed for maintaining the Road from Crossford Bridge to Manchester, and a Branch connected therewith.

FOURTH SCHEDULE.

(Turnpike Trusts nearly out of Debt and continued by the Annual Turnpike Acts Continuance Act.)

acts which are to continue until the 30th of June 1870, unless Parliament in the meantime otherwise provides.

County.	Name of Trust.	Tolls in 1866.	Debt in 1866.	No. of Act.
		£	£	Pr. Cent.
Bedford	Barford	430	183	5
	Hitchin and Bedford	554	34	4
Berks	Reading and Basingstoke	860	200	5
Cheshire	Macclesfield, District of the Sandon	880	345	4
	Span Smithy, Booth Lane, and Winsford	400	72	5
Derby	Nottingham Road: from Derby to Risley	570	350	4
Durham	Boroughbridge and Durham (Part). See also No. 84 in Third Schedule.	925	580	5
	Bowes and Sanderland Bridge	1,037	100	5
	Darlington and Cockerton Bridge (United)	687	250	5
Essex	Epping and Ongar	1,413	500	5
	Hockerill	1,137	250	5
Hants	Winchester and Alton, Lower District. See also No. 13 in Third Schedule.	450	300	4½
Hereford	Blue Mantle Hall	355	200	5
Hunts	Godmanchester to Cambridge	676	260	4
Kent	Dartford and Strood	1,146	600	4½ & 5

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County.	Name of Trust.	Tolls in 1866.	Debt in 1866.	No. of Act.
		£	£	Pr. Cent.
Lancaster	Barton Bridge and Moses' Gate	1,352	500	4½
	Hulton	767	50	5
	Manchester, Oldham, and Austerlands	8,939	1,857	5
	Pendleton Roads	8,248	973	4
	Penwortham and Wrightington	1,006	400	5
Leicester	Burton Bridge to Market Bosworth	1,350	50	5
Lincoln	Bridge End	499	250	5
Northampton	Wansford and Stamford. <i>See also No. 40 in Third Schedule.</i>	288	25	4
Nottingham	Nottingham and Derby, Eastern Division	837	250	4
Oxford	Barrington and Campsfield	470	100	5
Somerset	Frome	1,694	1,100	4½
Stafford	Ashby-de-la-Zouch to Tutbury	1,258	150	5
	Newport and Stonnall	538	200	5
	Walsall and Hamstead	527	250	4½
Warwick	Birmingham and Stratford-on-Avon	1,095	300	4½
	Coventry and Wolvey	279	41	4
	Warwick, Paddlebrook, and Stratford	738	200	4½
Worcester	Birmingham and Bromsgrove	953	392	4
	Dudley and Brettell Lane (<i>United with Dudley, Pedmore, and Roncley Trust, see No. 9 in Sixth Schedule.</i>)	—	—	—
	Tenbury	450	200	4
York	Dewsbury and Ealand	1,660	624	5
	Halifax and Sheffield: Huddersfield to Penistone	1,003	400	4
	Rotherham and Swinton	853	457	4
	Rotherham and Wentworth	—	—	—
Denbigh	Llanrwst	788	100	5
Warwick	Ansley and Whitacre	64	2,600	One Penny.

Date of Act.	Title of Act.
53 G. 3. c. vi.	1. An Act for repairing the Road from the City of Coventry to the Rugby Turnpike Road in the Parish of Wolvey in the County of Warwick.
53 G. 3. c. xxv.	2. An Act for continuing and amending an Act of His present Majesty, for repairing the Roads leading from Bowes in the County of York, through Barnard Castle and Bishop Auckland, to join the Great North Road near Sunderland Bridge in the County of Durham.
53 G. 3. c. xli.	3. An Act for more effectually repairing the Road from the Horseshoe Corner in Godmanchester in the County of Huntingdon to the South-east End of Castle Street in the Town of Cambridge in the County of Cambridge.
54 G. 3. c. xvii.	4. An Act for enlarging the Term and Powers of Two Acts, passed in the Twelfth and Thirty-third Years of His present Majesty, for repairing the Road from the Parish of Cardington to the Great Northern Road near Temsford Bridge in the County of Bedford, and for making and maintaining a Road branching out of the same at Roxton Hill to the South End of the Turnpike Road leading from Bedford to Kimbolton in the County of Huntingdon.

Date of Act.	Title of Act.
56 G. 3. c. xxxiii.	5. An Act to rectify a Mistake in an Act of the Fifty-third Year of His present Majesty, for repairing the Roads from Bowes in the County of York to join the Great North Road near Sunderland Bridge in the County of Durham.
57 G. 3. c. xxvi.	6. An Act for amending the Roads leading from Basingstone near Bagshot, through Farnham in the County of Surrey, and Alton and New Alresford, to Winchester in the County of Southampton; <i>so far as the same relates to the Lower District.</i>
59 G. 3. c. xci.	7. An Act for enlarging the Term and Powers of Two Acts of His present Majesty, for repairing the Road from Huddersfield to Penistone in the County of York.
1 & 2 G. 4. c. xxxii.	8. An Act for continuing and amending Three Acts of Their late Majesties King George the Second and King George the Third, for repairing the Road from Newport in the County of Salop to Welsh Harp in the Township of Stonnall in the County of Stafford.
1 & 2 G. 4. c. lxxxi.	9. An Act for repairing the Road from Birmingham, through Stratford-upon-Avon, to Stratford Bridge in the County of Warwick.
3 G. 4. c. xlviii.	10. An Act for more effectually repairing and widening the Roads from Spann Smithy, through Middlewich and by Spittle Hill in Stanthorn, to Winsford Bridge, and from Spittle Hill to Northwich in the County Palatine of Chester.
3 G. 4. c. lii.	11. An Act for more effectually making, repairing, and improving the Road leading from Reading in the County of Berks to Basingstoke in the County of Southampton.
3 G. 4. c. lxx.	12. An Act for repairing, widening, and maintaining the Road leading from Dartford to and through Northfleet and Gravesend, and thence to the Stone's End near the Parish Church of Strood in the County of Kent.
4 G. 4. c. xxv.	13. An Act for more effectually amending, widening, and keeping in repair several Roads in and near to the Town of Tenbury in the Counties of Salop, Worcester, and Hereford, and the Roads leading from the Knowle Gate to the Turnpike Road on the Clee Hill, and from Kyre Mill to the Turnpike Road leading from Bromyard to Tenbury.
4 G. 4. c. cxi.	14. An Act for more effectually repairing the Road from Wansford Bridge in the County of Northampton to Stamford, and from Stamford to Bourn in the County of Lincoln; <i>so far as the same relates to the Wansford District.</i>
5 G. 4. c. xxiv.	15. An Act for amending, repairing, and maintaining the Road from Sandon in the County of Stafford to Bullock Smithy in the County of Chester, and from Hilderstone to Draycott-in-the-Moors, and from Wetley Rocks to Tean in the said County of Stafford; <i>so far as the same relates to the "Macclesfield District of Road."</i>
5 G. 4. c. ci.	16. An Act for more effectually repairing the Road from Ashby-de-la-Zouch in the County of Leicester, through Burton-upon-Trent in the County of Stafford, to Tutbury in the said County of Stafford.
5 G. 4. c. cxlii.	17. An Act for amending and widening the Roads leading from Stretford's Bridge in the County of Hereford to the Cross Moor or Long Meadow End in the County of Salop, and other Roads therein mentioned in the said County of Hereford.
6 G. 4. c. ii.	18. An Act for repairing and maintaining the Road from Penwortham Bridge to the Boundary between the Townships of Wroughtington and Shevington and the Road from Lydiate Lane End to a Bridge called Little Hanging Bridge, all in the County of Lancaster.
6 G. 4. c. xlvii.	19. An Act for more effectually amending, widening, and maintaining the Road from Barton Bridge in the Parish of Eccles, through the Township of Worsley, to Moses Gate in the Township of Farnworth, and for

Date of Act.	Title of Act.
	making, repairing, and improving other Roads to communicate therewith, all in the County Palatine of Lancaster.
6 G. 4. c. lii. - -	20. An Act for amending and repairing the Turnpike Road leading from the North End of the Town of Rotherham to the East Side of Tankersley Park in the County of York.
6 G. 4. c. liii. - -	21. An Act for repairing the Road branching out of the Great North Road by the Guide Post at the South End of Spittlegate in the Parish of Grantham in the County of Lincoln, and leading from thence to the Turnpike Road at or near Bridge End in the same County.
7 G. 4. c. xx. - -	22. An Act for amending an Act of His present Majesty, for repairing the Road from Sandon in the County of Stafford to Bullock Smithy in the County of Chester, and from Hilderstone to Draycott-in-the-Moors, and from Wetley Rocks to Tean, in the County of Stafford; so far as relates to the Macclesfield District of the Road, and for making a Diversion of Road in the said District.
7 G. 4. c. lxxvii. -	23. An Act for more effectually amending and keeping in repair the Road called the Hulton Turnpike Road, lying between Knocket Wall Brook and the White Horse in West Houghton in the County Palatine of Lancaster.
7 & 8 G. 4. c. xxvi. -	24. An Act for repairing the Roads from Warwick to Paddlebrook in the Parish of Stretton-on-the-Fosse, and from Warwick to Stratford-upon-Avon, in the Counties of Warwick and Worcester.
7 & 8 G. 4. c. xxvii. -	25. An Act for more effectually repairing and otherwise improving the Road from the East End of Chapel Bar in Nottingham to the New China Works near Derby, and from the Guide Post in the Parish of Lenton to Sawley Ferry, all in the Counties of Nottingham and Derby.
7 & 8 G. 4. c. lviii. -	26. An Act for amending, repairing, and maintaining the Turnpike Road from Rotherham to Swinton in the West Riding of the County of York.
10 G. 4. c. xxi. - -	27. An Act for more effectually repairing, widening, and improving the Road from Harlow Bush Common in the Parish of Harlow in the County of Essex to Stump Cross in the Parish of Great Chesterford in the same County, and for making and maintaining Two new Lines of Road communicating therewith.
1 W. 4. c. x. - -	28. An Act for repairing the Road from Burton Bridge in the County of Stafford to Market Bosworth in the County of Leicester.
1 W. 4. c. xi. - -	29. An Act for repairing the Road from Birmingham to Bromsgrove.
1 W. 4. c. xlv. - -	30. An Act for improving and maintaining several Roads leading to and from the Town of Walsall in the County of Stafford.
1 & 2 W. 4. c. lxvi. -	31. An Act for better repairing and improving several Roads leading to and from the Town of Frome in the County of Somerset.
2 W. 4. c. xxii. - -	32. An Act for more effectually repairing the Road leading from Boroughbridge in the County of York to the City of Durham, and for making and maintaining certain Deviations therein; so far as the same relates to that Part of the Road situate in the County of Durham.
2 W. 4. c. lxxxiv. -	33. An Act for maintaining and improving certain Roads within the Counties of Worcester and Stafford called "The Dudley and Brettell Lane District of Roads," and for making several Branches from such Roads.
4 & 5 W. 4. c. xciv. -	34. An Act for making, improving, and keeping in repair the Roads leading from Barrington to Campsfield and Enslow Bridge in the County of Oxford.
5 W. 4. c. xxv. - -	35. An Act for more effectually repairing the Darlington and West Auckland and the Cockerton Bridge and Staindrop Roads in the County of Durham, and for consolidating the Trusts thereof.

Date of Act.	Title of Act.
W. 4. c. xxxix.	36. An Act for more effectually repairing and improving the Road from the Town of Hitchin, through Shefford, to the Turnpike Road from Saint Albans to Bedford, and also the Road from the Turning out of the said Road to Henlow and Gerford Bridge, and other Roads therein mentioned, in the Counties of Hertford and Bedford.
W. 4. c. xlix.	37. An Act for more effectually repairing the Roads from Harlow Bush Common to and into the Parish of Woodford, and the Road from Epping to Writtle, and other Roads therein mentioned, all in the County of Essex.
& 7 W. 4. c. cxviii.	38. An Act for repairing, maintaining, and improving the Road from Dewsbury to Ealand in the West Riding of the County of York.
W. 4. c. xxxv.	39. An Act for more effectually repairing, improving, and maintaining certain Roads leading to and from the Town of Llanrwst in the County of Denbigh.
W. 4. c. xliii.	40. An Act for more effectually amending the Roads from Manchester in the County of Lancaster, through Oldham, to Austerlands in the County of York, and from Oldham to Ashton-under-Lyne, and from Oldham to Rochdale, and other Roads, and for making and maintaining new Lines to communicate therewith, all in the said County of Lancaster.
16 & 17 Vict. c. cxxxv.	41. An Act for more effectually repairing and improving several Roads leading to and from the Town of Salford, through Pendleton, and other Places in the County Palatine of Lancaster.
W. 4. c. xiv.	42. An Act for repairing the Watling Street Road, the Manchester and Wolvey Heath Road, and other Roads communicating therewith, in the Counties of Leicester and Warwick, so far as the same relates to the <i>Ansley and Whitacre District of Road</i> .

FIFTH SCHEDULE.

(*Turnpike Trusts out of Debt, and the Local Acts not yet expired.*)

Acts which are to be repealed on and after the 30th of June 1870, unless Parliament in the meantime otherwise provides.

County.	Name of Trust.	No. of Act.
Bedford	Bedford and Luton	4
Berks	Chilton Pond	17
Bucks	Colnbrook, Datchet, and Slough	12
Cambridge	Cambridge and Ely (The South District)	23
	Stump Cross	11
Chester	Nantwich and Woore	24
	Stockport and Warrington, and Washway (United). <i>See also</i> <i>No. 58. in Third Schedule.</i>	27
Cumberland	Carlisle and Temon	1, 2
Durham	Gateshead and Hexham	26
Leicester	Hinckley and Narborough	18
Lincoln	Lincoln : Newark Road	15, 19
	„ Sleaford Road	

Date of Act.	Title of Act.
3 Vict. c. xxxviii. - <i>Limited to expire at End of Session after 19 May 1871.</i>	10. An Act for repairing and maintaining a Road from Banbury in the County of Oxford to Lutterworth in the County of Leicester, and other Roads communicating therewith.
4 Vict. c. xx. - - <i>Limited to expire at End of Session after 1 June 1872.</i>	11. An Act for maintaining certain Roads in the County of Cambridge, to be called "The Stumpcross Roads."
4 Vict. c. xxxiii. - - <i>Limited to expire at End of Session after June 1872.</i>	12. An Act for more effectually repairing the Road from Cranford Bridge to Maidenhead Bridge, with Roads thereout to Eton, Town End, and to the Great Western Railway, and from Langley Broom to Datchet Bridge, all in the Counties of Middlesex and Bucks.
4 & 5 Vict. c. xcvi. - <i>Limited to expire at End of Session after July 1872.</i>	13. An Act for more effectually widening and improving the Road from Wells to Highbridge, with a Road thereout to Cheddar, all in the County of Somerset.
4 & 5 Vict. c. cv. - <i>Limited to expire at End of Session after July 1872.</i>	14. An Act to amend an Act passed in the Eleventh Year of the Reign of King George the Fourth, for repairing and improving the Road from Brighton to Shoreham and Lancing in the County of Sussex; and for other Purposes connected therewith.
4 & 5 Vict. c. cviii. - <i>Limited to expire at End of Session after July 1872.</i>	15. An Act for more effectually repairing, maintaining, and improving certain Roads leading to and from the City of Lincoln; so far as the same relates to the "Newark Road" and to the "Sleaford Road."
4 & 5 Vict. c. cix. - <i>Limited to expire at End of Session after 8 July 1872.</i>	16. An Act for repairing the Turnpike Road from Tinsley to Doncaster, and for making certain new Lines of Road to communicate with the same, all in the West Riding of the County of York; so far as the same relates to the Sheffield and Tinsley Road.
4 & 5 Vict. c. cxi. - <i>Limited to expire at End of Session after 7 July 1872.</i>	17. An Act for repairing and maintaining the Road from the Mayor's Stone in Abingdon to Chilton Pond in the County of Berks.
5 & 6 Vict. c. lxx. - <i>Limited to expire at End of Session after June 1873.</i>	18. An Act for more effectually repairing the Roads from the Borough of Leicester to Narborough, and from the said Borough of Leicester to Earl Shilton, and from Earl Shilton to Hinckley, all in the County of Leicester.
5 & 6 Vict. c. lxxxi. - <i>Limited to expire at End of Session after July 1872.</i>	19. An Act to explain and amend an Act passed in the Fourth and Fifth Years of the Reign of Her present Majesty, for more effectually repairing, maintaining, and improving certain Roads leading to and from the City of Lincoln; so far as the same relates to the "Newark Road" and to the "Sleaford Road."
12 & 13 Vict. c. lxiv. - <i>Limited to expire at End of Session after 8 July 1872.</i>	20. An Act to extend the present Tinsley and Doncaster Turnpike Road from Tinsley to Sheffield, and for other Purposes.
15 Vict. c. lxxxi. - <i>Limited to expire at End of Session after July 1873.</i>	21. An Act for maintaining the Road from Beach Down near Battle to Heathfield, and from the Railway Station near the Town of Robertsbridge to Hood's Corner, all in the County of Sussex.
15 & 16 Vict. c. xxxiii. - <i>Limited to expire at End of Session after 26 October 1873.</i>	22. An Act to repeal the Act relating to the Road from the Town of Kingston-upon-Thames in the County of Surrey to Sheetbridge near Petersfield in the County of Southampton; and to make other Provisions in lieu thereof.
15 & 16 Vict. c. xxxiv. - <i>Limited to expire at End of Session after 29 September 1873.</i>	23. An Act for more effectually maintaining and keeping in repair the Road from Cambridge to Ely, and other Roads therein mentioned, in the Counties of Cambridge and Norfolk; so far as the same relates to the "South District."

Date of Act.	Title of Act.
16 & 17 Vict. c. cxlvii. - <i>Limited to expire at End of Session after 30 October 1874.</i>	24. An Act to repeal the Act relating to the Nantwich and Woom Turnpike Road, and to make other Provisions in lieu thereof.
17 & 18 Vict. c. cix. - <i>Limited to expire at End of Session after 1 November 1875.</i>	25. An Act to repeal an Act for enlarging the Term and Powers of an Act of His late Majesty George the Third, for repairing the Road from Saint Martin Stamford Baron to Kettering, and from Oundle to Middleton Lane, in the County of Northampton; and to make other Provisions in lieu thereof; so far as the same relates to the Fins District.
18 & 19 Vict. c. clxxv <i>Limited to expire at End of Session after 1 November 1876.</i>	26. An Act for maintaining and improving the Road from Gateshead in the County of Durham to the Hexham Turnpike Road near Dilton in the County of Northumberland, and other Roads connected therewith.
19 & 20 Vict. c. lxxvi. - <i>Limited to expire at End of Session after 1 November 1877.</i>	27. An Act for more effectually repairing certain Roads in the County of Chester, of which the Short Title is "Stockport and Warrington Road Act, 1856."

SIXTH SCHEDULE.

(Turnpike Trusts nearly out of Debt, and the Local Acts not yet expired.)

Acts which are to be repealed on and after the 30th of June 1870, unless Parliament in the meantime otherwise provides.

County.	Name of Trust.	Tolls in 1866.	Debt in 1866.	No. of Act.
		£	£	Pr Cent.
Chester - - -	Woodside and Hoylake - - - - -	343	60	5
Derby - - -	Derby, Ashborne, and Hurdloe - - - -	785	100	4½
Durham - - -	Wearmouth Bridge to Tyne Bridge and Branch -	1,864	803	5
	South Shields - - - - -	456	1,140	3½
Hants - - -	Andover and Basingstoke - - - - -	786	300	4
	Basingstoke, Odiham, and Alton - - - -	735	200	3
Leicester - -	Ashby-de-la-Zouch - - - - -	1,386	625	5
Northampton -	Kettering and Northampton - - - - -	633	345	3
Nottingham -	Nottingham and Newhaven, First District -	2,220	450	4
Stafford - -	Lawton, Burslem, and Newcastle-under-Lyne -	2,220	200	4
Wilts - - -	Trowbridge - - - - -	1,515	571	4
Worcester - -	Dudley and Brettell Lane, and Pedmore and Bowley (United). (See also No. 83 in Fourth Schedule.)	5,934	1,390	3
York - - -	Wakefield and Halifax - - - - -	988	300	5

Date of Act.	Title of Act.
9 G. 4. c. lxxix. - <i>Limited to expire at End of Session after 5 June 1872.</i>	1. An Act for diverting, widening, repairing, and improving the Road from the Town of Derby to the South End of Compton Street next Ashborne, and from Ashborne to Hurdloe House in the County of Derby, and that Part of the said Road called the Old Road leading from Hardy's Hill Toll Gate unto Compton.
1 Vict. c. xliii. - - <i>Limited to expire at End of Session after 11 June 1869.</i>	2. An Act for repairing and maintaining the Roads leading from Wakefield to Halifax, and from near Hipperholme Bar to near Stump Cross, all in the West Riding of the County of York.
2 Vict. c. xxii. - - <i>Limited to expire at End of Session after 1 September 1870.</i>	3. An Act for more effectually repairing and improving the Road from Wearmouth Bridge to Tyne Bridge, with a Branch from the said Road to the Town of South Shields, all in the County of Durham.
2 Vict. c. xlv. - - <i>Limited to expire at End of Session after 1 July 1870.</i>	4. An Act for repairing several Roads leading to the Towns of Basingstoke, Odiham, and Alton, in the County of Southampton, and for making several Deviations in the Line of the said Roads.
3 Vict. c. xxxi. - - <i>Limited to expire at End of Session after April 1871.</i>	5. An Act for more effectually repairing the Road from Basingstoke in the County of Southampton to Lobcomb Corner in the County of Wilts, and other Roads therein described; and for making a new Road from the said Road at the Eastern Entrance of the Town of Andover to the Warren Farm Station on the London and South-western Railway in the said County of Southampton; so far as the same relates to the Andover and Basingstoke District.
4 & 5 Vict. c. cxiv. - <i>Limited to expire at End of Session after June 1872.</i>	6. An Act for maintaining and repairing as Turnpike a certain Road commencing at or near the North-west Gate of the Woodside Hotel Stable Yard in the Township or Chapelry of Birkenhead, and terminating at or near the Cottage of Henry Berry in the Township of Little Meols in the Parish of West Kirby in the County of Chester; and for levying Tolls for that Purpose.
5 Vict. c. lxxiv. - <i>Limited to expire at End of Session after June 1873.</i>	7. An Act for more effectually repairing the Road from the Borough of Leicester in the County of Leicester to the Town of Ashby-de-la-Zouch in the said County.
14 Vict. c. xxxiv. - <i>Limited to expire at End of Session after 5 June 1872.</i>	8. An Act for continuing the Term of the Derby, Ashborne, and Hurdlo Road Act; and for other Purposes.
15 Vict. c. lxxxvi. - <i>Limited to expire at End of Session after 21 October 1873.</i>	9. An Act to repeal the Acts and Parts of Acts relating to the Pedmore and Holly Hall Districts of Roads, and to substitute other Provisions for the same.
15 Vict. c. xcix. - - <i>Limited to expire at End of Session after 30 October 1873.</i>	10. An Act to repeal an Act for repairing the Road from Kettering to the Town of Northampton in the County of Northampton, and to substitute other Provisions in lieu thereof.
17 Vict. c. xlvii. -	11. An Act to renew the Term and continue certain of the Powers of an Act passed in the Seventh Year of the Reign of His Majesty King George the Fourth, intituled "An Act for making and maintaining a Turnpike Road from South Shields to White Mere Pool, and from thence to join the Durham and Newcastle Turnpike Road at Vigo Lane, with a Branch from Jarrow Slake to East Boldon, all in the County of Durham."
17 & 18 Vict. c. lxxv. - <i>Limited to expire at End of Session after 1 November 1875.</i>	12. An Act to create a further Term in the Trowbridge Roads, to add other Roads to the Trust, to amend and extend the Act relating to the said Roads; and for other Purposes.

Date of Act.	Title of Act.
18 & 19 Vict. c. xcii. - <i>Limited to expire at End of Session after 1 January 1877.</i>	13. An Act for continuing the Term of the Nottingham and Newhaven Turnpike Road and Districts Act; and for other Purposes; so far as the same relates to the First District.
22 & 23 Vict. c. lxxvii. <i>Limited to expire at End of Session after 1 November 1880.</i>	14. An Act to repeal the Acts relating to the Lawton, Burslem, and New-castle-under-Lyme Turnpike Roads, and to consolidate and amend the Provisions thereof.

CAP. C.

Court of Session Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. Short Title.
2. Interpretation of Terms.
3. Commencement of Act.

I.—JUDICIAL ARRANGEMENTS.

4. *Sittings of Court of Session regulated.*
5. *Court may extend Sittings of Inner House in certain Cases.*
6. *Blank Days of Lords Ordinary abolished.*
7. *Court to meet at 10 a.m.*
8. *Divisions may meet on Mondays during Session.*
9. *Quorum of Teind Court which shall meet on alternate Mondays.*
10. *Registration Appeals to be heard on Monday.*
11. *Hearings before consulted Judges to be taken on Mondays.*
12. *Case of Illness or Absence of Judges provided for.*

II.—SUMMONS.

13. *Summonses may be signed by any Agent practising before the Court of Session.*
14. *Induciae of Summonses and other Writs passing the Signet shortened.*
15. *As to proving lost Summonses or Pleading.*
16. *Certified Copy may be used in place of Original in Service of Summonses and Writs.*
17. *Dort Advocate's Concurrence not to be necessary in Actions of Redaction-Improbation and Ranking and Sale.*
18. *Warrant of Inhibition may be inserted in Will of Summons. Publication of such Warrants and Letters of Inhibition.*
19. *Summonses against certain Defenders, &c. may be served by Sheriff Officers.*
20. *Amendment of Summonses and Pleadings in undefended Causes.*
21. *Party appearing not to state Objections to Execution of Summonses, &c.*

III.—CALLING AND DECREE IN ABSENCE.

22. *New Procedure in reference to Calling of Summonses and Enrolment for Decree.*
23. *Mode of obtaining Decrees in Absence.*
24. *Certain Decrees in Absence to have Effect as Decrees in foro.*

IV.—RECORD, MOTIONS, AND PROBATION.

25. *Revisal of Pleadings not to be allowed as Matter of Course.*
26. *Procedure after Pleadings completed, and Adjustment of Pleadings.*
27. *Procedure after Record closed, and Adjustment of Issues.*
28. *Review of certain Interlocutors of the Lord Ordinary.*
29. *Amendment of Records in defended Actions.*
30. *Pleadings in Actions of Multiple-poiniding.*
31. *Motions in the Outer House.*
32. *Regulations as to Time of addressing the Court in Proofs under the Conjugal Rights and Evidence Acts.*
33. *Time of Trial of Cases under the Conjugal Rights and Evidence Acts.*

V.—JURY TRIAL.

34. *Exceptions taken at a Jury Trial may be insisted in, either by Motion for New Trial, or by Bill of Exceptions.*
35. *Form of Bill of Exceptions ; Evidence need not be set forth at length in the Bill.*
36. *Verdict may be taken subject to the Opinion of the Court on a Point reserved.*
37. *Evidence may of Consent be taken in Shorthand.*
38. *Special Case may be substituted for Special Verdict.*
39. *Abandonment of Action in the course of a Trial.*
40. *Pursuer recovering less than 5l. of Damages not to recover Expenses unless the Judge shall certify.*
41. *Provision for Payment of deficient Stamp Duty pursuant to Judge's Certificate to be final.*
42. *Clerk to remit the Duty, &c. to Commissioners of Inland Revenue.*
43. *Certain Exemptions from serving as Jurors abolished.*
44. *In Civil Causes Juries to consist of Eight Common and Four Special Jurors.*
45. *Mode of returning Jurors.*
46. *Provisions for Trial of Civil Causes by Jury at Circuit.*
47. *Jurors to be cited by registered Post Letter.*
48. *Verdicts may be returned by a Majority.*
49. *Remuneration of Jurors.*
50. *Inferior Court Agents to act at Jury Trials on Circuit.*

VI.—INNER HOUSE PROCEDURE.

51. *Form of Reclaiming Notes.*
52. *Effect of a Reclaiming Note against a Final Judgment.*
53. *Definition of Final Judgment in the Outer House.*
54. *No Appeal allowed against Interlocutory Judgment without Leave ; Effect of such Appeal.*
55. *Disposal of such Reclaiming Notes.*
56. *After Reclaiming Note against a Final Judgment, Cause not to be remitted to Outer House.*
57. *Inner House may order Repayment of Money, &c.*
58. *Hearing of Motion for New Trials, &c.*
59. *Provision for Rehearing before Five Judges in case of equal Division of Opinion.*
60. *Cases of Difficulty and Importance may be referred to Seven Judges in place of to the whole Court.*
61. *New Trial not to be granted if Court equally divided.*
62. *Amendment of 29 & 30 Vict. c. 112. s. 3.*
63. *Special Cases on Questions of Law.*

VII.—APPEALS FROM INFERIOR COURTS.

64. *Process of Advocation abolished.*
65. *Appeals substituted for Advocation.*
66. *Form of Note of Appeal.*
67. *Not competent to appeal after Six Months from Date of Final Judgment.*
68. *Time at which Interlocutors of Inferior Courts may be extracted.*
69. *Effect of Appeals under this Act.*

70. *Notice of Appeal.*
71. *Form of bringing Appeals into Court of Session.*
72. *Proof and Judgment upon Appeals.*
73. *Appeal under s. 40. of 6 G. 4. c. 120.*
74. *Procedure in place of Advocations ob contingentiam.*
75. *Exclusion of Review in such Cases.*
76. *Appeals substituted for Advocations under special Enactments.*
77. *Provisions for completing Record in Processes removed to the Court of Session by Appeal.*
78. *Exclusion of Review by Advocation under special Enactments to imply Exclusion of Review by Appeal.*
79. *Regulation of Interim Possession pending Appeal to the Court of Session.*
80. *How far Provisions of Part VII. to apply to depending Actions.*

VIII.—ACCOUNTINGS, SUSPENSIONS, AND SUMMARY PETITIONS.

81. *Accountant may be required to attend Debate, and assist in settling the Terms of the Remit.*
82. *Accountant to have Power to compel Production of Documents, and Attendance of Parties and Witnesses.*
83. *In case of Default Accountant to proceed ex parte.*
84. *Accountant may apply to Court for special Direction.*
85. *Parties may appeal from Accountant, or move the Court for special Direction.*
86. *Accountant to report Results in the Form of a Certificate of his Opinion.*
87. *Court empowered to take the Assistance of the Accountant in applying their Judgment so as to bring out Results.*
88. *Procedure when Remit to Accountant made by the Lord Ordinary.*
89. *Lord Ordinary on Bills, &c. may grant Warrant ad factum prestandum.*
90. *As soon as Note passed in Bill Chamber, Cause to become Court of Session Process.*
91. *Questions of Possession or specific Performance may be presented in the Form of a summary Petition.*
92. *Appointment of Judicial Reporters on summary Petitions.*

IX.—MISCELLANEOUS PROVISIONS.

93. *Procedure in Time of Vacation.*
94. *Lord Ordinary may sign Interlocutors in Vacation.*
95. *New Procedure in place of Actions of Wakening.*
96. *New Procedure in place of Actions of Transference.*
97. *New Procedure in place of combined Actions of Wakening and Transference.*
98. *Transference of Actions depending in the Inner House.*
99. *Not competent to object to Productions after Record closed.*
100. *Amendment of Conjugal Rights Act.*
101. *Cognition of the Insane regulated.*
102. *Bonds of Caution for Judicial Factor for Lunatics to be approved of by Principal Clerks of Session only.*
103. *Regulation as to Declinature of Jurisdiction.*
104. *Annual Returns to be made to Parliament.*
105. *Salaries of certain Officers to be regulated.*
106. *Court to make Acts of Sederunt.*
107. *Repeal of Acts, &c.*

An Act to amend the Procedure in the Court of Session and the Judicial Arrangements in the Superior Courts of Scotland, and to make certain Changes in the other Courts thereof.
(31st July 1868.)

WHEREAS it is expedient to amend the Laws relating to the Procedure of the Court of Session

in Scotland, and the Judicial Arrangements of the said Court, and Court of Commissioners for Teinds :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited for all Purposes as the "Court of Session Act, 1868."

2. The following Words and Expressions in this Act shall have the Meanings hereby assigned to them, unless there be something in the Subject or Context repugnant to such Construction ; that is to say,

The Expression "the Court" shall include the whole Court sitting together, also either Division of the Inner House, or any Lord Ordinary :

The Word "Pursuer" shall include Complainer, Suspendor, Petitioner, or Appellant :

The Word "Defender" shall include Respondent.

3. Excepting in so far as regards the Power herein-after given to the Court of Session to pass Acts of Sederunt, and also in so far as regards the Power given to the Commissioners of the Treasury by Section One hundred and five hereof, which Powers may be exercised from and after the passing hereof, this Act shall commence and take effect on and after the Fifteenth Day of October One thousand eight hundred and sixty-eight.

I.—JUDICIAL ARRANGEMENTS.

4. The Ordinary Sittings of the Court shall be as follows, viz.: The Winter Session shall in each Year commence on the Fifteenth Day of October, or the first lawful Day, Monday excepted, which shall happen next thereafter, and shall end on the Twentieth Day of March following, or when that Day falls on a Sunday or Monday, then on the Saturday immediately preceding ; and the Summer Session shall commence on the Twelfth Day of May, or the next lawful Day, Monday excepted, which shall happen next thereafter, and shall end on the Twentieth Day of July, or when that Day falls on a Sunday or Monday, then on the Saturday immediately preceding ; but it shall be lawful for the Court at the Time of the Christmas Recess to adjourn for a Period not exceeding Fourteen Days, and to adjourn at such Time during the Month of February as shall be most convenient for a Period not exceeding Seven Days ; and the Sittings of the Divisions of the Court for the Trial of Jury Causes shall be held at such Times in each Period of Vacation and Recess as the Lords President of the Divisions may respectively appoint. The Court, except the Lord Ordinary on the Bills, shall not sit on the Fifteenth Day of May or on the Eleventh Day of November, or, when either of these Days happen to be a Sunday, on the following Monday.

5. Where in any Year the whole of the Causes coming into the Inner House in the Winter Session shall not have been heard before the End

of the Summer Session, the Court may, whenever it is expedient for the Despatch of Business, extend the Sittings of the Inner House at such Time and for such Period as may be necessary : Provided always, that nothing herein contained shall affect the Powers of the Court or of Her Majesty in Council to extend the Sittings of the Court under the Provisions of the Acts First William the Fourth, Chapter Sixty-nine, and Second and Third Victoria, Chapter Thirty-six.

6. The Lords Ordinary shall sit in the Outer House upon Tuesday, Wednesday, Thursday, Friday, and Saturday of each Week during Session ; but upon One of these Days in each Week they, in rotation, shall not call their Debate or Motion Rolls, but shall sit for the Purpose of taking Proofs or presiding at Trials by Jury in Causes depending before them respectively : Provided that nothing herein contained shall prevent the Lords Ordinary from taking Proofs or presiding at Trials by Jury on other Days when necessary.

7. The Hour of meeting of the Court, both Inner House and Outer House, on Sederunt Days, shall be Ten of the Clock Forenoon ; and it shall be competent for the Court to adjourn over any Day observed as a General Holiday or as a Sacramental Fast in the City of Edinburgh.

The Hours for the Attendance of the Clerks of Court at their Offices shall be as fixed from Time to Time by the Court.

8. It shall be competent for either Division of the Inner House to sit on Mondays during Session at such Hours as shall be convenient for hearing and advising Causes standing on the Short and Summar Rolls of such Divisions respectively. Notwithstanding anything contained in this Act, Monday shall not be, and shall not be reckoned to be, a "Sederunt Day" in the Sense of this or any other Act, or of any Act of Sederunt. It shall further be competent for the Court from Time to Time by Act of Sederunt to appoint any Four Lords Ordinary to meet as a Court at such Times as shall be specified in the Act of Sederunt, for the Purpose of hearing and disposing of such Causes standing on the Rolls of the First and Second Divisions of the Inner House, not being Causes which have come into the Inner House by Reclaiming Note against the Judgment of a Lord Ordinary, and to appoint One or more of the Depute Clerks of Session to act as Clerk or Clerks of said Court ; and further by Act of Sederunt to make all necessary Regulations as to the Causes which shall from Time to Time be so heard and disposed of ; and the Senior Lord Ordinary present shall preside, and shall sign the

Judgment of the said Court; and such Judgment shall have the same Effect in all respects as a Judgment of One of the Divisions of the Inner House of the Court.

9. Any Five Judges, being Lords Commissioners for Teinds, (of whom, except in case of Indisposition or Absence from other necessary Cause, the Lord Ordinary in Teind Causes shall be One,) shall constitute a Quorum of the Court of Commissioners for Teinds; and the said Court, instead of meeting once a Fortnight on Wednesday, shall meet once a Fortnight on Monday during the Sitting of the Court of Session, at such Hours as shall be convenient.

10. Appeals to Judges of the Court of Session under the Act or Acts in force for the Time in reference to the Registration of Persons entitled to vote at Elections for Members of Parliament shall be heard on Mondays during the Sitting of the Court of Session as often as shall be necessary, but with Power to the Court to continue the Hearing of any such Appeal on other Days.

11. Hearings under the Sixtieth Section of this Act, or under the Act Thirteenth and Fourteenth Victoria, Chapter Thirty-six, shall take place on Mondays during the Sittings of the Court as often as shall be necessary, but with Power to the Court to continue the Hearing of any such Case on other Days.

12. In the event of the Indisposition or necessary Absence of any Judge, it shall be competent for the Lord President of the Court to nominate another Judge to officiate in his Room.

II.—SUMMONS.

13. Summonses passing the Signet shall continue to be signeted as at present, but they may competently be signed by any Agent entitled to practise before the Court of Session; provided that in the event of such Agent not being a Writer to the Signet the Summonses shall be signed on the last Page only by a Writer to the Signet in testimony of its being written to the Signet, and any Writer to the Signet shall, on a Fee of Two Shillings and Sixpence being tendered to him, be bound so to sign any Summons which may be presented to him for that Purpose, but he shall not by so signing incur any Responsibility.

14. All Summonses before the Court of Session may proceed on Seven Days Warning or Induciae where the Defender is within Scotland, unless in Orkney and Shetland or in any other Island of Scotland, and Fourteen Days where he is in Orkney or Shetland or such other Island, or

further of Scotland, in place of the longer Induciae required by the present Practice; and such shorter Induciae shall also be competent and sufficient in respect to all other Letters passing Her Majesty's Signet bearing a Citation, Charge, Publication, or Service against Persons within or further of Scotland respectively, and in respect to all Edictal Charges upon Decrees and registered Protests: Provided always, that in all Cases where any shorter Induciae than the Induciae above mentioned are at present sufficient, such shorter Induciae shall continue to be sufficient after the passing of this Act.

15. Where a Summons, Petition, or other original Writ or Pleading is lost or destroyed, a Copy thereof proved in the Cause to the Satisfaction of the Court before whom the Cause is depending at the Time, and authenticated in such Manner as he or they shall require, may be substituted, and shall be held equivalent to the Original for the Purposes of the Action.

16. It shall not be necessary that any Messenger or Sheriff Officer serving a Summons, Petition, Appeal, or Note of Suspension or Interdict shall have the original Document in his Hands at the Time of such Service, provided that a Copy certified as correct by the Agent in the Cause shall at the Time be in the Possession of such Messenger or Officer, and shall be exhibited to the Party on whom the Service is made, if required.

17. It shall not be necessary to obtain the Concurrence of Her Majesty's Advocate to any Summons of Reduction-Improbation, or Ranking and Sale, and such Summonses in future shall not bear to be instituted with the Concurrence of Her Majesty's Advocate: Provided that nothing herein contained shall affect the Right of Her Majesty's Advocate to institute any such Summonses for the Interest of Her Majesty, Her Heirs and Successors.

18. It shall be competent to insert in the Will of a Summons passing the Signet a Warrant of Inhibition, which shall have all the like Force and Effect as Letters of Inhibition in the Form in Use at the passing of this Act; and such Warrant shall be, as nearly as may be, in the following Form:

' And also that ye lawfully inhibit the said personally or at his Dwelling
' Place, if within Scotland, and if further thereof,
' at the Office of the Keeper of the Record of
' Edictal Citations at Edinburgh, from selling,
' burdening, disposing, alienating, or otherwise
' affecting his Lands or Heritages, to the Pre-
' judice of the Pursuer; and that ye cause
' register this Summons and Execution hereof

in the General Register of Inhibitions at Edinburgh for Publication to Our Lieges: When Warrant of Inhibition is contained in the Bill of a Summons passing the Signet, such Warrant may be executed either at the same time as the Summons is served or at any Time hereafter, and it shall not be necessary to publish such Warrants, or to intimate Letters of Inhibition passing the Signet, to the Lieges in any other Way than by Registration in the General Register of Inhibitions; and in registering it shall be sufficient to register the Summons, including the Warrant of Inhibition, and the execution of such Warrant, without registering any Condescendence or Note of Pleas in Law which may follow the Summons, or where Letters of Inhibition are used, then such Letters, with the Execution thereof, shall be registered; and from and after Registration as aforesaid, the inhibition, whether contained in a Summons or in separate Letters of Inhibition, shall be held to be duly intimated and published to all concerned.

19. Where any Defender called in any Summons, or any Person upon whom Service of any proceeding is ordered by the Court or by the Judge officiating in the Bill Chamber, or any Witness or Haver requiring to be cited to attend said Court, or any Commissioner appointed by the same, resides within any County, or within any District of a County subject to the Jurisdiction of the ordinary Court of any Sheriff Substitute of such County, in which County or District of any County there shall not be at the time a resident Messenger-at-Arms, or within any of the Islands of Scotland, it shall be competent for a Sheriff Officer of such County or of the Sheriffdom within which such Island is situated (as the Case may be) to serve such Summons or to make such Service or Citation upon such Defender or other Party or Witness or Haver within such County or Island, and such Service and Citation and Execution thereof shall have the same Effect as if done or made by a Messenger-at-Arms.

20. In undefended Actions any Error or Defect in any Summons or other Pleading, whereby the Action is commenced in the Court of Session, may be amended upon Application to the Lord Ordinary or the Court before whom it depends, if the Lord Ordinary or the Court think such amendment should be allowed; and such Amendment shall be made in Writing either upon the Summons or Pleading, or in a separate Paper, and shall be authenticated by the Signature of Counsel; and the Lord Ordinary or Court may, if he or they think fit, order the amended Summons or other Pleading to be served upon the absent Defender or Defendants, with Liberty

to him or them to enter Appearance within such Time as shall seem proper: Provided that the Expenses occasioned by such Amendment shall not be chargeable against the Defender or Defendants; and provided also, that such Amendment shall not have the Effect of validating Diligence used on the Dependence of the Action so as to prejudice the Rights of Creditors of the Defender interested in defeating such Diligence, but shall be operative to the Effect of obviating any Objections to such Diligence when stated by the Defender himself, or by any Person representing him by a Title, or in right of a Debt contracted by him subsequent to the using of such Diligence.

21. No Party appearing in any Action or Proceeding in the Court of Session shall be entitled to state any Objection to the Regularity of the Execution or Service as against himself of the Summons or other Pleading or Writ whereby he is conveyed.

III.—CALLING AND DECREE IN ABSENCE.

22. Summonses may be called in Court on any Sederunt Day; and the Calling Lists shall be printed and published in the daily Rolls of Court, under such Regulations as the Court may see proper to make, in place of the separate Calling Lists now in use to be published; and in case a Pursuer shall not call his Summons in Court on the First Sederunt Day after the Expiration of the Inducement thereof, or on One of the Two Sederunt Days next ensuing, the Defender shall be entitled to the like Remedy by Protestation as is now competent, and subject to the like Conditions. The weekly printed Rolls of new Causes shall be discontinued; and where a Defender shall not enter Appearance on or before the Second Day after the Summons has been called in Court, the Cause may immediately be enrolled in the Lord Ordinary's Motion Roll as an undefended Cause for Decree in Absence; and where Appearance is timeously entered as aforesaid on behalf of a Defender, his Defences shall be lodged on or before the Tenth Day after the Date of Calling of the Summons, failing which, the Cause may be immediately enrolled for Decree in Absence, or in the Case of Actions containing reductive Conclusions the Cause may be enrolled for the Purpose of obtaining an Order for satisfying the Production, and thereafter the Cause may be enrolled by either Party for further Procedure.

23. When any Cause is enrolled as an undefended Cause before the Lord Ordinary, the Lord Ordinary shall, without any Attendance of

Counsel or Agent, grant Decree in Absence in Common Form in Terms of the Conclusions of the Summons, or subject to such Restrictions as may be set forth in a Minute written on the Summons by the Agent of the Pursuer; and such Decree shall, except as herein-after provided, have the like Effect and be subject to the like Conditions in all respects as a Decree in Absence pronounced according to the present Law and Practice: Provided always, that at any Time within Ten Days from the Date of such Decree it shall be competent for the Defender to enrol the Cause in the Lord Ordinary's Motion Roll; or when such Ten Days shall expire in Time of Vacation or Recess, it shall be competent for the Defender at any Time within the said Ten Days to lodge his Defences with the Clerk, and at the next ensuing Sitting of the Lord Ordinary officiating on the Bills in Terms of the Ninety-third Section hereof to move him to recall the Decree in Absence; and if, when the Cause is called in said Roll, or moved before the said Lord Ordinary officiating on the Bills as aforesaid, the Defender shall produce his Defences, and shall pay to the Pursuer the Sum of Two Pounds Two Shillings, the Lord Ordinary or the Lord Ordinary officiating on the Bills, as the Case may be, shall pronounce an Interlocutor recalling the Decree in Absence, and allowing the Defences to be received; and the Cause shall thereupon be treated as if Defences had been lodged in due Time: Provided farther, that after the Lapse of Ten Days it shall be competent to extract any Decree in Absence; and it shall not be competent by Reclaiming Note to the Inner House to obtain the Recall of a Decree pronounced in Absence of the Defender.

24. Where a Decree upon which a Charge is competent shall have been pronounced in Absence of a Defender after personal Service of the Summons on such Defender, or after the entering of Appearance for such Defender with his Authority, and such Decree shall not have been recalled in virtue of the Provision to that Effect herein-before contained, such Decree after Extract, and upon the Lapse of Sixty Days after the Expiry of a Charge upon it not brought under Review by Suspension, shall be entitled to all the Privileges of a Decree in foro against such Defender; and a Decree of Declarator, or any other Decree on which a Charge is not competent, obtained in Absence after such personal Service or Appearance as aforesaid, shall be final after the Lapse of Twenty Years from its Date unless the same shall before that Time have been lawfully recalled or brought under Review by Suspension or Reduction.

IV.—RECORD, MOTIONS, AND PROBATION.

25. Neither Party shall be entitled as Matter of Right to ask for a Revisal of his Pleadings; but it shall be competent for the Lord Ordinary to allow or to order a Revisal of the Pleadings, upon just Cause shown.

26. If no Motion for Revisal is made as above provided, or if such Motion is refused, or after the Lapse of the Period within which the revised Pleadings fall to be lodged where a Revisal has been allowed or ordered, the Pursuer shall cause the Pleadings which are to form the Record to be printed, and shall within Eight Days from the lodging of the Defences or revised Pleadings, as the Case may be, deliver Two Printer's Proofs thereof to the Agent or to each of the Agents of the other Parties, and also to the Clerk to the Process, who shall transmit the same to the Lord Ordinary, and the Lord Ordinary shall direct the Cause to be put to the Roll for a Day, not less than Four and not more than Six Days thereafter; and upon such Day the Lord Ordinary shall require the Parties then to adjust their Pleadings, and shall close the Record: Provided that if the Pursuer shall fail to deliver the Printer's Proofs as aforesaid the Defender may enrol the Cause, and move for Decree of Absolvitor by Default, which Decree the Lord Ordinary shall grant unless the Pursuer shall show good Cause to the contrary: Provided also, that it shall not be competent of Consent of Parties to prorogate the Time for complying with any Statutory Enactment or Order of the Court, whether with reference to the making up and closing of the Record or otherwise.

27. The Lord Ordinary shall at the Time of closing the Record require the Parties then to state whether they are ready to renounce farther Probation; and if they are ready to do so the Counsel for the Parties shall sign a Minute to that Effect on the Interlocutor Sheet; and the Lord Ordinary shall, in the Interlocutor closing the Record, pronounce a Finding that farther Probation has been renounced, and shall appoint the Cause to be debated.

If the Parties shall not agree to renounce farther Probation, the Lord Ordinary shall appoint the Cause to be debated summarily at the End of the Motion Roll on a Day to be then fixed, before which Day the Parties shall respectively lodge the Issue or Issues, if any, which they propose for the Trial of the Cause; and the Lord Ordinary, after hearing Parties, shall, on the said Day, determine whether farther Probation should be allowed; and if he shall consider that it is necessary, he shall determine whether it is to be limited to Proof by Writ or

Oath, and if not, whether it is to be taken before a Jury, or in what other Manner of Way :

- (1.) If the Lord Ordinary considers that the Cause may be disposed of without farther Probation, he may, without any Adjournment, hear the Parties upon their Pleas, and dispose of them as appears to him just :
- (2.) If the Lord Ordinary considers that farther Probation should be allowed, but that it should be limited to Proof by Writ or Oath, he may pronounce an Interlocutor to that Effect, and at the same Time determine how such Proof is to be taken, and make such Order as may be necessary :
- (3.) If the Lord Ordinary shall think that farther Probation should be allowed, and that it should be taken before a Jury, he may, without Adjournment, proceed to adjust Issues for the Trial of the Cause, and pronounce an Interlocutor approving of the Issue or Issues which have been so adjusted ; provided that if the Parties consent, and the Lord Ordinary approves, it shall be competent to direct the Cause to be tried by Jury without adjusting any such Issues, and such Cause shall be tried as nearly as may be in the same Manner in which Causes are tried in which Issues have been adjusted according to the present Law and Practice :
- (4.) If the Lord Ordinary shall think farther Probation should be allowed, but that such Probation should not be taken before a Jury, he may pronounce an Interlocutor dispensing with the adjusting of Issues, and determining the Manner in which Proof is to be taken or Inquiry to be made, and make such Order as may be necessary for giving Effect to such Interlocutor.

28. Any Interlocutor pronounced by the Lord Ordinary as provided for in the preceding Section, except under Sub-division (1.), shall be final, unless within Six Days from its Date the Parties, or either of them, shall present a Reclaiming Note against it to One of the Divisions of the Court by whom the Cause shall be heard summarily ; and when the Reclaiming Note is advised, the Division shall dispose of the Expenses of the Reclaiming Note, and of the Discussion, and shall remit the Cause to the Lord Ordinary to proceed as accords : Provided always, that it shall be lawful to either Party within the said Period, without presenting a Reclaiming Note, to move the said Division to vary the Terms of any Issue that may have been approved of by an Interlocutor of the Lord Ordinary, specifying in the Notice of Motion the Variation that is desired : Provided also, that nothing herein contained shall be held to prevent the Lord Ordinary or the

Court from dismissing the Action at any Stage upon any Ground upon which such Action might at present be dismissed according to the existing Law and Practice.

29. The Court or the Lord Ordinary may at any Time amend any Error or Defect in the Record or Issues in any Action or Proceeding in the Court of Session, upon such Terms as to Expenses and otherwise as to the Court or Lord Ordinary shall seem proper ; and all such Amendments as may be necessary for the Purpose of determining in the existing Action or Proceeding the real Question in Controversy between the Parties shall be so made : Provided always, that it shall not be competent, by Amendment of the Record or Issues under this Act, to subject to the Adjudication of the Court any larger Sum or any other Fund or Property than such as are specified in the Summons or other original Pleading, unless all the Parties interested shall consent to such Amendment : And provided also, that no such Amendment shall have the Effect of validating Diligence used on the Dependence of the Action so as to prejudice the Rights of Creditors of the Defender interested in defeating such Diligence, but shall be operative to the Effect of obviating any Objections to such Diligence when stated by the Defender himself, or by any Person representing him by a Title, or in right of a Debt contracted by him, subsequent to the Execution of such Diligence.

30. In Actions of Multipointing it shall not be necessary to lodge Answers to the original Condescendences and Claims, unless it is made to appear to the Satisfaction of the Lord Ordinary that the Claimants are at Issue on Matters of Fact material to the Action, and that Answers are necessary ; and in such Actions it shall be competent for Parties having opposing Interests (where they are agreed upon the Facts) to make their Averments in the Form of a Joint Case, appending thereto their respective Claims and Pleas in Law : Provided always, that where the Competition involves the Construction of written Documents, such Documents shall not be set out at Length on the Record, but shall be printed separately, and referred to in the Pleadings as set forth in such separate Print.

31. The Motion Rolls of the Lords Ordinary in the Outer House shall, instead of being called before these Judges respectively, be hereafter called before the Clerks to the Processes therein enrolled ; such Calling shall take place at such Hours as shall from Time to Time be fixed by the Lord President of the Court, and shall not be attended by Counsel, but by Agents practising before the Court, or by their Clerks duly authorized by them. If any Motion is unopposed, it

may be granted by the Clerk, who shall write on the Interlocutor Sheet an Order in Terms of said Motion, which Order, being signed by said Clerk, shall have the same Effect and be treated in all respects as if it were an Interlocutor of the Lord Ordinary before whom the Cause depends, made out and signed according to the present Law and Practice. All Motions which are opposed, and also those which the Clerk thinks should be disposed of by the Lord Ordinary, shall, on a Requisition to that Effect by the said Clerk, be put to a Roll of continued Motions, which the Clerk of the Lord Ordinary is hereby required to make up, and which shall be called before the Lord Ordinary himself on such Days, not exceeding Two in each Week, as he may appoint for the hearing of Motions and summary Debates, and shall be disposed of by the Lord Ordinary after hearing Counsel; and it shall not be necessary that any Notice of the Enrolment of such continued Motions shall be given by either Party to the other. The Lord Ordinary, in disposing of any continued Motion, shall, unless he see Cause to the contrary, award such Sum of modified Expenses as he shall think fit to the Party who has successfully insisted in or opposed the same, as the Case may be.

32. In all Proofs before the Lord Ordinary under the Acts Twenty-four and Twenty-five Victoria, Chapter Eighty-six, and Twenty-nine and Thirty Victoria, Chapter One hundred and twelve, no Adjournment shall be allowed, except on special Cause stated in an Interlocutor, and the Evidence shall be summed up by One Counsel on each Side at the Conclusion of the Examination of the Witnesses, as in the Case of Jury Trials; and it shall not be necessary to print the Evidence, unless for the Purpose of bringing the Judgment of the Lord Ordinary thereon under the Review of the Inner House.

33. All Causes ready for Trial by a Proof before any of the Lords Ordinary, under the last-mentioned Acts, at the End of the Winter and Summer Sessions of the Court respectively, shall be tried at Sittings to be held by the Lord Ordinary before whom the Cause depends, or by some other Judge acting for him at his Request, during the ensuing Vacation, at such Time as may be fixed by the Lord Ordinary.

V.—JURY TRIAL.

34. When an Exception is taken in the Course of a Jury Trial, a Note thereof shall be taken by the Judge, or, if he shall so direct, or the Party excepting shall think proper, a Note thereof shall be written out, and signed by such Party or his Counsel, and also by the Judge at the

Time; and such Exception may be made the Ground of an Application to set aside the Verdict, either by Motion for a new Trial, or by Bill of Exceptions.

35. The Bill of Exceptions (which may be subsequently prepared, and of which Notice shall be given as in the Case of a Motion for a new Trial,) shall consist of a distinct Statement of the Exception or Exceptions so noted, with such a Statement of the Circumstances in which the Exception or Exceptions were taken (including, if necessary, a Statement of the Purport of the Evidence, or Extracts therefrom, so far as bearing upon such Exception or Exceptions, but without any Argument,) as, along with the Record in the Cause, may enable the Court to judge of such Exception or Exceptions; and, unless the Party excepting shall choose, or the Judge at the Trial, or the Court at the Discussion of the Bill, shall so direct, it shall be unnecessary to print or submit to the Court the Notes of Evidence or the Documentary Evidence adduced at the Trial; and when such Notes and Documents are submitted to the Court, they shall form no Part of the Bill of Exceptions; and in discussing a Bill of Exceptions it shall be competent for either Party to refer to the Record, and to every Document produced and put in Evidence at the Trial, and the Notes of Evidence at the Trial may be produced and founded on at any Time.

36. The Judge at the Trial may direct the Jury upon any Matter of Law (subject to the Opinion of the Court upon such Direction), and with Liberty to either Party to move the Court to enter the Verdict for such Party, although returned against him, if the Court should be of opinion that such Direction was erroneous, and that such Party was truly entitled to a Verdict. The Opinion of the Court upon any Direction so given may be obtained upon Motion to enter the Verdict for the Party moving; and if the Court shall be of opinion that the Direction was erroneous, and that the Party moving is truly entitled to the Verdict in whole or in part, they shall direct the Verdict to be entered for him in whole or in part, either absolutely, or on such Terms as they may think fit; otherwise they shall refuse the Motion, or they may, if necessary, set aside the Verdict and order a new Trial: Provided also, that in such Applications, as well as in Motions for a new Trial, it shall not be necessary to print the Notes of the Evidence for the Use of the Court, but the Judge's Notes may be produced at any Time, if required.

37. Where the Parties agree, the Evidence at a Jury Trial taken in Shorthand, and extended by the Shorthand Writer, may, with the Consent

of the Judge, be substituted for the Judge's Notes of the Evidence for all Purposes; and in such Cases it shall not be competent to ask for the Judge's Notes of Evidence.

38. It shall be lawful to substitute a Special Case signed by Counsel for a Special Verdict, and thereupon to discharge the Order for Trial, or the Jury, if one has been empanelled, without returning a Verdict; and such Special Case shall have the like Force and Effect as a Special Verdict.

39. Any Action may, with Leave of the Judge, be abandoned on the Conditions contained in the Tenth Section of the Act Sixth George the Fourth, Chapter One hundred and twenty, and relative Act of Sederunt, Section One hundred and fifteen, in the course of a Trial at any Time before the Judge has commenced to charge the Jury, or, where there is no Jury, at any Time before the Judge has made Avizandum with the Evidence: Provided that such Abandonment shall not be competent without the Leave of the Judge, who shall be of opinion that it is just and proper in the Circumstances: Provided further, that in granting such Leave the Judge shall specify the Time within which the Expenses shall be paid to the Defender; and if the Expenses shall not be paid within such Time the Defender shall be entitled to be assolizied from the Conclusions of the Action, with Expenses.

40. Where the Pursuer in any Action of Damages in the Court of Session recovers by the Verdict of a Jury less than Five Pounds, he shall not be entitled to recover or obtain from the Defender any Expenses in respect of such Verdict, unless the Judge before whom such Verdict is obtained shall certify on the Interlocutor Sheet that the Action was brought to try Right besides the mere Right to recover Damages; or that the Injury in respect of which the Action was brought was malicious; or, in the case of Actions for Defamation or for Libel, that the Action was brought for the Vindication of Character, and was in his Opinion fit to be tried in the Court of Session.

41. No Document tendered in Evidence at any Trial or Proceeding in the Court of Session and which at the Time when the same is tendered might lawfully be stamped on Payment (a Penalty) shall be rejected by reason of the omission to affix a Stamp thereto, or by reason of the Insufficiency of the Stamp; provided the Party tendering the same shall, before the Conclusion of such Trial or Proceeding, pay into Court such Sum as the Judge shall certify to be the Amount of Stamp Duty or of additional Stamp Duty chargeable thereon, with the Penalty

required by Statute, and an additional Penalty of One Pound; and the Deliverance of the Judge that the Stamp upon any Document is sufficient, or that such Document does not require a Stamp, shall not be subject to Review.

42. Every Sum so paid for Stamp Duty and Penalty, including such additional Penalty together with such Document and the Certificate of the Judge written thereon, shall immediately after the Trial be transmitted by the Clerk of the Process to the Commissioners of Inland Revenue, who shall cause the said Document to be impressed with a denoting Stamp corresponding to the Amount of Duty mentioned in the Certificate, and received by them, and shall return the Document with all convenient Speed to the Clerk.

43. All Exemptions from Liability to serve as Jurors in Scotland depending on any Act passed subsequently to the Act Sixth George the Fourth, Chapter Twenty-two, are hereby abolished.

44. In all Civil Causes appointed to be tried by Jury the Jurors for the Trial of any Cause shall be chosen in open Court by Ballot from the List of Persons summoned; and for that Purpose the Clerk of Court shall cause the Name and Designation of each Juror to be written on a separate Piece of Paper or Parchment, all the Pieces being of the same Size, and shall cause the Pieces to be rolled up as nearly as may be in the same Shape, and the Names of the Special Jurors shall be put together into One Box or Glass, and the Remainder into another, and being respectively mixed, the Clerk shall draw out the said Pieces of Paper or Parchment One by One from both Boxes or Glasses in the Proportion of One from the Box containing the Names of the Special Jurors, and Two from the other Box; and if any of the Persons whose Names shall be so drawn shall not appear, or shall be challenged with or without Cause assigned, and be set aside, then such further Number shall be drawn until the Number required for the Trial shall be made out; and the Persons so drawn and appearing, and being sworn, shall be the Jury to try the Cause, and their Names shall be taken down and recorded, according to the present Law and Practice; but providing that when Challenges are made, and Jurors set aside, their Places shall be filled up with other Names, by drawing by Ballot as aforesaid from the Box or Glass containing the Description of Jurors challenged respectively.

45. The Number of Jurors to be cited for the Trial of any Cause or Causes appointed to be tried at Edinburgh, or at any Circuit Town

(where a Special Diet shall be fixed for such Trial), shall be such as is specified in the Act Fifty-fifth George the Third, Chapter Forty-two, and a List of such Jurors shall be returned by the Sheriff of Edinburgh, or of any other County or Counties, as provided by the Act Sixth George the Fourth, Chapter Twenty-two, but so that One Third of the Number of Jurors required, or, if the Number required cannot be divided equally into Thirds, a Number as near as may be, more or less, at the Discretion of the Sheriff, shall be Persons qualified as Special Jurors, and shall be distinguished in the Return accordingly; provided that in the event of the List to be taken from the General Jury Book, as provided in the said Act, not being found to contain the said Proportion of Special Jurors, the Deficiency shall be supplied by Names to be taken from the Special Jury Book.

46. Where a Cause is appointed to be tried at any Circuit Town in any Period of Vacation or Recess, and no Special Diet is fixed for such Trial, it shall be lawful for either of the Judges presiding at the Sittings of the Circuit Court of Justiciary in such Circuit Town to try the same, and such Trial may proceed either at the same Time with the Sittings of the said Circuit Court of Justiciary, or at the Termination thereof; and where a Cause is so tried it shall not be necessary that a separate List of Jurors shall be returned for the Trial thereof, but the Jury shall be chosen from the List of Jurors summoned to attend the Circuit Court of Justiciary, who shall be bound by their Citation to serve, if required, at the Trial of all Civil Causes for which no Special Diet of Trial shall have been appointed; but notwithstanding the Provisions herein contained it shall be competent for any Judge of the Court of Session to preside at the Trial of any Civil Cause which may fall to be tried during the Sittings of any Circuit Court of Justiciary, or at the Termination thereof.

47. The present Mode of citing Jurors for the Trial of Civil Causes shall be discontinued, and in place thereof the Sheriff Clerk of the County of Edinburgh, where the Trial is to take place at Edinburgh, or the Sheriff Clerk of the County in which any Juror is to be cited, where the Citation is for a Trial at a Circuit Town, or his Depute, shall fill up and sign a proper Citation addressed to each such Juror, and shall cause the same to be transmitted to him in a registered Post Letter, directed to him at his Place of Residence as stated in the Roll of Jurors; and a Certificate under the Hand of such Sheriff Clerk or his Depute of the Citation of any Jurors or Juror in manner herein provided shall have the like Force and Effect as an Execution of

Citation according to the present Law and Practice.

48. A Jury may at any Time, being not less than Three Hours after it has been enclosed, return a Verdict by a Majority of its Number.

49. The Remuneration to be allowed to Jurors empannelled at the Trial by Jury of any Civil Cause shall be at the Rate of Ten Shillings to each Juror for each Day, or Part of a Day, during which such Juror shall be empannelled upon such Trial.

50. At the Trial of any Civil Cause at a Circuit Town any Agent qualified to practise in the Sheriff Court of any County comprised within such Circuit may attend such Trial as sole Agent in the Cause, and shall be allowed for his Attendance, and for all necessary Business performed by him in connexion with such Trial, the same Fees as are allowed to Agents in the Court of Session.

VI.—INNER HOUSE PROCEDURE.

51. Reclaiming Notes to the Inner House shall not contain any Prayer, but shall bear in general Terms that the Interlocutor or Interlocutors reclaimed against are submitted to Review.

52. Every Reclaiming Note, whether presented before or after the whole Cause has been decided in the Outer House, shall have the Effect of submitting to the Review of the Inner House the whole of the prior Interlocutors of the Lord Ordinary of whatever Date, not only at the Instance of the Party reclaiming, but also at the Instance of all or any of the other Parties who have appeared in the Cause, to the Effect of enabling the Court to do complete Justice, without Hindrance from the Terms of any Interlocutor which may have been pronounced by the Lord Ordinary, and without the Necessity of any counter Reclaiming Note; and after a Reclaiming Note has been presented, the Reclaimer shall not be at liberty to withdraw it without the Consent of the other Parties as aforesaid; and if he shall not insist therein, any other Party in the Cause may do so, in the same Way as if it had been presented at his own Instance.

53. It shall be held that the whole Cause has been decided in the Outer House when an Interlocutor has been pronounced by the Lord Ordinary, which, either by itself, or taken along with a previous Interlocutor or Interlocutors, disposes of the whole Subject Matter of the Cause, or of the Competition between the Parties in a Process of Competition, although Judgment

shall not have been pronounced upon all the Questions of Law or Fact raised in the Cause; but it shall not prevent a Cause from being held as so decided that Expenses, if found due, have not been taxed, modified, or decerned for; and for the Purpose of determining the Competency of Appeals to the Court of Session, this Provision shall be applicable to the Causes in the Sheriff and other Inferior Courts, the Name of the Sheriff or other Inferior Judge or Court being read, instead of the Words "the Lord Ordinary," and the Name of the Sheriff Court or other Inferior Court being read instead of the Words "Outer House."

54. Except in so far as otherwise provided by the Twenty-eighth Section hereof, until the whole Cause has been decided in the Outer House, it shall not be competent to present a Reclaiming Note against any Interlocutor of the Lord Ordinary without his Leave first had and obtained; but where such Leave has been obtained, a Reclaiming Note, presented before the whole Cause has been decided in the Outer House, may be lodged within Ten Days from the Date of the Interlocutor granting Leave with One of the Clerks of the Division of the Court in which the Cause depends, without Transmission of the Process or any Part thereof; and such Note shall not have the Effect of removing the Cause or the Process from the Outer House, or of staying Procedure before the Lord Ordinary, or of excusing Obedience to or Implement of the Interlocutor reclaimed against, unless the Lord Ordinary shall otherwise direct, upon Motion made for that Purpose, and the Decision of the Lord Ordinary on such Motion shall be final.

55. Failing such Direction by the Lord Ordinary as aforesaid, the Process shall remain and the Cause shall proceed in the Outer House in all respects as if no such Reclaiming Note had been presented, until it is advised by the Inner House, when the Court shall pronounce such Judgment or Order as they shall think fit; and when the Cause shall be called for Hearing in the Inner House on such Reclaiming Note, the Interlocutor Sheet shall be delivered to the Inner House Clerk that the Judgment of the Court may be written thereon; and the Process shall, if required by either Party or by the Court, be delivered to the Inner House Clerk by the Outer House Clerk, but shall nevertheless be considered as still in the Outer House.

56. After the whole Cause has been decided in the Outer House within the Meaning of this Act, it shall not in any Case be necessary for the Inner House to remit the same back to the Outer House; but the Cause, when taken to the Inner House, after having been so decided in

the Outer House, even though the Interlocutor of the Lord Ordinary or any of the Procedure shall be held to have been incompetent, shall, except in special Circumstances rendering a Remit expedient, remain in the Inner House, until it shall be finally and completely decided in the Court of Session.

57. In the event of any Interim Decree or Interlocutor pronounced in the Outer House having been implemented, it shall be lawful for the Court, in any Interlocutor recalling or altering such Interim Decree or Interlocutor, to order the Repayment of any Money which shall have been paid or recovered in Implement thereof, or to pronounce such Warrant *ad factum præstandum* or other Order as may be necessary in order to give Effect to such Recall or Alteration of the Lord Ordinary's Interlocutor, notwithstanding that the Interlocutor of the Lord Ordinary may have been extracted and put to Execution.

58. When a Motion for a New Trial or a Bill of Exceptions comes before One of the Divisions of the Court, if the Judge who tried the Cause is not One of the Judges of the Division, such Judge shall be called in to hear the Motion or Bill, as the Case may be; and when the Cause is advised, such Judge shall give his Judgment with the other Judges, and the Decision shall be in conformity with the Opinion of the Majority of the Judges present.

59. In the event of the Judges of either of the Divisions of the Inner House being equally divided in Opinion on a Question of Fact arising upon a Proof, or upon a Cause which in their Opinion does not involve any legal Principle of Importance, it shall be competent for such Division to appoint the Cause to be re-heard before the Judges of the said Division, or such of them as shall be able to give Attendance in Court on the Day appointed, with the Assistance of such additional Judge or Judges to be afterwards named by the President or Judge presiding in the Division as shall make up the Number of Five Judges; and the Judgment to be pronounced upon such Hearing shall be in conformity with the Opinion of the Majority of the Five Judges, and shall bear to be the Judgment of the Division by which the Hearing was appointed after consulting with such additional Judge or Judges, and may be signed at any ordinary Sitting of the said Division, without the Presence of such additional Judge or Judges, if he or they do not desire to attend for the Purpose of delivering separate Opinions.

60. In Cases of equal Division of Opinion not falling under the preceding Section, and in Cases of Difficulty or Importance which, according to

the existing Practice, may be referred by One of the Divisions of the Inner House to the whole Court, it shall be competent for such Division to direct that the printed Papers in the Cause shall be laid before Three other Judges to be named in the Interlocutor with a view to their Opinions being communicated in Writing, or to direct that the Cause shall be argued before themselves with the Assistance of such Three Judges (or Four Judges when that is necessary to complete the Number of Seven at the Time of the Re-hearing); and the Judgment to be pronounced thereon shall be in conformity with the Opinions of the Majority of the Seven Judges, and shall bear to be the Judgment of the Division by whom the Hearing was appointed, after consulting with such other Judges, and may be signed in the Absence of such other Judges at any ordinary Sitting of the Division.

61. No Verdict of a Jury shall be discharged or set aside upon a Motion for a New Trial, unless in conformity with the Opinion of a Majority of the Judges of the Division, and in case of equal Division Judgment shall be given in conformity with the Verdict; but this Provision shall not apply to Hearings upon Bills of Exceptions.

62. The Third Section of the Act Twenty-nine and Thirty Victoria, Chapter One hundred and twelve, is hereby amended to the Effect of providing that, notwithstanding the Terms of said Section, "where Proof shall be ordered by One of the Divisions of Court," it shall no longer be competent to remit to One of the Lords Ordinary to take such Proof, but it shall be taken before any One of the Judges of the said Division, whose Place may for the Time be supplied by One of the Lords Ordinary called in for that Occasion.

63. Where any Parties interested, whether personally or in some fiduciary or official Character, in the Decision of a Question of Law, shall be agreed upon the Facts, and shall dispute only on the Law applicable thereto, it shall be competent for them, without raising any Action or Proceeding, or at any Stage of an Action or Proceeding, to present to One of the Divisions of the Court a Special Case, signed by their Counsel, setting forth the Facts upon which they are so agreed, and the Question of Law thence arising upon which they desire to obtain the Opinion of the Court; and which Case may set forth alternatively the Terms in which the Parties agree that Judgment shall be pronounced according to the Opinion of the Court upon the Question of Law aforesaid. When a Special Case is laid before One of the Divisions, the Court may order such Documents as appear to be necessary to be printed

and boxed, and shall bear Parties in the Summar Roll, and give their Opinion or pronounce Judgment, as the Case may be, and such Judgment shall be extractible in common Form: Provided always, that the Case may be amended of Consent, and that, if the Court shall think fit, they may appoint the Case to be reheard in Terms of the Sixtieth Section hereof; and the Court shall dispose of all Questions of Expenses. Judgments pronounced in virtue of this Section shall be liable to Review by the House of Lords, unless such Review shall be excluded of Consent of all Parties.

VII.—APPEALS FROM INFERIOR COURTS.

64. The Process of Advocacy is hereby abolished.

65. Wherever, according to the present Law and Practice, it is competent to advocate to the Court of Session a Judgment (final or not final, as the Case may be,) of any Sheriff or other Inferior Court or Judge, it shall be competent, except as herein-after provided, to submit such Judgment to the Review of the Court of Session by Appeal in the Manner herein-after provided: Provided always, that it shall not be necessary for the Appellant to find Caution for Expenses before taking or prosecuting his Appeal.

66. An Appeal to the Court of Session under this Act may, when otherwise competent, be taken by a Note of Appeal written at the End or on the Margin of the Interlocutor Sheet containing the Judgment appealed from, or any Note thereto annexed, or by a separate Note of Appeal lodged with the Clerk of the Inferior Court; and such Note of Appeal may be in the following or similar Terms:

"The Pursuer [or Defender or other Party]
"appeals to the Division of
"the Court of Session:"

And the said Note shall specify the Division, and shall be signed by the Appellant or his Agent, and shall bear the Date on which it is signed.

67. It shall not be competent to take or sign any Note of Appeal after the Expiration of Six Months from the Date of Final Judgment in any Cause depending before the Sheriff or other Inferior Court or Judge, even although such Judgment has not been extracted.

68. A Party may take an Appeal within the Space of Twenty Days after the Date of the Judgment of which he complains, during which Period of Twenty Days Extract shall not be competent; but on the Expiration of the foresaid Period, if no Appeal shall have been taken, the

Clerk of Court may give out the Extract; it being competent, however, to take such Appeal at any Time within the Period of Six Months from the Date of Final Judgment in the Cause, unless the Judgment has previously been extracted or implemented.

69. Such Appeal shall be effectual to submit to the Review of the Court of Session the whole Interlocutors and Judgments pronounced in the Cause, not only at the Instance of the Appellant, but also at the Instance of every other Party appearing in the Appeal, to the Effect of enabling the Court to do complete Justice without Hindrance from the Terms of any Interlocutor in the Cause, and without the Necessity of any Counter Appeal; and an Appellant shall not be at liberty to withdraw or abandon an Appeal without Leave of the Court; and an Appeal may be insisted in by any Party in the Cause other than the Appellant, in the same Manner and to the like Effect as if it had been taken by himself.

70. The Clerk of the Inferior Court shall, within Two Days after the Date of any Appeal being taken, send written Notice of such Appeal to the Respondent or his Agent: Provided that the Failure to give such Notice shall not invalidate the Appeal; but the Court of Session may give such Remedy for any Disadvantage or Inconvenience thereby occasioned as may in the Circumstances be thought proper.

71. Within Two Days after the Appeal shall have been taken, the Clerk of the Inferior Court shall transmit the Process to One of the Clerks of the Division of the Court to which the Appeal is taken, who shall subjoin to the Appeal a Note of the Day on which it is received; and it shall be lawful for either the Appellant or the Respondent at any Time after the Expiry of Eight Days from the Date of such Note to enrol the Appeal; and when the Appeal is called in the Roll, it shall be competent for the Court to order the whole Inferior Court Record, and the Interlocutors in Causa and Note of Appeal, and Notes of the Evidence and Productions, if any, to be printed and boxed to the Court; or the Court may dispense with the printing and boxing of any Portions of the same; and in case the Record and other Papers ordered to be printed shall not be printed and boxed by the Appellant, or in case he shall not move in the Appeal, it shall be lawful for the Court, on a Motion by any other Party in the Cause, either to dismiss the Appeal with Expenses, and to affirm the Interlocutor of the Inferior Court, or to grant an Order authorizing the Party moving to print and box the Record and other Papers aforesaid, and to insist in the Appeal as if it had been taken by himself.

72. The Court may, if necessary, order Proof or additional Proof to be taken in any Appeal under this Act, such Proof to be taken in the same Manner as Proof may be competently taken in any Cause depending before the Inner House, and shall thereafter, or without any such Order (if no such Proof or additional Proof is necessary), give Judgment on the Merits of the Cause according to the Law truly applicable in the Circumstances, although such Law is not pleaded on the Record; and the Record may, with Leave of the Court, be amended at any Time, on such Conditions as to the Court shall seem proper.

73. It shall be lawful, by Note of Appeal under this Act, to remove to the Court of Session all Causes originating in the Inferior Courts in which the Claim is in Amount above Forty Pounds at the Time and for the Purpose and subject to the Conditions specified in the Fortieth Section of the Act Sixth George the Fourth, Chapter One hundred and twenty; and such Causes may be remitted to the Outer House.

74. In place of Advocations of Actions and Proceedings in Inferior Courts ob contingentiam of a Process in the Court of Session, it shall be lawful for the Party desiring to remove any such Action or Proceeding to the Court of Session to lay before the Lord Ordinary, or the Division of the Court before which such Court of Session Process shall actually be at the Time, a Copy of the Inferior Court Record or of such Pleadings as may have been lodged, and of the Interlocutors in the Cause, certified by the Clerk of the said Inferior Court, and to move for the Transmission of the Inferior Court Process to the Court of Session; and if upon Consideration thereof the said Lord Ordinary or Division of the Court shall be of opinion that there is Contingency between the said Processes, he or they shall grant Warrant to the Clerk of the Inferior Court Process for the Transmission thereof; and upon such Transmission being made the said Process shall thenceforth be proceeded with in all respects as if it had been advocated ob contingentiam to the Court of Session according to the present Law and Practice.

75. The Decision of the Lord Ordinary or of the Court, as the Case may be, upon any such Motion for Transmission, shall be final at that Stage; but, in the event of the Application being refused, it shall be competent for either Party to renew the Motion at any subsequent Stage of the Cause.

76. Where, by any Statute now in force, special Provision is made for removing any Action or Proceeding in any Inferior Court to the Court of Session by Advocation, it shall be lawful to remove

any such Action or Proceeding to the Court of Session by Appeal under this Act at the same Stage of the Cause, for the same Purpose, and with such and the like Restrictions as are provided by such Statute.

77. Where it is necessary in any Action removed to the Court of Session by Appeal under this Act that a Record should be made up in the Court of Session, the Record shall be made up under the Direction of the Division of the Inner House in which the Appeal is depending.

78. Where, by any Statute now in force, the Right of Review by Advocacy to the Court of Session is excluded or restricted, such Exclusion or Restriction of Review shall be deemed and taken to apply to Review by Appeal under this Act.

79. In all Cases where the Judgment of any Inferior Court shall be brought under the Review of the Court of Session by Appeal, it shall be competent for the Inferior Court to regulate in the meantime, on the Application of either Party, all Matters relating to Interim Possession, having due regard to the Manner in which the Interests of the Parties may be affected by the final Decision of the Cause; and such Interim Order shall not be subject to Review, except by the Court at the hearing of such Appeal, when the Court shall have full Power to give such Orders and Direction in respect to Interim Possession as Justice may require.

80. The whole Provisions of Part VII. of this Act shall, so far as possible, apply to all Advocations in Dependence before the Inner House at the Commencement of this Act, and to all Advocations which may, after the Commencement of this Act, come before the Inner House by Report or Reclaiming Note from any Lord Ordinary: Provided always, that the Advocations depending before the Outer House at the Commencement of this Act shall be disposed of in the Outer House according to the present Law and Practice.

VIII.—ACCOUNTINGS, SUSPENSIONS, AND SUMMARY PETITIONS.

81. The Court (in any Branch of its Jurisdiction), where a Question of Accounting is to be investigated, may request the Accountant, to whom it is intended to remit the Cause, to attend in Court at the Debate, and in the advising of the Cause may take the Assistance of such Accountant out of Court in settling the Terms of the Remit to be made to him.

82. The Accountant shall have Power, by signed Order, to require the Attendance of the Parties before him at such Times, either in Session or in Vacation, as he may appoint; and also to fix the Times within which Notes of Objections and Answers, Vouchers, and other necessary Papers shall be lodged before him, and the Time appointed by such Order may be once prorogated without special Cause shown, and a Second Time upon special Cause to be mentioned in the Order of Prorogation; provided in case of such Second Prorogation that Application is made before the Expiration of the Time previously appointed. When the Accountant has Power under the Remit to examine Witnesses or Havers, the Clerk of the Bills shall issue Letters of Second Diligence against any defaulting Witness or Haver, on a Bill presented by the Agent, and countersigned by the Accountant.

83. In case of Failure to lodge any Note or Answer or Productions within the Time appointed, the Accountant shall proceed to dispose of the Cause upon the Evidence and Statements submitted to him; and in case of the Failure of One of the Parties to attend any Diet without reasonable Excuse, he shall proceed to dispose of the Cause, after hearing the Explanations of the other Party, according to his Opinion on its Merits.

84. It shall be competent for the Accountant to apply, either by written Note, or *vivâ voce* in Presence of the Parties, to the Court for Direction as to any Point which may arise in the course of the Remit; and the Court may give such Directions either *vivâ voce*, or by Interlocutor thereon, or may suspend the Remit, and proceed to deal with the Point raised as in the Cause, and dispose of it accordingly.

85. It shall be competent for either Party, with the Leave of the Accountant, to bring under Review of the Court any Interim Order or Proceeding of the Accountant, or, with Leave as aforesaid, to move the Court to give the Accountant special Directions on any Point arising in the course of the Remit.

86. The Report of the Accountant shall state, in the Form of a Certificate, the Facts he has found to be established, and the Results at which he has arrived, and also the Points falling within the Remit which he suggests as proper for the Consideration of the Court; and any necessary Explanations of the Grounds of the Accountant's Findings and Opinion shall be stated in the Form of a Note appended to such Certificate; and such States of Accounts only shall be prepared as the Accountant or the Court shall consider essential for the proper Decision of the Cause.

87. The Accountant shall, if required by the Court or by either of the Parties, attend at the Debate on his Report; and it shall be lawful for the Court to take the Assistance of the Accountant out of Court in the Preparation of the Draft of the Judgment, in which the Opinions they may communicate to him shall be applied to the various Points of the Case, so as to bring out the proper Results of such Opinions, and so as, if possible, to obviate the Necessity of a Second Remit; and for this Purpose the Opinion of the Court may be communicated to the Accountant by the Judge, upon whom the Preparation of the Judgment of the Court may be devolved, in any way he may think fit.

88. The whole of the above-mentioned Provisions in relation to Actions of Accounting shall be applicable to Causes in Dependence before any of the Lords Ordinary.

89. Where a Respondent in any Application or Proceeding in the Bill Chamber, whether before or after the Institution of such Proceeding or Application, shall have done any Act which the Court, in the Exercise of its preventive Jurisdiction, might have prohibited by Interdict, it shall be lawful for the said Court, or for the Lord Ordinary on the Bills, upon a Prayer to that Effect, in the Note of Suspension and Interdict, or in a supplementary Note, to ordain such Respondent to perform any Act which may be necessary for reinstating the Complainer in his Possessory Right, or for granting specific Relief against the illegal Act complained of.

90. In all Proceedings in the Bill Chamber, as soon as an Interlocutor passing the Note has become final, and Caution has been found or Consignation has been made, in the event of Caution or Consignation having been ordered, the Cause shall become for all Purposes an Action depending in the Court of Session, and may immediately be enrolled by either Party in the Motion Roll of the Lord Ordinary to whom it is marked: Provided that where a Note of Suspension or other original Note in the Bill Chamber is not at the Time of its Presentation, or during the Dependence of the Process in the Bill Chamber, marked by the Respondent to One of the Lords Ordinary, it may, as soon as the Interlocutor passing the Note has become final, be so marked by the Complainer; and it shall not be necessary that any such Process should appear in the Calling Lists.

91. It shall be lawful for the Court, upon Application by summary Petition, to order the Restoration of Possession of any Real or Personal Property of the Possession of which the Petitioner may have been violently or fraudulently deprived,

and also to order the specific Performance of any Statutory Duty under such Conditions and Penalties (including Fine and Imprisonment where consistent with the Statute), in the event of the Order not being implemented, as to the Court shall seem proper; and such Petitions may be presented to any Lord Ordinary, or, in Time of Vacation or Recess, to the Lord Ordinary on the Bills, who shall proceed therein as Justice may require; and any such Petition presented to the Lord Ordinary on the Bills may, after the ordinary Sittings of the Court have commenced, be transferred to One of the Lords Ordinary in the Outer House in manner herein-before provided with respect to Bill Chamber Proceedings.

92. It shall be lawful for the Court to appoint not fewer than Six Agents, being Agents practising in the Court of Session of not less than Five Years standing, and skilled in Conveyancing, to be Judicial Reporters, and who shall hold their Office at the Pleasure of the Court; and all Remits which under the existing Practice are made to Agents practising in the Court of Session shall be made to such Judicial Reporters by Rotation, or in such other Way as may be considered most advisable for the Despatch of the Business entrusted to such Reporters, who shall be remunerated by Fees according to a Scale to be fixed by the Court, and which the Court may alter from Time to Time. The Court also shall have Power to regulate from Time to Time the Fees which shall be payable to any Accountant or Person of Skill, other than the Judicial Reporters foresaid, to whom any Remit is made in the course of any Judicial Proceedings before the Court.

IX.—MISCELLANEOUS PROVISIONS.

93. Summonses may be called, and Defences or other Pleadings may be returnable, at any of the Box Days in Vacation or Recess; and on the Fifth lawful Day after each Box Day the Lord Ordinary officiating on the Bills shall sit in Court for the Purpose of granting or recalling Decrees in Absence and hearing and disposing of Motions in any Cause in reference to the Preparation of the Record, or for the granting of Commissions and Diligence for the Recovery of Writings or the taking of Evidence to lie in retentis, or for any other Purpose which the Court may specify in any Act of Sederunt which they are empowered by this Act to make.

94. It shall be lawful for the Lords Ordinary at any Time in Vacation or Recess to sign Interlocutors pronounced in Causes heard in Time of Session, or at any extended Sittings, or at the Trial of Causes by Jury or by Proof, before such

Lord Ordinary; provided that where any such Interlocutor is dated at or prior to the First Box Day in Vacation, the same may be reclaimed against on the Second Box Day; and where the Interlocutor is dated after the First Box Day, then on the First Sederunt Day ensuing, or within such Number of Days from the Date of such Interlocutor as may be competent in the Case of a Reclaiming Note against such Interlocutor, dated and signed during Session; and where such Interlocutor is signed during the Christmas Recess, the same may be reclaimed against on the First Sederunt Day ensuing, or within such Time after the Date thereof as may be competent as aforesaid: Provided that in the Case of Interlocutors which cannot be reclaimed against without the Leave of the Lord Ordinary, such Leave may be given by such Lord Ordinary, or in his Absence by the Lord Ordinary sitting on the Bills during Vacation or Recess.

95. Where, according to the existing Practice, a Cause would require to be wakened in order to its being proceeded with, it shall be competent for any of the Parties to enrol such Cause before the Lord Ordinary, and to lodge a Minute craving a Wakening of the Cause; and the Lord Ordinary may thereupon direct Intimation of such Minute to be made to the known Agents of the other Parties in the Cause, or to such Parties themselves, and shall direct Intimation to be made in the Minute Book of the Court of Session; and where said Parties have no known Agents, or are themselves furth of Scotland, the Lord Ordinary shall also appoint Edictal Intimation thereof to be made by Publication in the Record of Edictal Citations; and on the Expiration of Eight Days from the Date of such Intimation, or from the latest Date thereof, and on a Certificate being lodged in Process under the Hand of the Agent of the Party applying for the Wakening, certifying that he has duly intimated the Minute in Terms of the Lord Ordinary's Interlocutor, the Lord Ordinary may pronounce an Interlocutor holding the Cause as wakened, and the same may thereafter be proceeded with as wakened accordingly.

96. Where, according to the existing Practice, a Cause may be transferred against any Party or Parties, it shall be competent to any Party who might have instituted a Summons of Transference to enrol the Cause before the Lord Ordinary, and to lodge a Minute craving a Transference of the Cause against such Party or Parties; and the Lord Ordinary may thereupon grant Warrant for serving a Copy of the Summons or other original Pleading upon the Party or Parties against whom such Cause is sought to be transferred, and at the same Time shall allow such Party or Parties to give in a Minute of Objections to such Transference within a Time to be specified in the

Interlocutor; and such Interlocutor shall also be intimated in common Form to the Agents of the other Parties in the Cause; and such and the like Procedure may be had in virtue of the Service of such Summons or Pleading under the Lord Ordinary's Warrant as might have been had in virtue of the Execution of a Summons of Transference; and if the Lord Ordinary shall think fit to transfer the Cause in Terms of the said Minute (which the Lord Ordinary is hereby authorized to amend if necessary), he shall pronounce an Interlocutor holding the Cause as transferred against the Party or Parties named in such Minute or amended Minute, and the Cause shall be taken to be transferred accordingly.

97. Where, according to the existing Practice, a Cause would require to be wakened in order to its being proceeded with, and also to be transferred against any Party or Parties, it shall be competent to any Party who might have instituted a Summons of Wakening and Transference to enrol the Cause before the Lord Ordinary, and to lodge a Minute craving a Wakening of the Cause, and a Transference thereof against such Party or Parties; and after such Procedure by Intimation and Service as is herein-before directed with respect to Motions for Wakening and Transference respectively, the Lord Ordinary may pronounce an Interlocutor holding the Cause as wakened, and may either in the same Interlocutor, or in an Interlocutor to be subsequently pronounced, as Justice may require, also transfer the Cause against the Parties named in such Minute.

98. It shall be lawful, where the Process is in the Inner House, to apply by Minute to the Division of the Court in which the Cause depends for a Transference of the Cause in manner herein-before provided against any Party or Parties named in such Minute: Provided also, that nothing herein contained shall prevent the Lord Ordinary or the Court from sisting any Person upon his own Application by Minute as a Party to the Cause, where such Person is, according to the existing Practice, entitled to be sisted as Representative, Trustee, or Guardian, or in any other Relation to any Party who shall be already a Party to the Cause, or who shall have died during the Dependence thereof; and any such Application to be so sisted may be combined with an Application for Wakening.

99. It shall no longer be competent to object to the Production of any Document after a Record has been closed, on the Ground that it was in the Possession or under the Control of the Party producing it at the Time when the Record was closed: Provided that the Court or the Lord Ordinary may attach such Conditions, as to

Expenses or otherwise, to the receiving of such Documents, as to them or him shall seem proper.

100. "The Conjugal Rights (Scotland) Amendment Act, 1861," is hereby amended as follows, viz.:

(1.) It shall be sufficient Compliance with the Provision in the Tenth Section of said Act if the Personal Service therein required is made by the Delivery to the Defender personally of the Summons by a Person (although not a Messenger-at-Arms or other Officer of the Law) duly authorized by the Pursuer for that Purpose, and such Person shall return a Certificate that such Delivery has been made: Provided always, that it shall be competent for the Lord Ordinary to call for farther Evidence of the Service by such Delivery, if he shall think proper:

(2.) Notwithstanding the Terms of the Thirteenth Section of said Act, it shall be competent for the Lord Ordinary to grant Commission to any Person competent to take and report in Writing the Deposition of a Haver according to the existing Practice, although such Haver shall be resident in Scotland.

101. It shall no longer be competent to direct a Brieve for the Cognition of a Person alleged to be *incompos mentis prodigus et furiosus*, or of a Person alleged to be *incompos mentis fatuus et naturaliter idiota*, to the Judge Ordinary; and the Brieves of Furiosity and Idiocy hitherto in Use are hereby abolished; and in lieu thereof it is enacted, that a Brieve from Chancery, written in the English Language, shall be directed to the Lord President of the Court of Session, directing him to inquire whether the Person sought to be cognosed is insane, who is his nearest Agnate, and whether such Agnate is of lawful Age; and such Person shall be deemed insane if he be furious or fatuous or labouring under such Unsoundness of Mind as to render him incapable of managing his Affairs; and such Brieves shall be served upon the Persons sought to be cognosed, on Induciae of Fourteen Days; and the Brieve shall be tried before the said Lord President and a Special Jury, or before any other Judge of the Court of Session to whom the said Lord President may remit the same, and a Special Jury; and the Trial shall be conducted in the same Manner as Jury Trials in Civil Causes in Scotland are conducted, with all the like Remedies as to Motions for New Trials and Bills of Exceptions which are competent with reference to such Jury Trials; and the Court shall have Power to award Expenses against either Party; but they shall not award Expenses against the Party prosecuting the Brieve, unless they are of opinion that the same was prose-

cuted without reasonable or probable Cause; and the Verdict and Service of the Jury shall be retoured to Chancery, and shall, unless set aside on any Ground, have the like Force and Effect, and be followed by the like Procedure, as a Retour of the Verdict and Service of the Jury before the Judge Ordinary according to the present Law and Practice.

102. Whereas by the Act Twentieth and Twenty-first Victoria, Chapter Seventy-one, Section Eighty-four, it is provided that no Caution for any Judicial Factor for a Lunatic shall be received as sufficient by any of the Principal Clerks of Session until the Accountant of the Court of Session shall approve thereof: Be it enacted, That the said Provision be repealed, so far as relates to the Approval of Caution for Judicial Factors to Lunatics by the said Accountant of Court, and that after the passing of this Act all such Bonds of Caution shall be received by the Principal Clerks of Session in the same Manner as before the passing of the said last-mentioned Act.

103. It shall not be deemed a Ground of Declinature of Jurisdiction that the Judge (whether in the Court of Session or in any of the Inferior Courts) is a Partner in any Joint Stock Company carrying on as its sole or principal Business the Business of Life and Fire or Life Assurance, where such Company is a Party to the Proceeding in which the Judge is called to exercise his Jurisdiction, and it shall not be deemed a Ground of Declinature of Jurisdiction that any such Judge is possessed, merely as a Trustee, of any Stock or Shares in any incorporated Company, where such Company is a Party to the Proceeding.

104. The Clerks and other Officers of the Court of Session shall make, in such Manner and Form as may from Time to Time be ordered and required by One of Her Majesty's Principal Secretaries of State, annual Returns of the Business of their respective Offices for the Year ending on the Thirty-first Day of December immediately preceding, and shall transmit such Returns to Her Majesty's Advocate for Scotland on or before the Fifteenth Day of January in each Year; and Her Majesty's Advocate for Scotland is hereby required to prepare from these Returns a general Return for the Court of Session, and on or before the First Day of March in each Year to cause the same to be transmitted to One of Her Majesty's Principal Secretaries of State, to be laid before Parliament.

105. Whereas by the Tenth, Twelfth, Thirteenth, Sixteenth, Nineteenth, Twenty-fifth, and Twenty-sixth Sections of the Act First and Second Victoria, Chapter One hundred and eighteen, and by the Third Section of the Act Twentieth

and Twenty-first Victoria, Chapter Eighteen, certain Salaries were provided to certain therein-named Officers of the Court of Session and of the Bill Chamber of said Court, and of the Court of Commissioners for Teinds: So much of the said Sections of said Acts as fixes the Amounts of said Salaries respectively is hereby repealed; and it shall be lawful for the Commissioners of Her Majesty's Treasury to grant to such Officers of the Court of Session and of the Bill Chamber of said Court, and of the Court of Commissioners for Teinds, such Salaries as to them shall seem proper, payable quarterly out of any Monies to be voted by Parliament for that Purpose, which Salaries shall come in lieu of the Salaries now payable, and of any Fees or other Allowances exigible by such Clerks.

106. The Court of Session may from Time to Time make such Regulations by Act of Sederunt as shall be necessary for carrying into effect the Purposes of this Act; and for regulating the Times and Forms of Summonses and Writs, and Modes of Procedure and of Pleadings and generally the Practice of the said Court in respect of the Matters to which this Act relates; and for regulating the Fees of the Agents practising before the said Court; and, so far as may be found expedient, for altering the Course of proceeding herein-before prescribed in respect to the

Matters to which this Act relates, or any of them; and may also repeal or alter the Provisions of any Act of Sederunt relating to any of the Matters herein-before specified as may be inconsistent with such new Regulations; and for that Purpose the said Court may meet during Vacation as well as during Session: Provided that every such Act of Sederunt shall, within One Month after the Date thereof, be transmitted by the Lord President of the Court of Session to One of Her Majesty's Principal Secretaries of State in order that it may be laid before both Houses of Parliament; and if either of the Houses of Parliament shall, by any Resolution passed within Thirty-six Days after such Act of Sederunt has been laid before such House of Parliament, resolve that the whole or any Part of such Act of Sederunt ought not to continue in force, in such Case the whole or such Part thereof as shall be so included in such Resolution shall from and after such Resolution cease to be binding.

107. All Laws, Statutes, Acts of Sederunt, and Usages shall be and the same are hereby repealed in so far only as they may be in any way inconsistent or at variance with the Provisions of this Act, but in all other respects they shall remain in full Force and Effect; and this Act shall be read and construed along with the Tenor thereof.

CAP. CI.

The Titles to Land Consolidation (Scotland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Commencement of Act.*
3. *Interpretation of Terms.*
4. *Acts specified in Schedule (A.) repealed.*
5. *In Conveyances of Land, &c. not held Burgage, certain Clauses may be inserted in the short Forms given in Schedule (B.) No. 1.*
6. *Import of Clause expressing Manner of holding.*
7. *In Conveyances of Burgage Property certain Clauses may be inserted in the Forms given in Schedule (B.) No. 2.*
8. *Import of Clauses in Schedule (B.) Nos. 1 & 2.*
9. *Conditions of Entail may, in Conveyances of Entailed Lands, be inserted by Reference merely.*
10. *Real Burdens may be referred to as already in the Register of Sasines.*
11. *Description of Lands contained in recorded Deeds may be inserted in subsequent Writs by Reference merely.*
12. *Clause directing Part of Conveyance to be recorded.*
13. *Several Lands conveyed by the same Deed may be comprehended under One general Name.*
14. *Certain Clauses in Entails no longer necessary.*
15. *Instrument of Sasine no longer necessary, but Conveyance may be recorded instead.*
16. *Mode of expeding Sasine in Lands holden Burgage.*
17. *Not necessary to record the whole Conveyance or Discharge.*

18. *Instrument of Resignation ad remanentiam unnecessary, but in place thereof Conveyance in favour of Superior may be recorded.*
19. *Notarial Instruments in favour of general Disponees.*
20. *De presenti Words, or Words of Style, unnecessary in mortis causa Deeds.*
21. *Trustee or Executor to apply Lands for Purposes of Trust or Will.*
22. *Assignations to unrecorded Conveyances.*
23. *Notarial Instruments in favour of Parties acquiring Rights to unrecorded Conveyances.*
24. *Mode of completing Title by a Judicial Factor on a Trust Estate, &c.*
25. *Mode of completing Title by a Trustee in Sequestration, and by Liquidators of Joint Stock Companies.*
26. *Heritable Property conveyed for religious or educational Purposes to vest in Disponees or their Successors.*
27. *Services to proceed by Petition to the Sheriff.*
28. *Petition to be presented to the Sheriff of the County or to the Sheriff of Chancery.*
29. *Nature and Form of Petition.*
30. *Services not to proceed till Publication be made.*
31. *Caveats to be received.*
32. *Petition of Service to be equivalent to a Brieve and Claim.*
33. *Procedure before the Sheriff, and the Effect of his Judgment.*
34. *Case where Domicile of Party is unknown.*
35. *Competing Petition may be presented, and Sheriff, after receiving Evidence, give Judgment.*
36. *Recording and Extract of Judgment.*
37. *The Extract Decree to be equivalent to an Extract Retour.*
38. *Transmission of Records.*
39. *Clerks of Chancery to be remunerated for keeping Register, &c., by Act of Sederunt.*
40. *No Person entitled to oppose a Service who could not appear against a Brieve of Inquest.*
41. *Appeal for Jury Trial.*
42. *Where Sheriff refuses to serve Petitioner, &c. Judgment may be reviewed.*
43. *Procedure when a Decree of Service is brought under Reduction. Effect of the Decree of Reduction.*
44. *Forms and Effect of Procedure in the Court of Session.*
45. *"Court of Session Act, 1868," to apply to Appeals and Reductions, &c. under this Act.*
46. *A Decree of Special Service, besides operating as a Retour, shall have the Operation and Effect of a Disposition from the Deceased to his Heirs and Assignees.*
47. *A Special Service not to infer a general Representation, either active or passive.*
48. *Petitioner for Special Service may petition for General Service.*
49. *A General Service may be applied for and obtained to a limited Effect by annexing a Specification : and it shall infer only a limited passive Representation.*
50. *Jurisdiction of the Sheriff of Chancery.*
51. *Power to the Court of Session to pass Acts of Sederunt.*
52. *Appointment of Sheriff of Chancery.*
53. *Agents may practise before Sheriff Courts.*
54. *Salaries of Sheriff of Chancery and Sheriff Clerk of Chancery.*
55. *Salary to be regulated by the Commissioners of the Treasury on Vacancy.*
56. *Compensation already awarded not to be affected.*
57. *Compensation to be paid.*
58. *Provisions as to depending Petition for Service.*
59. *Unnecessary to libel and conclude for Decree of Special Adjudication.*
60. *General and Special and General Special Charges to be no longer necessary.*
61. *Actions of Constitution and Adjudication against Apparent Heir may be insisted in after the Lapse of Six Months.*
62. *Effect of a Decree of Adjudication or Sale.*
63. *Signatures for Crown Writs abolished.*
64. *Crown Writs to be obtained by lodging a Draft thereof and Note along with the Title Deeds.*
65. *Draft Crown Writ to be revised.*
66. *Rectification of Mistakes in former Titles.*
67. *Intimation of proposed Rectification to be made to Solicitor for Commissioners of Woods and Forests.*
68. *Presenter of Signatures, &c. may refer to Copy of Writ when withheld.*
69. *Amount of Crown Duties to be fixed.*
70. *Clerk's Fees.*
71. *Copy of revised Draft to be furnished to the Party.*

72. *If no Objections, the revised Draft to be attested, and the Crown Writ prepared.*
73. *Crown Writs may be applied for at any Time.*
74. *Objections, if any, to Draft Crown Writ to be by a Note.*
75. *Objections, how to be disposed of.*
76. *Procedure if Objections repelled.*
77. *Refusal to revise, how to be complained of.*
78. *Crown Writ as revised to be engrossed and delivered.*
79. *Crown Writ to be valid.*
80. *Ceremony of Resignation abolished.*
81. *Investiture by Resignation from the Crown.*
82. *Investiture by Confirmation from the Crown.*
83. *Crown Writs and Crown Charters may be in the Forms given in Schedule (T.)*
84. *Crown Writs or Precepts to Heirs specially served, how to be obtained.*
85. *Crown Writs or Precepts of Clare constat may also be granted to Heirs holding only a Gavel Service.*
86. *Crown Writs or Precepts of Clare constat to be null unless recorded before First Term after being issued. Fees to be paid to Sheriffs and Sheriff Clerks for a limited Period.*
87. *Register of Crown Writs to be kept.*
88. *Crown Charters or Writs of Novodamus, how to be obtained.*
89. *Lodging Draft Crown Writ with Note, and recording Note, to be equivalent, in competition, to presenting a Signature and recording Abstract.*
90. *Crown Writs to be in the English Language.*
91. *Court of Session to frame Regulations.*
92. *Salary to be regulated by Commissioners of the Treasury, when Vacancy.*
93. *Power to Prince and Steward of Scotland to appoint his own Presenter of Signatures, &c.*
94. *Compensation already awarded not to be affected.*
95. *Compensation, how to be paid.*
96. *Substitute to be appointed to Sheriff of Chancery or Presenter of Signatures in event of Absence or Disability.*
97. *Subject Superior may be compelled to grant Entries by Confirmation.*
98. *Confirmation by Subject Superior to be by Writ or Charter in Form of Schedule (V.) Nos. 1. and 2.*
99. *Investiture by Resignation from Subject Superior.*
100. *All Writs and Charters from Subject Superior may refer Tenendas and Reddendo.*
101. *Precepts and Writs of Clare constat from Subject Superior.*
102. *Heir in Burgage Subjects may make up Title by Writ of Clare constat.*
103. *Writs of Clare constat from Subject Superiors, &c. not to fall by Death of the Grantor.*
104. *Where Subject Superior's Title incomplete, Owner may in certain Cases apply to Lord Ordinary on the Bills to ordain Superior to complete his Title and grant an Entry, under pain of Forfeiture.*
105. *Owner may in such Case apply to Lord Ordinary on Bills to authorize Application for an Entry by the Crown or mediate Over Superior as in vice of the recusant Superior.*
106. *Lands to be held temporarily of the Crown or mediate Superior.*
107. *The Party in right of the Superiority may lodge a Minute tendering Relinquishment of his Right and if accepted by the Petitioner the Lord Ordinary may interpose his Authority.*
108. *Over Superior's Rights not to be extended or affected.*
109. *Vassal obtaining or accepting Forfeiture or Relinquishment of Superiority to be liable for its Value but Forfeiture or Relinquishment not to infer Representation.*
110. *Mode of relinquishing Superiorities.*
111. *Investiture by Over Superior.*
112. *Applications of Price of Entailed Superiorities. Price of Superiorities of Entailed Lands may be charged on the Entailed Estate.*
113. *Providing for Payment in lieu of Casualties of Superiority in case of Lands conveyed for Religious Purposes.*
114. *Writs of Confirmation, &c. by Subject Superiors to be tested.*
115. *Charters and Writs to operate as Confirmation of all prior Conveyances, &c.*
116. *Stamp Duty on Writs of Confirmation, &c.*
117. *Heritable Securities to form Moveable Estate; except where conceived in favour of Heirs, exclude Executors, and quoad fiscum. Not to belong to Husband jure mariti, nor to Wife jure uxoris Nor to be computed in Legitim.*
118. *Bonds and Dispositions in Security may be granted in the Form No. 1. of Schedule (FF.)*
119. *Explanation of Clauses in Schedule (FF.) No. 1. Clauses reserving Right of Redemption, and of Obligation to pay Expense of Assignment or Discharge and Power of Sale, valid, &c.*

20. *Securities may be registered during Lifetime of Grantee, or Title completed after his Death.*
21. *Sale carried through in Terms of this Act to be valid to the Purchaser.*
22. *Creditors seeking to count and reckon for the Surplus of the Price, and to consign the same in the Bank.*
23. *On Sale and Consignation of Surplus, Lands to be disencumbered of the Security.*
24. *Securities to be transferred in the Form prescribed. When Conveyance of Heritable Security is contained in a general Deed of Conveyance, the whole such Deed need not be recorded.*
25. *Completion of Title of Executors or Executor nominate, or Donee or Legatee of an Heritable Security, or of Heir where Executors excluded.*
26. *Completion of Title of Executors, &c. of Creditor dying intestate.*
27. *Executor nominate or Donee mortis causa may complete Title by Notarial Instrument.*
28. *Form of completing Title of Heir where Executors are excluded.*
29. *Adjudgers may complete their Title by recording Abbreviate of Adjudication.*
30. *Unregistered Security or Assignment to be available to Executors, &c. of Grantee.*
31. *This Act not to affect Liability of Debtors on their Lands.*
32. *How any Heritable Security may be renounced or discharged.*
33. *Heritable Security how restricted.*
34. *Act to apply to all Heritable Securities.*
35. *Parties may use the present Forms if they see fit.*
36. *Fees to be taken by Town Clerks of Royal Burghs and Keepers of Registers in Office at 1st Oct. 1845, during their respective Rights of Office, &c.*
37. *This Act to apply to Lands held by any Description of Tenure.*
38. *Short Clauses of Consent to Registration may be used in any Deed.*
39. *Females may act as instrumentary Witnesses.*
40. *Additional Sheets may be added to Writs.*
41. *All Deeds, &c. recorded in Register of Sasines to have Warrants of Registration endorsed, except certain Burgage Deeds.*
42. *Recording of Conveyances in the Register of Sasines authorized.*
43. *Conveyances and Instruments may be recorded of new.*
44. *Recorded Instruments not to be challenged on the Ground of Erasures.*
45. *Not competent to challenge existing Warrants of Registration on certain Grounds.*
46. *Obligations appointed to be inserted in Instruments of Sasine shall be inserted in Notarial Instruments.*
47. *Prohibition against Subinfeudation not to be affected.*
48. *In all Questions under the Bankrupt Acts in Scotland, the Dates of Registration of Assignations, &c. to be held to be the Dates of the Instruments.*
49. *Deeds and Instruments may be partly written and partly printed or engraved.*
50. *Debts affecting Lands exchanged for other Lands to affect such other Lands in lieu thereof.*
51. *Provision for Lands held Burgage where no Burgh Register of Sasines is kept.*
52. *Provision for Lands in the Burgh of Paisley held by Booking Tenure.*
53. *Fees of Town Clerks appointed prior to 8th March 1860 reserved, but no Town Clerks appointed after that Date to have Claims for Compensation for Loss of Fees, &c.*
54. *Official Acts of Town Clerks and Keepers of Registers of Sasines not to be affected by their personal Interests in recorded Writs.*
55. *Inhibitions to take effect from Date of Registration of Notice, &c.*
56. *Short Form of Letters of Inhibition.*
57. *No Inhibition to have Effect against Acquirenda, unless in case of Heir under Entail or other indefeasible Title.*
58. *Inhibitions on Depending Summons to be recalled on Petition to Lord Ordinary.*
59. *Litigiosity not to begin before Date of Registration of Notice of Summons.*
60. *Right to Heirship Moveables abolished.*
61. *Judgment of Lord Ordinary on the Bills subject to Review of Inner House, and Judgments in certain Cases to be final.*
62. *Court of Session may fix and regulate Fees.*
63. *Old Forms of Conveyances may be used.*
Schedules.

An Act to consolidate the Statutes relating to the Constitution and Completion of Titles to Heritable Property in Scotland, and to make certain Changes in the Law of Scotland relating to Heritable Rights.

(31st July 1868.)

WHEREAS it is expedient to consolidate the Statutes which have been passed during recent Years relating to the Forms of constituting and completing Titles to Land and to Heritable Securities in Scotland, and to make certain Changes upon the Law of Scotland in regard to Heritable Rights, and to the Succession to Heritable Securities, in Scotland : Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited for all Purposes as "The Titles to Land Consolidation (Scotland) Act, 1868."

2. This Act shall take effect from and after the Thirty-first Day of December One thousand eight hundred and sixty-eight, unless in so far as it is herein appointed to take effect at an earlier Date.

3. The following Words and Expressions in this Act, and in the Schedules annexed to this Act, shall have the several Meanings hereby assigned to them, unless there be something in the Subject or Context repugnant to such Construction ; that is to say,

The Words "Superior," "Vassal," "Grantor," "Grantee," "Disponent," "Disponee," "Legatee," "Adjudger," and "Purchaser," shall extend to and include the Heirs, Successors, and Representatives of such Superior, Vassal, Grantor, Grantee, Disponent, Disponee, Legatee, Adjudger, or Purchaser respectively ; and the Word "Successors" shall extend to and include Heirs, Disponees, Assignees legal as well as voluntary, Executors, and Representatives :

The Word "Month" shall mean Calendar Month :

The Words "Sheriff of Chancery" shall extend to and include the Sheriff of Chancery and his Substitute under this Act, or under the Act of the Tenth and Eleventh Victoria, Chapter Forty-seven ; and the Word "Sheriff" shall extend to and include the Sheriff and Steward of any County or Stewartry and his Substitute, and the Sheriff of Chancery and his Substitute :

The Words "Sheriff Clerk of Chancery" shall

extend to and include the Sheriff Clerk of Chancery acting under this Act, or who acted under the Act of the Tenth and Eleventh Victoria, Chapter Forty-seven, and the Depute of such Sheriff Clerk ; and the Words "Sheriff Clerk" shall extend to and include the Sheriff Clerk of Chancery and the Sheriff Clerk and Steward Clerk of any County or Stewartry and their respective Deputes :

The Words "Crown Writ" shall extend to and include all Charters, Precepts, and Writs from Her Majesty, and from the Prince ; and the Word "Crown" shall extend to and include Her Majesty and the Prince ; the Words "Her Majesty" shall extend to and include Her Majesty and Her Royal Successors ; and the Word "Prince" shall extend to and include the Prince and Steward of Scotland and his Successors :

The Word "Charter" and the Word "Writ" shall each extend to and include all Crown Writs, and all Charters, Precepts, and Writs from Subject Superiors :

The Word "Deed" and the Word "Conveyance" shall each extend to and include all Charters, Writs, Dispositions, whether containing a Warrant or Precept of Sasine or not, and whether inter vivos or mortis causa, and whether absolute or in trust, Feu Contracts, Contracts of Ground Annual, Heritable Securities, Reversions, Assignations, Instruments, Decrees of Constitution relating to Land to be afterwards adjudged, Decrees of Adjudication for Debt, and of Adjudication in Implement, and of Constitution and Adjudication combined, whether for Debt or Implement, Decrees of Declarator and Adjudication, Decrees of Sale, and Decrees of General and of Special Service, whether such Decrees contain Warrant to Infert or Precept of Sasine or not, and the Summonses, Petitions, or Warrants on which any such Decrees proceed, Warrants to Judicial Factors, Trustees, or Beneficiaries of a lapsed Trust, to make up Titles to Lands and the Petitions on which such Warrants proceed, Writs of Acknowledgment, Contracts of Excambion, Deeds of Entail, Procuratories of Resignation ad remanentiam, and all Deeds, Decrees, and Writings by which Lands, or Rights in Lands, are constituted or completed or conveyed or discharged, whether dated, granted, or obtained before or after the passing of this Act, and official Extracts of all Deeds and Conveyances ; and all Codicils, Deeds of Nomination, and other Writings annexed to or endorsed on Deeds or Conveyances or bearing reference to Deeds or Conveyances separately granted, and Decrees of Declarator naming or appointing Persons to exercise or

enjoy the Rights or Powers conferred by such Deeds or Conveyances, shall be deemed and taken for the Purposes of this Act to be Parts of the Deeds or Conveyances to which they severally relate, and shall have the same Effect in all respects as to the Persons so named and appointed as if they had been named and appointed in the Deeds or Conveyances themselves :

The Words "Deed of Entail" shall extend to and include all Deeds and Conveyances of Lands under the Fetters of a strict Entail, and all Procuratories, Bonds, and Contracts by which Lands are settled under such Fetters :

The Word "Instrument" shall extend to and include all Notarial Instruments authorized by this Act, or by any of the Acts hereby repealed, and also all Instruments of Sasine, Instruments of Resignation ad remanentiam, Instruments of Resignation and Sasine, and Instruments of Cognition and Sasine, and Instruments of Cognition :

The Words "Heritable Security" and "Security" shall each extend to and include all Heritable Bonds, Bonds and Dispositions in Security, Bonds of annual Rent, Bonds of Annuity, and all Securities authorized to be granted by the Seventh Section of the Act of the Nineteenth and Twentieth Victoria, Chapter Ninety-one, intituled "An Act to amend and re-enact certain Provisions of an Act of the Fifty-fourth Year of King George the Third relating to Judicial Procedure and Securities for Debts in Scotland," and all Deeds and Conveyances whatsoever, legal as well as voluntary, which are or may be used for the Purpose of constituting or completing or transmitting a Security over Lands or over the Rents and Profits thereof, as well as such Lands themselves and the Rents and Profits thereof, and the Sums, Principal, Interest, and Penalties secured by such Securities, but shall not include Securities by way of Ground Annual, whether redeemable or irredeemable, or absolute Dispositions qualified by Back Bonds or Letters :

The Word "Creditor" shall extend to and include the Party in whose Favour an Heritable Security is granted, and his Successors in right thereof :

The Word "Debtor" shall include the Debtor and his Successors :

The Word "Lands" shall extend to and include all Heritable Subjects, Securities, and Rights :

The Words "Notary Public" shall be held to mean a Notary Public duly admitted to practise in Scotland :

The Word "Petitioner" shall extend to and

include any Person who may have presented or may present a Petition within the Meaning of this Act, or of any Act hereby repealed :

The Words "Judicial Factor" shall extend to and include Judicial Factors or Curators Bonis to Persons under Incapacity, Factors loco tutoris, Factors loco absentis, and all Judicial Managers :

The Words "infert" and "Infertment" shall extend to and include the due Registration, in the appropriate Register of Sasines, of any Deed or Conveyance, whether before or after the Commencement of this Act, by which Registration a Real Right to Lands has been or shall be constituted.

4. From and after the Commencement of this Act, the several Acts and Part of Act set forth in Schedule (A. No. 1.) to this Act annexed, to the Extent to which such Acts or Part of Act are by such Schedule expressed to be repealed, and every other Act or Acts, and such Parts of every other Act or Acts as shall be inconsistent with this Act, shall be and the same are hereby repealed : Provided always, that such Repeal shall not be construed to lessen or affect any Right to which any Person may at the Time of such Repeal be entitled under the said Acts or Part of Act, or to lessen or affect any Liability then existing thereunder, or to invalidate or affect anything done prior to the passing hereof in pursuance of the said Acts or Part of Act, or to revive or render necessary any Deed, Form, Procedure, or Practice by said Acts or Part of Act repealed, abolished, or rendered unnecessary ; and provided also, that any Right to Lands constituted or acquired under said Acts or Part of Act may be completed, transferred, or extinguished either under the same or under this Act.

5. It shall not be necessary to insert in any Conveyance of Lands in Scotland not held by Burgage Tenure a Clause of Obligation to infert, or a Precept of Sasine, or Warrant of Infertment ; and in any Conveyance of such Lands in which all or any of the following Clauses are necessarily or usually inserted, (videlicet,) a Clause declaring the Term of Entry, a Clause expressing the Manner of holding, a Procuratory or Clause of Resignation, a Clause of Assignment of Writs and Evidents, a Clause of Assignment of Rents, a Clause of Obligation to free and relieve of Feu Duties and Casualties due to the Superior, and of Public Burdens, a Clause of Warrandice, a Procuratory or Clause of Registration for Preservation or for Preservation and Execution, it shall be lawful and competent to insert all or any of such Clauses in the Form or as nearly as may be in the Form No. 1. of Schedule (B.) hereunto annexed ; and all or any of such Clauses, if so inserted in any such Conveyance, or in any Con-

veyance dated after the Thirtieth Day of September One thousand eight hundred and forty-seven, shall have the Meaning and Effect assigned to them in the Sixth and Eighth Sections of this Act, and shall be as valid, effectual, and operative, to all Intents, Effects, and Purposes, as if the same had been expressed in the fuller Mode or Form generally in use prior to the said Thirtieth Day of September One thousand eight hundred and forty-seven.

6. If the Lands have been or shall be conveyed to be holden a me only, the Clause so expressing the Manner of holding shall imply that the Lands are to be holden from the Grantor of and under his immediate lawful Superiors, in the same Manner as the Grantor or his Predecessors or Authors held, hold, or might have holden the same, and that the Title of the Disponee may be completed either by Resignation or Confirmation, or both, the one without Prejudice of the other; and if the Lands shall be disposed to be holden a me vel de me, the Clause so expressing the Manner of holding shall imply that the Lands are either to be holden of the Grantor in Free Bleich, for Payment of a Penny Scots in Name of Bleich Farm, at Whitsunday yearly, upon the Ground of the Lands, if asked only, and freeing and relieving the Grantor of all Feu Duties and other Duties and Services exigible out of the said Lands by his immediate lawful Superiors thereof, or to be holden from the Grantor of and under his immediate lawful Superiors, in the same Manner as the Grantor or his Predecessors or Authors held, hold, or might have holden the same, and that the Title of the Disponee may be completed either by Resignation or Confirmation, or both, the one without Prejudice of the other; and where no Manner of holding is expressed, the Conveyance shall be held to imply that the Lands are to be holden in the same Manner as if the Conveyance contained a Clause expressing the Manner of holding to be a me vel de me, where the Titles of the Lands contain no Prohibition against Sub-infeudation, or against an alternative Holding, and as if the Conveyance contained a Clause expressing the Manner of holding to be a me, where the Titles contain such Prohibitions, or either of them: Provided always, that where the said Titles contain such Prohibitions or either of them the Conveyance shall, if an Entry in the Lands therein specified or thereby conveyed be expedite with the Superior within Twelve Months from the Date of such Conveyance, have the same Preference in all respects from the Date of recording the Conveyance or any Instrument thereon in the appropriate Register of Sasines as if such Conveyance contained a Clause expressing the Manner of holding to be a me vel de me, and the Titles did not contain any Prohibition against Sub-infeudation or against an alternative Holding:

And provided always, that nothing contained in this Act shall be construed to take away or impair any of the Rights and Remedies competent to a Superior against his Vassal lying out unentered.

7. It shall not be necessary to insert in any Conveyance of Lands in Scotland held by Burgage Tenure a Clause of Obligation to infeft, or a Procuratory or Clause of Resignation; and every Conveyance of such Lands shall imply that the Lands thereby conveyed are to be holden of Her Majesty in Free Burgage, for Service of Burgh used and wont; and in any Conveyance of such Lands in which all or any of the following Clauses are necessarily or usually inserted, (*videlicet*,) a Clause declaring the Term of Entry, a Clause of Obligation to free and relieve of Ground Annual, Cess, Annuity, and other public Burdens, a Clause of Assignment of Rents, a Clause of Assignment of Writs and Evidents, a Clause of Warrandice, and a Clause of Registration for Preservation and Execution, it shall be lawful and competent to insert all or any of such Clauses in the Form or as nearly as may be in the Form No. 2. of Schedule (B.) hereto annexed; and all or any of such Clauses, if so inserted in any such Conveyance, or in any similar Conveyance dated after the Thirtieth Day of September One thousand eight hundred and forty-seven, shall have the Meaning and Effect assigned to them in the Eighth Section of this Act, and shall be as valid, effectual, and operative to all Intents and Purposes as if they had been expressed in the fuller Mode or Form generally in use prior to the said Thirtieth Day of September One thousand eight hundred and forty-seven.

8. The Clause for resigning the Lands in Form No. 1. of Schedule (B.) hereto annexed shall be held and taken to be equivalent to a Procuratory of Resignation in favorem only in the Terms in use prior to the Thirtieth Day of September One thousand eight hundred and forty-seven, unless specially expressed to be a Resignation *ad remanentiam*, in which Case it shall be equivalent to a Procuratory of Resignation *ad remanentiam* according to the Form in use prior to the said Date; and the Clause of Assignment of Writs and Evidents in Forms Nos. 1. and 2. of Schedule (B.) hereto annexed shall, unless specially qualified, be held to import an absolute and unconditional Assignment to such Writs and Evidents, and to all open Procuratories, Clauses, and Precepts, if any, and as the Case may be, therein contained, and to all unrecorded Conveyances to which the Disponer has Right; and the Clause of Assignment of Rents in these Forms shall, unless specially qualified, be held to import an Assignment to the Rents to become due for the Possession following the Term of Entry, according to the legal and not the conventional

Terms, unless in the Case of *forehand Rents*, in which Case it shall be held to import an Assignment to the Rents payable at the conventional Terms subsequent to the Date of Entry; and the Clause of Warrandice in these Forms shall, unless specially qualified, be held to imply absolute Warrandice as regards the Lands and Writs and Evidents, and Warrandice from Fact and Deed as regards the Rents; and the Clause of Obligation to free and relieve from Feu Duties, Casualties, and public Burdens, in Form No. 1. of Schedule (B.) hereto annexed, shall, unless specially qualified, be held to import an Obligation to relieve of all Feu Duties or other Duties and Services or Casualties payable or prestable to the Superior, and of all public, parochial, and local Burdens due from or on account of the Lands conveyed prior to the Date of Entry; and the Clause of Obligation to free and relieve from Ground Annuals, Cess, Annuity, and other public Burdens, in Form No. 2. of Schedule (B.) hereto annexed, shall, unless specially qualified, be held to import an Obligation to relieve of all Ground Annuals, Cess, Annuity, and other public, parochial, and local Burdens, due from or on account of the Lands conveyed prior to the Date of Entry; and the Clause of Consent to Registration in these Two Forms shall, unless specially qualified, have the Meaning and Import and Effect assigned to them in the One hundred and thirty-eighth Section of this Act.

9. It shall not be necessary, in any Conveyance or Deed of or relating to Lands held under a Deed of Entail, or of or relating to Lands obtained by Excambion in Exchange for Lands held under any Deed of Entail, or of or relating to Lands purchased or acquired for the Purpose of being added to any Estate held under any Deed of Entail, or entailed on the Heirs and under the Conditions specified in any Deed of Entail, to insert the Destination of Heirs, or the Conditions, Provisions, and prohibitory, irritant, and resolute Clauses, or Clause authorizing Registration in the Register of Tailzies, contained in any such Deed of Entail; provided the same shall in such Conveyance or Deed be specially referred to, as set forth at full Length in such Deed of Entail recorded in the Register of Tailzies, if the same shall have been so recorded, or as set forth at full Length in any Conveyance or Deed recorded in the appropriate Register of Sasines and forming Part of the Progress of Title Needs of the said Lands held under such Deed of Entail, such Reference being made, as nearly as may be, in the Terms set forth in Schedule (C.) hereto annexed; and the Reference to such Destination, or to such Conditions, Provisions, and prohibitory, irritant, and resolute Clauses, or Clause authorizing Registration in the Register of Tailzies, if so made in any such Conveyance or

Deed, whether dated prior or subsequent to the Commencement of this Act, shall be equivalent to the full Insertion thereof, and shall, to all Intents and in all Questions whatever, whether inter hæredes or with Third Parties, have the same legal Effect as if the same had been inserted exactly as they are expressed in the recorded Deed of Entail, Conveyance, or Deed referred to, notwithstanding any Law or Practice to the contrary, or any Injunction to the contrary contained in such Deed of Entail, or any Enactments or Provisions to the contrary contained in an Act of the Parliament of Scotland made in the Year One thousand six hundred and eighty-five, intituled "An Act concerning Tailzies," or in any other Act or Acts of the Parliament of Scotland or of Great Britain, or of the United Kingdom of Great Britain and Ireland, now in force.

10. Where Lands are or shall hereafter be held under any Real Burdens or Conditions or Provisions or Limitations whatsoever appointed to be fully inserted in the Investitures of such Lands, it shall, notwithstanding such Appointment, and notwithstanding any Law or Practice to the contrary, not be necessary in any Conveyance or Deed of or relating to such Lands to insert such Real Burdens or Conditions or Provisions or Limitations, provided the same shall, in such Conveyance or Deed, be specially referred to as set forth at full Length in the Conveyance or Deed of or relating to such Lands recorded in the appropriate Register of Sasines, wherein the same were first inserted, or in any such Conveyance or Deed of subsequent Date recorded as aforesaid, and forming Part of the Progress of Titles of the said Lands, such Reference being made in the Terms or as nearly as may be in the Terms set forth in Schedule (D.) hereto annexed; and the Reference to such Real Burdens or Conditions or Provisions or Limitations if so made in any such Conveyance or Deed, whether dated prior or subsequent to the Commencement of this Act, shall be held to be equivalent to the full Insertion thereof, and shall, to all Intents and in all Questions whatever, whether with the Disposer or Superior or Third Parties, have the same legal Effect as if the same had been inserted exactly as they are expressed in the recorded Conveyance or Deed referred to, notwithstanding any Law or Practice or Act or Acts of Parliament to the contrary.

11. In all Cases where any Lands have been particularly described in any prior Conveyance or Deed of or relating thereto recorded in the appropriate Register of Sasines, it shall not be necessary in any subsequent Conveyance or Deed conveying or referring to the whole or any Part of such Lands to repeat the particular Description of the Lands at Length, but it shall be

sufficient to specify some leading Name or Names or some distinctive Description of the Lands, as contained in the Titles thereto, and to specify the Name of the County, and, where the Lands are held by Burgage Tenure, or by any similar Tenure, the Name of the Burgh and County in which they are situated, and to refer to the particular Description of such Lands as contained in such prior Conveyance or Deed so recorded in or as nearly as may be in the Form set forth in Schedule (E.) hereto annexed; and the Specification and Reference so made in any such subsequent Conveyance or Deed, whether dated prior or subsequent to the Commencement of this Act, shall be held to be equivalent to the full Insertion of the particular Description contained in such prior Conveyance or Deed, and shall have the same Effect as if the particular Description had been inserted in such subsequent Conveyance or Deed exactly as it is set forth in such prior Conveyance or Deed.

12. Immediately before the Testing Clause of any Conveyance of Lands, it shall be competent to insert a Clause of Direction, in or as nearly as may be in the Form No. 1. of Schedule (F.) hereto annexed, specifying the Part or Parts of the Conveyance which the Grantor thereof desires to be recorded in the Register of Sasines; and when such Clause is so inserted in any Conveyance, whether dated before or after the Commencement of this Act, and with a Warrant of Registration thereon, in which express Reference is made to such Clause of Direction (such Warrant being in the Form as nearly as may be of No. 2. of Schedule (F.) hereto annexed), is presented to the Keeper of the appropriate Register of Sasines for Registration, such Keeper shall record such Part or Parts only, together with the Clause of Direction and the Testing Clause and Warrant of Registration; and in the Absence of such express Reference in the Warrant of Registration as aforesaid, such Conveyance shall be engrossed in the Register as if it had contained no Clause of Direction; and the recording of such Part or Parts of the Conveyance, together with the Clause of Direction and the Testing Clause, and the Warrant of Registration, as before provided, shall have the same legal Effect as if, at the Date of such recording, a Notarial Instrument containing such Part or Parts of the Conveyance had been duly expedé and recorded in the appropriate Register of Sasines in favour of the Person on whose Behalf the Conveyance is presented: Provided that, notwithstanding such Clause of Direction, it shall be competent for the Person entitled to present the Conveyance for Registration to record the whole Conveyance, or to expedé and record a Notarial Instrument thereon, as after provided, in the same Manner as if the Conveyance had contained no such

Clause of Direction; and where such Notarial Instrument shall be expedé no Part or Parts of the Conveyance directed to be recorded shall be omitted from such Instrument.

13. Where several Lands are comprehended in One Conveyance in favour of the same Person or Persons, it shall be competent to insert a Clause in the Conveyance, declaring that the whole Lands conveyed and therein particularly described shall be designed and known in future by One general Name to be therein specified; and on the Conveyance containing such Clause, whether dated before or after the Commencement of this Act, or on an Instrument following thereon, whether dated before or after the Commencement of this Act, and containing such particular Description and Clause, being duly recorded in the appropriate Register of Sasines, it shall be competent in all subsequent Conveyances and Deeds and Discharges, of or relating to such several Lands to use the general Name specified in such Clause as the Name of the several Lands declared by such Clause to be comprehended under it; and such subsequent Conveyances and Deeds and Discharges of or relating to such several Lands under the general Name so specified shall be as effectual in all respects as if the same contained a particular Description of each of such several Lands, exactly as the same is set forth in such recorded Conveyance or Instrument: Provided always, that Reference be made in such subsequent Conveyances and Deeds and Discharges to a prior Conveyance or Instrument recorded as aforesaid, in which such particular Description and Clause are contained: Provided also, that it shall not be necessary in such Clause to comprehend under One general Name the whole Lands contained in the Conveyance in which such Clause is inserted, but that it shall be competent to comprehend certain Lands under one general Name and certain other Lands under another general Name, it being clearly specified what Lands are comprehended under each general Name; and such Reference shall be in or as nearly as may be in the Terms set forth in Schedule (G.) hereunto annexed.

14. Where a Deed of Entail contains an express Clause authorizing Registration of the Deed in the Register of Tailzies, it shall not be necessary to insert Clauses of Prohibition against Alienation, contracting Debt, and altering the Order of Succession, and irritant and resolute Clauses, or any of them; and such Clause of Registration contained in any Deed of Entail of Lands not held by Burgage Tenure dated on or after the First Day of October One thousand eight hundred and fifty-eight, or of Lands held by Burgage Tenure dated on or after the Twentieth

Day of October One thousand eight hundred and sixty, shall have in every respect the same Operation and Effect as if such Clauses of Prohibition, and such irritant and resolute Clauses, had been inserted in such Deed of Entail, any Law or Practice to the contrary notwithstanding.

15. It shall not be necessary towards obtaining Infestment in Land to expedite and record in the Case of Lands not held by Burgage Tenure an Instrument of Sasine, or, in the Case of Lands held by Burgage Tenure, an Instrument of Resignation and Sasine, on any Conveyance or Deed of or relating to such Lands, but it shall be competent and sufficient for the Person or Persons in whose Favour the Conveyance or Deed has been or shall be granted or conceived, instead of expediting and recording such Instrument of Sasine or of Resignation and Sasine, to record the Conveyance or Deed itself in the appropriate Register of Sasines; and the Conveyance or Deed being presented for Registration in such Register, with a Warrant of Registration thereon, in or as nearly as may be in the Form No. 1. of Schedule (H.) hereto annexed, and being so recorded along with such Warrant, shall have the same legal Force and Effect in all respects as if the Conveyance or Deed so recorded had been followed by an Instrument of Sasine in the Case of Lands not held by Burgage Tenure, or, in the Case of Lands held by Burgage Tenure, by an Instrument of Resignation and Sasine expedite in favour of the Person on whose Behalf the Conveyance or Deed is presented for Registration, and recorded in the appropriate Register of Sasines, at the Date of recording the said Conveyance or Deed; and where it is desired to give Investiture *propriis manibus*, it shall be competent for the Person in whose Favour the Conveyance or Deed has been or shall be granted or conceived to record the Conveyance or Deed itself in the Register of Sasines applicable to the Lands therein contained, with a Warrant of Registration thereon in or as nearly as may be in the Form of No. 3. of Schedule (H.) hereto annexed, signed by such Person, and such Conveyance or Deed being so recorded along with such Warrant shall have the same legal Force and Effect in all respects as if the Conveyance or Deed so recorded had been followed by an Instrument of Sasine, or of Resignation and Sasine *propriis manibus* expedite in favour of the Wife of such Person and signed by such Person, and recorded at the Date of recording the said Conveyance or Deed according to the Law and Practice heretofore in force.

16. It shall not be necessary towards obtaining Infestment in Lands holden by Burgage Tenure upon any Conveyance or Deed of or relating to such Lands that the Person or a Procurator for

the Person obtaining Infestment shall appear before the Provost or some One of the Bailies of the Burgh in which such Lands are situated, and resign the same into his Hands as into the Hands of Her Majesty, and for such Provost or Bailie to give Sasine to such Person or Procurator, nor shall it be necessary to proceed to the Ground of the Lands, or to the Council Chamber of the Burgh, or to use any Symbol of Resignation or Sasine; and, notwithstanding the Provisions of the immediately preceding Section of this Act, it shall be lawful and competent to resign and obtain Infestment in such Lands by presenting to any Notary Public such Conveyance or Deed and other necessary Warrants, and by such Notary Public giving Sasine therein by subscribing and recording an Instrument in the Form and Manner herein-after mentioned; and the Instrument of Sasine, or of Resignation and Sasine, following on such Conveyance or Deed, may be expressed in the Form or as nearly as may be in the Form of Schedule (I.) hereto annexed, and shall be authenticated in the Manner shown in such Schedule; and such Sasine, or Resignation and Sasine, and such Instrument following thereon, shall be as valid and effectual as if the same had been made and received and given and expressed in the Mode and Form in use prior to the Thirtieth Day of September One thousand eight hundred and forty-seven, and that notwithstanding of an Act of the Scottish Parliament passed in the Year One thousand five hundred and sixty-seven, or any other Act of Parliament now in force to the contrary; and every such Instrument of Sasine, or of Resignation and Sasine, and every similar Instrument of Sasine, or of Resignation and Sasine expedite in virtue of the Provisions of the Act Tenth and Eleventh of the Reign of Her present Majesty, Chapter Forty-nine, shall be recorded in manner in use prior to the said Thirtieth Day of September One thousand eight hundred and forty-seven, with regard to Instruments of Resignation and Sasine in Burgage Property, and the Town Clerks of Cities and Burghs are hereby required to register the same accordingly; and such Instruments of Sasine, or of Resignation and Sasine, being so recorded, shall in all respects have the same Effect at the Date of such recording as if Resignation had been made and accepted, and Sasine had been given, and an Instrument of Sasine, or of Resignation and Sasine, had been expedite in favour of the Person so obtaining Infestment, and had been recorded, in the appropriate Register of Sasines, according to the Law and Practice in use prior to the Thirtieth Day of September One thousand eight hundred and forty-seven.

17. Where it is not desired to record in the Register of Sasines the whole of a Conveyance

or Deed, or the whole of a Discharge, of or relating to Lands, it shall be competent and sufficient to expedite and record in the appropriate Register of Sasines a Notarial Instrument setting forth generally the Nature of the Conveyance or Deed or Discharge, and containing those Portions of the same by which the Lands are conveyed or discharged, and by which Real Burdens, Conditions, Provisions, or Limitations are imposed or discharged; and where by any Conveyance or Deed or Discharge separate Lands or separate Interests in the same Lands are conveyed or discharged in favour of the same or different Persons, it shall not be necessary to record the whole of such Conveyance or Deed or Discharge, but it shall be competent and sufficient to expedite and record as aforesaid a Notarial Instrument, setting forth generally the Nature of the Conveyance or Deed or Discharge, and containing the Part or Parts of the Conveyance or Deed or Discharge by which particular Lands are conveyed or discharged in favour of the Person or Persons in whose Favour the Notarial Instrument is expedite, and the Part of the Conveyance or Deed or Discharge which specifies the Nature and Extent of the Right and Interest of such Person or Persons, with the Real Burdens, Conditions, Provisions, and Limitations, if any; and such Notarial Instrument shall be in or as nearly as may be in the Form of Schedule (J.) hereto annexed; and upon such Notarial Instrument or any similar Notarial Instrument expedite in virtue of any of the Acts of Parliament hereby repealed being so recorded, the Person or Persons in whose Favour the same has been or shall be expedite and so recorded shall be in the same Position as if, at the Date of such recording, the Conveyance or Deed or Discharge on which it proceeds, along with a Warrant of Registration thereon, had been recorded in the appropriate Register of Sasines in favour of such Person or Persons.

18. It shall not be necessary to expedite and record an Instrument of Resignation ad remanentiam on any Procuratory of Resignation ad remanentiam, or on any Conveyance containing an express Clause of Resignation ad remanentiam, but it shall be competent and sufficient for the Superior in whose Favour the Resignation under such Procuratory or Conveyance is authorized to be made to record in the appropriate Register of Sasines such Procuratory or Conveyance, with a Warrant of Registration thereon, in the Form or as nearly as may be in the Form No. 1. of Schedule (H.) hereto annexed, or to expedite and record a Notarial Instrument as nearly as may be in the Form of Schedule (J.) hereto annexed; and such Procuratory or Conveyance and Warrant, or such Notarial Instrument, being so recorded, shall have the same Effect as if, at

the Date of such recording, an Instrument of Resignation ad remanentiam in favour of the Party on whose Behalf the same is so recorded had been expedite on such Procuratory or Conveyance, and had been recorded in the appropriate Register of Sasines: Provided always, that nothing herein contained shall prevent an Instrument of Resignation ad remanentiam being expedite and recorded on a Conveyance granted prior to the First Day of October One thousand eight hundred and fifty-eight, and containing a Clause of Resignation in the Form authorized by the Act of the Tenth and Eleventh Victoria, Chapter Forty-eight; and that all Instruments of Resignation ad remanentiam may be in or as nearly as may be in the Form of Schedule (K.) hereto annexed; and when in such Form, whether expedite before or after the Commencement of this Act, the same may, with Warrant of Registration thereon, be recorded in the appropriate Register of Sasines at any Time during the Life of the Party in whose Favour the Resignation is made, and the Date of Presentment and Entry set forth on any Instrument of Resignation in such Form by the Keeper of the Register shall be the Date of the Resignation and of the Instrument.

19. Where a Person shall have granted or shall grant a general Disposition of his Lands, whether by Conveyance mortis causa or inter vivos, or by a Testamentary Deed or Writing within the Sense and Meaning of the Twentieth and Twenty-first Sections of this Act, and whether such general Disposition shall extend to the whole Lands belonging to the Grantor, or be limited to particular Lands belonging to him, with or without full Description of such Lands, and whether such general Disposition shall contain or shall not contain a Procuratory or Clause of Resignation, or a Precept of Sasine, or an Obligation to infeft, or a Clause expressing the Manner of holding, it shall be competent to the Grantee under such general Disposition to expedite and record in the appropriate Register of Sasines a Notarial Instrument in or as nearly as may be in the Form of Schedule (L.) hereto annexed; and on such Notarial Instrument or any similar Notarial Instrument expedite in virtue of any Act of Parliament hereby repealed being so recorded, such Grantee shall be in all respects in the same Position as if a Conveyance of the Lands contained in such Notarial Instrument had been executed in his Favour by the Grantor of the general Disposition, to be holden, in the Case of Lands not held by Burgage Tenure, by such Manner of holding, if any, as is expressed in the general Disposition, and if no particular Manner of holding is therein expressed, then to be holden in the Manner and to the Effect and subject to the Provisions enacted and provided



in the Sixth Section of this Act in the Case of Conveyances in which no Manner of holding is expressed, and in the Case of Lands held by Burgage Tenure to be holden of Her Majesty in Free Burgage, and as if such Conveyance had been followed, where such Lands are not held by Burgage Tenure, by an Instrument of Sasine of the said Lands in favour of such Grantee, or, where they are held by Burgage Tenure, by an Instrument of Resignation and Sasine thereof in his Favour expedite and recorded in the appropriate Register of Sasines at the Date of recording such Notarial Instrument: Provided always, that where such Notarial Instrument shall be expedite by a Person other than the original Grantee under such general Disposition, it shall set forth the Title or Series of Titles by which the Person in whose Favour it is expedite acquired Right to such general Disposition, and the Nature of his Right.

20. From and after the Commencement of this Act, it shall be competent to any Owner of Lands to settle the Succession to the same in the event of his Death, not only by Conveyances *de præsenti*, according to the existing Law and Practice, but likewise by Testamentary or *mortis causa* Deeds or Writings, and no Testamentary or *mortis causa* Deed or Writing purporting to convey or bequeath Lands which shall have been granted by any Person alive at the Commencement of this Act, or which shall be granted by any Person after the Commencement of this Act, shall be held to be invalid as a Settlement of the Lands to which such Deed or Writing applies, on the Ground that the Grantor has not used, with reference to such Lands, the Word "*disponere*," or other Word or Words importing a Conveyance *de præsenti*; and where such Deed or Writing shall not be expressed in the Terms required by the existing Law or Practice for the Conveyance of Lands, but shall contain with reference to such Lands any Word or Words which would, if used in a Will or Testament with reference to Moveables, be sufficient to confer upon the Executor of the Grantor, or upon the Grantee or Legatee of such Moveables, a Right to claim and receive the same, such Deed or Writing, if duly executed in the Manner required or permitted in the Case of any Testamentary Writing by the Law of Scotland, shall be deemed and taken to be equivalent to a general Disposition of such Lands within the Meaning of the Nineteenth Section hereof by the Grantor of such Deed or Writing in favour of the Grantee thereof, or of the Legatee of such Lands, and shall be held to create and shall create in favour of such Grantee or Legatee an Obligation upon the Successors of the Grantor of such Deed or Writing to make up Titles in their own Persons to such Lands, and to convey

the same to such Grantee or Legatee; and it shall be competent to such Grantee or Legatee to complete his Title to such Lands in the same Manner and to the same Effect as if such Deed or Writing had been such a general Disposition of such Lands in favour of such Grantee or Legatee, and that either by Notarial Instrument or in any other Manner competent to a general Disponent: Provided always, that nothing herein contained shall be held to confer any Right to such Lands on the Successors of any such Grantee or Legatee who shall predecease the Grantor, unless the Deed or Writing shall be so expressed as to give them such Right in the event of the Predecease of such Grantee or Legatee.

21. Where such Testamentary or *mortis causa* Deed or Writing shall be conceived in favour of a Grantee as Trustee or Executor of the Grantor, and shall not be expressed to be wholly in favour of such Trustee or Executor for his own Benefit, such Trustee or Executor shall apply such whole Lands for the Purposes specified in such Deed or Writing; and where such Purposes cannot, in whole or in part, be carried into effect, or where no Purposes with reference to such Lands have been or shall be specified in such Deed or Writing, such Trustee or Executor shall convey such Lands, or so much thereof, or shall apply so much of the Proceeds thereof, if such Lands shall have been sold and realized by him, as may not be required for the Purposes of such Deed or Writing, to or for behoof of the Person or the Successors of the Person who, but for the passing of this Act and the granting of such Deed or Writing, would have been entitled to succeed to such Lands on the Death of such Grantor.

22. It shall be competent to any Person having Right to an unrecorded Deed or Conveyance, whether granted in favour of himself or originally granted in favour of another Person, to assign the Deed or Conveyance in or as nearly as may be in the Form No. 1. of Schedule (M.) to this Act annexed, setting forth the Deed or Conveyance, and the Title or Series of Titles, if any, by which he acquired Right to the same, and the Nature of the Right assigned; and the Assignment, or in the event of there being more than One, the successive Assignations, may be recorded in the appropriate Register of Sasines along with the Deed or Conveyance itself, and a Warrant of Registration thereon, in or as nearly as may be in the Form No. 2. of Schedule (H.) hereto annexed; and it shall be competent to write the Assignment or Assignations on the Deed or Conveyance itself, in or as nearly as may be in the Form No. 2. of Schedule (M.) hereto annexed, setting forth the Deed or Conveyance and the Title or Series of Titles, if any, by which such Person

acquired Right to the same, and the Nature of the Right assigned; in which Case the Assignment or Assignations and the Deed or Conveyance may be so recorded along with the Warrant of Registration thereon, which Warrant shall be in or as nearly as may be in the Form No. 1. of Schedule (H.) hereto annexed; and the Deed or Conveyance, with the Warrant of Registration, and the Assignment or Assignations, separate from the Deed or Conveyance, and those written upon the Deed or Conveyance, if any, and all similar Assignations granted before the Commencement of this Act, being so recorded, shall operate in favour of the Assignee on whose Behalf they are presented for Registration, as fully and effectually as if the Lands contained in the Assignment, or, if there be more than One, in the last Assignment, had been disposed by the original Deed or Conveyance in favour of such Assignee, and the Deed or Conveyance, with the Warrant of Registration, had been recorded, in the Manner herein-before provided, of the Date of recording such Deed or Conveyance and Assignment or Assignations; and all Deeds or Conveyances, with a Warrant of Registration and Assignment or Assignations written thereon, that may have been so recorded before the Commencement of this Act, shall operate in favour of the Assignees on whose Behalf the same shall have been so recorded, as effectually as is herein-before provided in regard to a recorded Deed or Conveyance, with a Warrant of Registration and Assignment or Assignations written thereon, notwithstanding that such Assignment or Assignations may not have been docketed with reference to such Warrant, or referred to therein as being so docketed.

23. It shall be competent to any Person having Right to an unrecorded Deed or Conveyance originally granted in favour of another Person to expedite a Notarial Instrument, in or as nearly as may be in the Form of Schedule (N.) hereto annexed, setting forth the Deed or Conveyance and the Title or Series of Titles by which he acquired Right to the same, and the Nature of his Right, and to record the Deed or Conveyance, with Warrant of Registration thereon, in the Form or as nearly as may be in the Form of No. 2. of Schedule (H.) hereto annexed, and also the Notarial Instrument, in the appropriate Register of Sasines; or where it is not desired to record the whole of the Deed or Conveyance, it shall be competent to expedite a Notarial Instrument in or as nearly as may be in the Form of Schedule (J.) hereto annexed, setting forth generally the Nature of the Deed or Conveyance, and containing those Portions of the Deed or Conveyance by which the Lands in regard to which the said Instrument is expedite are conveyed, and by which Real Burdens, Conditions, Provisions, or Limitations,

if any, are imposed, and also setting forth the Title or Series of Titles by which the Party acquired Right to the Deed or Conveyance, and to record such Notarial Instrument in the appropriate Register of Sasines; and on the Deed or Conveyance, with such Warrant of Registration thereon, and such Notarial Instrument in the Form of the said Schedule (N.), or any similar Deed or Conveyance, with Warrant of Registration and Notarial Instrument expedite in virtue of any Act of Parliament hereby repealed, being so recorded, or on such Notarial Instrument in the Form of the said Schedule (J.), or any similar Notarial Instrument expedite in virtue of any Act of Parliament hereby repealed, being so recorded, the Person in whose Favour the Deed or Conveyance and Instrument, or the Instrument, have or has been or shall be expedite and so recorded, shall be in the same Position as if the original Deed or Conveyance had been granted to himself, and, along with a Warrant of Registration thereon, had been recorded in the Manner herein-before provided, of the Date of recording the Deed or Conveyance and Notarial Instrument or the Notarial Instrument.

24. Where, in a Petition to the Court of Session for the Appointment of a Judicial Factor, Authority has been or shall be asked for the Completion of a Title by such Factor to any Lands forming the whole or Part of the Estate to be managed by such Judicial Factor, or where a Judicial Factor has applied or shall apply, by Petition or Note to said Court, for Authority to complete a Title to such Lands, and where any Petition or Note has specified and described or shall specify and describe the Lands to which such Title is to be completed, or has referred or shall refer to the Description of the same, in the Form or as nearly as may be in the Form of Schedule (E.) hereto annexed, or of Schedule (G.) hereto annexed, as the Case may be, the Warrant granted for completing such Title shall also so specify and describe the Lands to which such Title is to be completed, or shall so refer to the Description thereof; and such Warrant shall be held to be a Conveyance in due and common Form of the Lands therein specified in favour of such Judicial Factor granted by the Person, whether in Life or deceased, whose Estate is under Judicial Management, or granted, where such Judicial Factor has been or shall be appointed on a Trust Estate which shall have been vested in a Trustee or former Judicial Factor, by such Trustee or former Factor, whether in Life or deceased, for the Purposes of such Trust, to be holden in the Case of Lands not held by Burgage Tenure in the Manner and to the Effect, and subject to the Provisions enacted and provided in the Sixth Section of this Act in the Case of Conveyances in which no Manner of holding is

expressed, and in the Case of Lands held by Burgage Tenure to be holden of Her Majesty in Free Burgage; and such Warrant may, with Warrant of Registration thereon, be recorded in the appropriate Register of Sasines as a Conveyance in favour of such Judicial Factor, and being so recorded shall have the same Force and Effect as if at the Date of such recording such Conveyance had been granted to the Judicial Factor, and recorded in the appropriate Register of Sasines: Provided always, that for enabling the Person in whom such Lands were last vested, or his Representatives, or other Parties interested, to bring forward competent Objections against such Warrant being granted, or Claims upon the Estate, the Court shall order such Intimation and Service of the Petition or Note as to them shall seem proper: Declaring always, that the whole Enactments and Provisions herein contained shall extend and apply to all Petitions to and Warrants by the Court of Session under "The Trusts (Scotland) Act, 1867," unless in so far as such Provisions and Enactments may be inapplicable to the Form or Objects of such Petitions or Warrants.

25. It shall be competent to a Trustee on a sequestrated Estate, or to Liquidators, official or voluntary, appointed for the Purpose of winding up a Joint Stock Company, to expedite a Notarial Instrument, setting forth the Act and Warrant of Confirmation in favour of such Trustee, or the Appointment of such Liquidators, official or voluntary, respectively, and specifying the Lands belonging to the Bankrupt or Company to which a Title is to be completed, and the Title by which such Lands are held by the Bankrupt or Company, in or as nearly as may be in the Form of Schedule (O.) hereto annexed, and when the Lands consist of Heritable Securities by a Notarial Instrument in or nearly as may be the Form of Schedule (LL.) hereto annexed, and to record such Notarial Instrument in the appropriate Register of Sasines; and on such Notarial Instrument or any similar Notarial Instrument expedite in virtue of any Act of Parliament hereby repealed being so recorded, the Trustee or Liquidators in whose Favour the same shall have been or shall be so recorded shall be held to be in all respects in the same Position as if the Bankrupt or Company, or any previous Trustee or Liquidator, had granted a Conveyance of the Lands contained in the Notarial Instrument in favour of such Trustee or such Liquidators, to be holden in the Case of Lands not held by Burgage Tenure in the Manner and to the Effect and subject to the Provisions enacted and provided in Section Sixth hereof in the Case of Conveyances where no Manner of Holding is expressed, and in the Case of Lands held by Burgage Tenure to be holden of Her Majesty in Free Burgage, and as if

such Conveyance had been recorded or followed by an Instrument of Sasine, or of Resignation and Sasine, or Notarial Instrument, in favour of such Trustee or of such Liquidators, duly expedite and recorded in the appropriate Register of Sasines at the Date of recording such Notarial Instrument.

26. Wherever Lands have been or may hereafter be acquired by any Congregation, Society, or Body of Men associated for Religious Purposes, or for the Promotion of Education, including the General Assemblies, Synods, and Presbyteries of the Established Church of Scotland, and of all other Presbyterian Churches in Scotland, as a Chapel, Meeting House, or other Place of Worship, or as a Manse or Dwelling House for the Minister of such Congregation or Society or Body of Men, or Offices, Garden, or Glebe for his Use, or as a Schoolhouse or Schoolmaster's House, Garden, or Playground, or as a College, Academy, or Seminary, or as a Hall or Rooms for meeting for the Transaction of Business, or as Part of the Property belonging to such Congregation, Society, or Body of Men, and wherever the Conveyance or Lease of such Lands has been or may be taken in favour of the Moderator, Minister, Kirk Session, Vestrymen, Deacons, Managers, or other Office Bearers or Office Bearer of such Congregation or Society or Body of Men, or any of them, or of Trustees appointed or to be from Time to Time appointed, or of any Party or Parties named in such Conveyance or Lease, in trust for behoof of the Congregation or Society or Body of Men, or of the Individuals comprising the same, such Conveyance, when recorded with Warrant of Registration thereon in Terms of this Act, or when followed by Notarial Instrument expedite, and with Warrant of Registration thereon recorded in Terms of this Act, or such Lease, shall not only vest the Party or Parties named therein in the Lands thereby feued, conveyed, or leased, but shall also, after the Death or Resignation or Removal from Office of such Party or Parties, or any of them, effectually vest their Successors in Office for the Time being, chosen and appointed in the Manner provided or referred to in such Conveyance or Lease, or if no Mode of Appointment be therein set forth or prescribed, then in Terms of the Rules or Regulations of such Congregation or Society or Body of Men, in such Lands, subject to such and the like Trusts and with and under the same Powers and Provisions as are contained or referred to in the Conveyance or Lease given and granted to the Parties Dispones or Lessees therein, and that without any Transmission or Renewal of the Investiture whatsoever, anything in such Conveyance or Lease contained to the contrary notwithstanding: And the Provisions of this Section shall apply also to all Trusts for the Maintenance,

Support, or Endowment of Ministers of Religion, Missionaries, or Schoolmasters, or for the Maintenance of the Fabric of Churches, Chapels, Meeting Houses, or other Places of Worship, or of Manse or Dwelling Houses or Offices for Ministers of the Gospel, or of Schoolhouses or Schoolmasters Houses, or other like Buildings.

27. From and after the Commencement of this Act, it shall not be competent to issue Brieves from Chancery for the Service of Heirs, or for any Person to obtain himself served Heir by virtue of any such Brieve, or otherwise than according to the Provisions of this Act; and every Person desirous of being served Heir to a Person deceased, whether in general or in special, and in whatsoever Character, and whether the Lands which belonged to such Person deceased were held by Burgage Tenure, or were not held by Burgage Tenure, shall present a Petition of Service to the Sheriff in manner herein-after set forth.

28. In every Case in which a general Service only is intended to be carried through, such Petition shall be presented to the Sheriff of the County within which the Deceased had at the Time of his Death his ordinary or principal Domicile, or, in the Option of the Petitioner, to the Sheriff of Chancery, and if the Deceased had at the Time of his Death no Domicile within Scotland, then in every such Case to the Sheriff of Chancery; and in every Case in which a special Service is intended to be carried through, such Petition shall be presented to the Sheriff within whose Jurisdiction the Lands or the Burgh containing the Lands in which the deceased Person died last vest and seised are situated, or, in the Option of the Petitioner, to the Sheriff of Chancery, and in the event of the Lands being situated in more Counties than one, or in more Burghs than one if such Burghs are in different Counties, then in every such Case to the Sheriff of Chancery.

29. Every Petition for Service shall be subscribed by the Petitioner, or by a Mandatory specially authorized for the Purpose, and shall be in the Form, or as nearly as may be in the Form, of one or other of the Schedules (P.) and (Q.) hereunto annexed, and shall, under the Exceptions after mentioned, set forth the Particulars which, according to the Law and Practice existing prior to the Fifteenth Day of November One thousand eight hundred and forty-seven, had been in use to be set forth with reference to a Service sought to be carried through in any Claim presented to a Jury summoned under a Brieve of Inquest, and shall pray the Sheriff to serve the Petitioner accordingly: Provided always, that it shall not be necessary in such Petition to set

forth in any Case the Value of the Lands either according to new or old Extent, or the valued Rent thereof, or of whom the Lands are held, or by what Service or Tenure they are held, or in whose Hands the same have been since the Death of the Ancestor, or whether or how long the same have been in Non-entry, or that the Petitioner is of lawful Age, or that the Ancestor died at the Faith and Peace of the Sovereign, but that in setting forth the Death of the Ancestor there shall also be set forth the Date at or about which the said Death took place, and in Cases of general Service, except as herein-after provided, the County or Place in which the Deceased at the Time of his Death had his ordinary or principal Domicile, and that in every Case in which the Petitioner claims to be served Heir of Provision, or of Taillie and Provision, whether in general or special, the Deed or Deeds under which he so claims shall be distinctly specified.

30. When any Petition of Service shall be presented to the Sheriff of any County the Service shall not proceed until Publication shall be made in such County, nor until the Sheriff Clerk of the County shall have received from the Sheriff Clerk of Chancery official Notice that Publication has been made edictally in Edinburgh; and when such Petition shall be presented to the Sheriff of Chancery the Service shall not proceed until Publication shall have been made edictally in Edinburgh, nor until the Sheriff Clerk of Chancery shall have received official Notice that Publication has been made in the County of the Domicile of the Party deceased, when such Domicile was within Scotland, or the County or Counties in which the Lands are situated, as the Case may be; and the edictal Publication in Edinburgh shall be at the Office of the Keeper of Edictal Citations in the General Register Office, and in the same Mode and Form as in Edictal Citations; and in the County of the Domicile and in the County or Counties where the Lands are situated, by affixing on the Doors of the Court-house, or in some conspicuous Place of the Court or of the Office of the Sheriff Clerk of the County, as the Sheriff may direct, a short Abstract of the Petition, and there shall be no farther Publication; and the Form of such Abstract, and the Mode or Form of the official Notice of such Publications, shall be those fixed and declared by the Court of Session, by Act of Sederunt, in virtue of the Powers herein-after mentioned.

31. The Sheriff Clerk shall be bound to receive any Caveat against any Petition of Service to be presented to him, and on the Receipt of the Petition of Service referred to in the Caveat, or of any official Notice of any such Petition which may be communicated to such Sheriff Clerk, such

Sheriff Clerk shall within Twenty-four Hours hereafter write and put into the Post Office a Notice of such Petition, addressed either to the Agent by whom or to the Person on whose Behalf the Caveat is entered, as may be desired in such Caveat, and according to the Name and Address which shall be stated in such Caveat, the Sheriff Clerk receiving therefor a Fee for his own Use of such Amount as shall be fixed by Act of Sederunt as aforesaid.

32. A Petition of Service so presented shall, after Expiration of the Period herein-after mentioned, be equivalent to and have the full legal Effect of a Brieve of Service duly executed, and if a Claim duly presented to the Inquest, according to the Law and Practice existing prior to the Fifteenth Day of November One thousand eight hundred and forty-seven; and every Petition of Service, without further Publication than as herein provided and has been or may be directed by Act of Sederunt, shall be held as duly published to all Parties interested, and the Decree to follow upon such Petition shall not be questionable or reducible upon the Ground of Omission or Inaccuracy in the Observance by any Officer or official Person of any of the Forms or Proceedings herein prescribed, or which have been or shall be prescribed by Act of Sederunt made in relation to Petitions of Service.

33. In regard to all Petitions of Service presented to the Sheriff of Chancery or to the Sheriff of a County respectively, where the Deceased died in Scotland, no Evidence shall be led and no Decree pronounced thereon by such Sheriff until after the Lapse of Fifteen Days from the Date of the latest Publication, or where Publication is to be made in Orkney or Shetland, or the Petition is presented to the Sheriff of Orkney or Shetland, until after the Lapse of Twenty Days from such Date; and in regard to all Petitions of Service to be presented to the Sheriff of Chancery where the Deceased died abroad, no Evidence shall be taken and no Decree pronounced thereon by him until after the Lapse of Thirty Days from such Date; and it shall be lawful, after the Lapse of the Times respectively above mentioned, to the Sheriff to whom such Petition of Service shall have been presented, by himself, or by the Provost or any of the Bailies of any City or Royal or Parliamentary Burgh, or by any Justice of the Peace or any Part of the United Kingdom wherever such Justice of the Peace may happen to be for the Time, whether within the United Kingdom or abroad, or by any Notary Public, all of whom are hereby authorized to act as Commissioners of such Sheriff without special Appointment, or by any Commissioner whom such Sheriff may appoint, to receive all competent Evidence, docu-

mentary and parole, and any parole Evidence so received shall be taken down in Writing according to the Practice in the Sheriff Courts of Scotland existing prior to the First Day of November One thousand eight hundred and fifty-three, and a full and complete Inventory of the Documents produced shall be made out, and shall be certified by the Sheriff or his Commissioner aforesaid; and on considering the said Evidence the Sheriff shall, without the Aid of a Jury, pronounce Decree, serving the Petitioner in Terms of the Petition, in whole or in part, or refusing to serve the said Petitioner, and dismissing the Petition, in whole or in part, as shall be just; and the said Decree shall be equivalent to and have the full legal Effect of the Verdict of the Jury under the Brieve of Inquest according to the Law and Practice existing prior to the said Fifteenth Day of November One thousand eight hundred and forty-seven.

34. Where a general Service only is intended to be carried through by an Heir, it shall not be necessary, if the Deceased died upwards of Ten Years prior to the Date of presenting the Petition for general Service as Heir to him, to state or prove the County within which the Deceased had his ordinary or principal Domicile at the Time of his Death, or that such Domicile was furth of Scotland; but in such Cases it shall be sufficient (so far as regards the Domicile of the Deceased) for the Heir to state in his Petition, and if required in the Court of Service to make Oath, that he is unable to prove at what Place the Deceased had his ordinary or principal Domicile at the Time of his Death: Provided always, that in every such Case, and in every Case of general Service where it is doubtful in what County the Deceased had his ordinary or principal Domicile, the Petition for general Service as Heir to the Deceased shall be dealt with and all relative Procedure shall be regulated in or as nearly as may be in the same Manner as if it had been proved that the Deceased had at the Time of his Death his ordinary or principal Domicile furth of Scotland.

35. It shall be lawful to any Person who may conceive that he has a Right to be served preferable to that of the Person petitioning the Sheriff as aforesaid, also to present a Petition of Service to the Sheriff in manner and to the Effect aforesaid, and the same shall be proceeded with in manner herein-before directed; and it shall be lawful to the Sheriff, if he shall see Cause, at any Time before pronouncing Decree in the first Petition, to sist Procedure on the first Petition in the meantime, or to conjoin the said Petitions, and thereafter to proceed to receive Evidence in manner herein-before directed, allowing each of the Parties not only a Proof in chief with reference to his own Claim, but a conjunct Probation with

reference to the Claims of such other Parties; and the Sheriff shall, after receiving the Evidence, pronounce Decree on the said Petitions, serving or refusing to serve as may be just, and shall at the same Time dispose of the Matter of Expenses; and when the Accounts thereof shall be audited and taxed in manner after provided, such Sheriff shall decern for the same.

36. On the Application of the Petitioner in whose Favour a Decree shall have been pronounced by the Sheriff, the Sheriff Clerk shall forthwith transmit to the Office of the Director of Chancery the Petition on which such Decree was pronounced, together with such Decree, the Proof taken down in Writing as aforesaid, and the Inventories of written Documents made up and certified as aforesaid, and also all other Parts or Steps of the Process, excepting any original Documents or Extracts of recorded Writs produced therewith, which, after Decree is pronounced, shall be returned, on Demand, to the Parties producing the same; and on the Proceedings being so transmitted to Chancery, such Decree shall be recorded by the Director of Chancery, or his Depute, in the Manner and Form directed or approved of or to be directed or approved of from Time to Time by the Lord Clerk Register; and on such Decree being so recorded the Director of Chancery, or his Depute, shall prepare an authenticated Extract thereof, and, where such Decree shall have been pronounced by the Sheriff of Chancery, shall deliver such Extract to the Party or his Agent, and in all other Cases shall transmit such Extract without Delay, and without Charge or Expense against the Party in respect of the Transmission and Re-transmission, to the Sheriff Clerk of the County, to be by him delivered to the Party or his Agent in the Sheriff Court; and such Proceedings and Decree shall, both prior and subsequent to the said Transmission, be at all Times patent and open to Inspection in the Office of the Sheriff Clerk and of the Director of Chancery respectively; and certified Copies shall be given to any Party demanding the same, on Payment of such Fees as shall be fixed by Act of Sederunt as aforesaid; and in Cases where an Heir is served to an Ancestor in several separate Lands or Estates under the same Petition, it shall be competent for such Heir to obtain separate Extract Decrees under the said Petition applicable to One or more of such Parcels of Lands or separate Estates, provided a Prayer to that Effect is inserted in the Petition for Service.

37. The Decree of Service so recorded and extracted shall have the full legal Effect of a Service duly retoured to Chancery, and shall be equivalent to the Retour of a Service under the Brieve of Inquest according to the Law and Practice existing prior to the Fifteenth Day of

November One thousand eight hundred and forty-seven; and the Extract of such Decree, or any second or later Extract thereof, under the Hand of the proper Officer entitled to make such Extracts for the Time, shall be equivalent to and have the full legal Effect of the certified Extract of the Retour formerly in use according to the Law and Practice existing prior to the said Fifteenth Day of November One thousand eight hundred and forty-seven; and the Decree of Service so recorded and extracted shall not be liable to Challenge, nor be set aside, except by a Process of Reduction to be brought before the Court of Session as heretofore in use with regard to Services duly retoured to Chancery.

38. The Book or Books in Chancery in which such Decree shall be recorded as aforesaid shall be entitled the "Record of Services," and shall be the Book or Books presently in use as the "Record of Services" under the said recited Act Tenth and Eleventh of the Reign of Her present Majesty, Chapter Forty-seven, and such other Book or Books as shall be from Time to Time issued under the Direction and Authority of the Lord Clerk Register, for which no more than the prime Cost shall be charged; and it shall not be lawful for the Director of Chancery to use any other Book or Books in framing the said Records; and the said Book or Books shall have an Index or Abridgment connected therewith, to be prepared in Chancery in the Form and Manner at present in use, or in any other Form and Manner to be pointed out or approved of by the Lord Clerk Register; and such Index or Abridgment shall be completed as soon as possible after the End of each Year, and shall be printed and published, and printed Copies thereof shall be distributed and disposed of in the Manner at present in use, or in such other Manner as shall be directed or approved of by the Lord Clerk Register: Provided always, that if a more general Distribution or Publication of such Index or Abridgment than to the official Individuals to be fixed by the Lord Clerk Register shall be made, then and in that Case Copies of the Index or Abridgment aforesaid shall be sold to the Public at the lowest Rate which will defray the Expense of printing the same, and an Account of the Sums to be received shall be exhibited by the Director of Chancery, and be examined and audited along with his other Accounts; and such Index or Abridgment shall be so prepared, printed, and distributed at latest by the First Day of July in each Year, beginning with the Year One thousand eight hundred and sixty-nine; and the said Record of Services and other Proceedings shall be at all Times patent and open to Inspection in the Office of Chancery, on Payment of such a Fee as shall be regulated by Act of Sederunt as aforesaid, and Extracts from the said Record, or certified Copies of the said

Proceedings, shall be given to any one demanding the same, on Payment of such Fees as shall be fixed by Act of Sederunt as aforesaid; and the Director of Chancery shall have the Power and is hereby required to direct and regulate the Sheriff Clerks in the several Counties and the Sheriff Clerk of Chancery in regard to the Manner of arranging and transmitting the Petitions of Service and Procedure thereon, and also to prepare and furnish to the Sheriff Clerks of the several Counties the requisite printed Forms of the Intimations to be sent by them through the Post Office to the Sheriff Clerk of Chancery when Petitions of Service shall be presented in their respective Courts, or when they shall have received Notice to publish Petitions that have been presented to the Sheriff of Chancery.

39. The Amount of the Remuneration to the Clerks of Chancery for keeping the Record of Services, and arranging the Warrants, and preparing the Indexes and Abridgments, shall be fixed by Act of Sederunt as aforesaid; and such Remuneration, together with the Expense of printing the Index or Abridgment aforesaid, shall be paid from the Fees collected in the Office of Chancery, and an Account thereof shall be exhibited by the Director of Chancery, and be examined and audited along with his other Accounts.

40. No Person shall be entitled to appear and oppose a Service proceeding before the Sheriff in Terms of this Act who could not competently appear and oppose such Service if the same were proceeding under the Brieve of Inquest according to the Law and Practice existing prior to the Fifteenth Day of November One thousand eight hundred and forty-seven; and all Objections shall be presented in Writing, and shall forthwith be disposed of in a summary Manner by the Sheriff, but without Prejudice to the Sheriff, if he see Cause, allowing Parties to be heard *vivâ voce* thereon.

41. In all Cases in which competing Petitions presented to the Sheriff in Terms of the last-recited Act or of this Act have been or shall be conjoined as aforesaid, or in which any Person has competently appeared or shall competently appear to oppose any Petition of Service presented to the Sheriff in Terms of the said recited Act or of this Act, it shall be competent to any of the Parties, at any Time before Proof is begun to be taken by the Sheriff in manner before provided, to remove the Proceedings to the Court of Session, by a Note of Appeal in or as nearly as may be in the Form of a Note of Appeal under the "Court of Session Act, 1868," which Note of Appeal shall be proceeded with in like Manner with Notes of Appeal presented with a view to Jury Trial against Judgments of the Sheriff Courts of Scotland, and such Judgment shall be pronounced on the said Note of Appeal

as shall be just; and in the event of it appearing proper that the Cause should be tried by a Jury, the same shall be tried according to the Law and Practice in Trials by Jury of Causes in the Court of Session, and the Jury shall be chosen and summoned in like Manner as on such Trials; and the Verdict to be returned by the Jury shall be equally final and conclusive with the Verdicts returned in Trials by Jury in the said Court, but with all and the like Remedies by Bill of Exceptions, Motion for new Trial, or otherwise, competent in regard to such Verdicts: Provided always, that in every Case in which the Jury shall find a Verdict, or in which the Court shall pronounce a Judgment in favour of a Party petitioning to be served, the Court shall, at the same Time with applying such Verdict or pronouncing such Judgment, remit to the Sheriff from whom the Cause was appealed, or before whom such Petitions or Petition would have depended if the same had not been advocated or appealed before the Commencement of this Act, with Instructions to pronounce a Decree serving the said Party in Terms of this Act, which Decree may thereafter be extracted, and the Extract thereof recorded and given out in manner and to the Effect before provided.

42. In every Case in which the Sheriff, acting under the said Act of the Tenth and Eleventh of Her Majesty Queen Victoria, Chapter Forty-seven, or under this Act, has pronounced or shall pronounce a Decree refusing to serve a Petitioner, or dismissing his Petition, or repelling the Objection of an opposing Party, it shall be lawful to bring the said Decree under Review of the Court of Session by a Note of Appeal, in or as nearly as may be in the Form of a Note of Appeal under the "Court of Session Act, 1868": Provided always, that such Note shall be presented within Fifteen, or, where the Proceedings have been taken in the Courts of Orkney or Shetland, Twenty Days from the Date of the said Judgment; and that where the Decree has been pronounced after Opposition duly entered or in competition, such Note shall be intimated to the opposite Party, and such Note shall be proceeded with in like Manner with Notes of Appeal against final Judgments of the Sheriff Courts; and it shall be competent to the Court of Session, if it shall appear necessary for the right Determination of the Cause, to allow further or additional Evidence to be taken in any Way or Form in which Evidence may be competently taken in ordinary Civil Causes depending before the said Court, or to appoint the Cause, or special Issues therein, to be tried by a Jury, and such Jury Trial shall proceed in the same Manner and to the like Effect and with all and the like Remedies as are before provided, and such Judgment shall be pronounced on such Note of Appeal as shall

be just: Provided always, that in every Case in which the Sheriff has refused to serve, but in which the Court of Session shall determine that the Party ought to be served, a Remit shall be made to the Sheriff from whom such Petition has been or shall be appealed, or before whom the same, if not advocated or appealed before the Commencement of this Act, would have depended, with Instructions to pronounce a Decree serving the said Party in Terms of this Act, which Decree may be thereafter recorded and extracted in manner and to the Effect before provided: Provided also, that nothing herein contained shall prejudice the Right of any Person whose Petition of Service shall be refused without any opposing or competing Party having appeared and been heard on the Merits of the Competition, to present a new Petition at any Time thereafter, or the Right of either Party in any of the Proceedings authorized in the Court of the Sheriff, by this Act or the said Act of the Tenth and Eleventh of Her Majesty, Chapter Forty-seven, to bring under Challenge whatever Decree may have been or may be pronounced therein by Process of Reduction before the Court of Session on any competent Ground.

43. In every Case in which a Process of Reduction of any Decree of Service pronounced by any Sheriff acting under the said last-recited Act or this Act has been or shall be brought before the Court of Session, it shall be competent to the said Court, if it shall appear necessary for the right Determination of the Cause, either to allow further or additional Evidence to be taken in any Way or Form in which Evidence may be competently taken in ordinary Civil Causes depending before the said Court, or to appoint the Cause, or special Issues therein, to be tried by a Jury; and such Jury Trial shall proceed in the same Manner, and to the like Effect, and with all and the like Remedies, as are before provided in regard to Jury Trials under Notes of Appeal, and such Judgment shall be pronounced in the said Process as shall be just: Provided always, that wherever the Decree of the Sheriff brought under Reduction has proceeded on competing Petitions conjoined as aforesaid, and the Court of Session shall determine that a different Person shall be served from the Person preferred by the Sheriff, a Remit shall be made to the Sheriff acting under this Act before whom the said competing Petitions depended, or to the Sheriff before whom the same would have depended if the said Decree had not been pronounced before the Commencement of this Act, with Instructions to pronounce a Decree serving such different Person in Terms of this Act, which Decree may be thereafter recorded, and an Extract thereof given out in manner and to the Effect above provided; and in any Case of Reduction of a

Service the Judgment shall, unless and until reversed by the House of Lords on Appeal, be conclusive as between the Parties to the Suit against the Party whose Service is reduced, and shall have the same Effect as if the Action had contained a Conclusion of Declarator that the Party served was not entitled to be served in the Character claimed, and Judgment had been pronounced in Terms of that Conclusion.

44. All Proceedings authorized by the present Act to be taken in the Court of Session in reference to Appeals from the Sheriff or to Reduction of Decrees of Service shall commence and be carried on in the same Manner with Proceedings of the same Description in ordinary Civil Causes; and all Judgments to be pronounced by the Court of Session in such Proceedings in Terms of this Act, or in the corresponding Proceedings in Terms of the said last-recited Act, shall be equally final and conclusive as the Judgments pronounced by the said Court in ordinary Civil Causes, and shall not be liable to Review by Reduction or otherwise, save and except to such Extent and Effect as Judgments by the said Court in ordinary Civil Causes are so liable: Provided always, that it shall be competent to appeal against the said Judgments to the House of Lords in like Manner as against Judgments of the Court in ordinary Civil Causes aforesaid.

45. The whole Provisions of "The Court of Session Act, 1868," shall, in so far as possible, apply to Notes of Appeal and Processes of Reduction under this Act, and to all Advocations from the Sheriff, and to all Processes of Reduction of Decrees of Service in dependence in the Court of Session at the Commencement of this Act, and to all Advocations which may after the Commencement of this Act come before the Inner House of the Court of Session by Report or Reclaiming Note from any Lord Ordinary; provided always, that the Advocations depending before the Outer House of said Court at the Commencement of this Act shall be disposed of in the Outer House according to the Law and Practice existing prior to the Commencement of the said "Court of Session Act, 1868."

46. On being recorded and extracted as aforesaid, every Decree of special Service pronounced in virtue of the said recited Act Tenth and Eleventh of the Reign of Her present Majesty, Chapter Forty-seven, in favour of any Person who shall be in Life at the passing of this Act, and every Decree of special Service to be pronounced in virtue of this Act, shall, to all Intents and Purposes, unless and until reduced, be held equivalent to and have the full legal Operation and Effect of a Disposition in ordinary Form of the Lands contained in such Service, granted by

the Person deceased being last feudally vest and seised in the said Lands to and in favour of the Heir so served, and to his other Heirs and Successors entitled to succeed under the Destination of the Lands contained in the Deceased's Investiture thereof, but under the whole Conditions and Qualifications of such Investiture as set forth or referred to in such extracted Decree, containing the various Clauses set forth in No. 1. of Schedule (B.) hereto annexed in the Case of Lands not held by Burgage Tenure, and in No. 2. of Schedule (B.) hereto annexed in the Case of Lands held by Burgage Tenure, although the Deceased should have died in Nonage, or been of insane Mind, or laboured under any Disability whatever, and as if a Disposition had been granted in these Terms by the Deceased when of full Age and Capacity to grant it; and in the Case of Lands not held by Burgage Tenure, such extracted Decree shall infer that the same are to be holden in the Manner and subject to the Provisions enacted and provided in the Sixth Section of this Act in the Case of Conveyances in which no Manner of holding is expressed; and in the Case of Lands held by Burgage Tenure such extracted Decree shall infer that the same are to be holden of Her Majesty in Free Burgage; and in either Case such extracted Decree shall be held from the Date of such recording to vest in the Heir so served a personal Right to the Lands therein contained, and to render said Lands liable to all his Debts and Deeds and to the Diligence of his Creditors, as well after his Death as during his Life, which Right shall be transmissible to the Heirs and Successors of the Heir so served entitled to succeed to the said Lands under the Destination thereof as aforesaid, and also to his Assignees, legal as well as voluntary, except in so far as such Transmission shall be effectually prohibited by the Titles under which said Lands are held; and in order that the feudal Title may be completed in the Person of the Heir so served, it shall be lawful and competent for him to use such extracted Decree in the same Manner and to the same Effect as if such extracted Decree were actually a Disposition of the Nature above mentioned, and in particular he shall be entitled to record the same in the appropriate Register of Sasines as a Conveyance under this Act, along with a Warrant of Registration thereon on his Behalf; and such extracted Decree and Warrant of Registration, upon being so recorded in favour of such Heir, shall form as effectual an Investiture in favour of such Heir in the Lands where the same are held by Burgage Tenure as if Cognition and Entry had taken place in due Form, and an Instrument of Cognition and Sasine in regard to such Lands and in favour of such Heir had at the Date of so recording such extracted Decree and Warrant, or such Instrument of

Sasine, been expedite and recorded in the Burgh Register of Sasines, according to the Law and Practice prior to the First Day of October One thousand eight hundred and sixty, and in the Lands where the same are not held by Burgage Tenure, holding Base of the Deceased and his Heirs, until Confirmation thereof shall be granted by the Deceased's Superior as if such Investiture had been created by a Disposition from the Deceased as aforesaid, recorded, with Warrant of Registration thereon as aforesaid, in the appropriate Register of Sasines, in favour of such Heir at the Date of so recording the said extracted Decree of Service; and in order that the feudal Title to said Lands may be completed in the Person of the said Heirs and Successors and Assignees of the Heir so served not having completed a feudal Title thereto in his own Person, it shall be lawful and competent to such Heirs, Successors, and Assignees to use such extracted Decree, as if the same had been an unrecorded Conveyance of the said Lands in favour of the Heir so served to which they had acquired Right, and to complete their Titles to said Lands in the Manner and to the Effect provided by this Act in the Case of a Party having Right to an unrecorded Conveyance: Provided always, that, notwithstanding of any Prohibition against Sub-infeudation or alternative Holding contained in the Charter or Contract or other Deed by which the Vassal's Right is constituted, the Titles so completed shall, in the Case of Lands not held by Burgage Tenure, form a valid feudal Investiture in favour of the Heir so served, or of his Heirs, Successors, or Assignees, as the Case may be, without Prejudice to the Right of the Superior to require the Heir so served, or his Heirs, Successors, and Assignees, as the Case may be, to enter forthwith as accords of Law, and to deal otherwise with the Heir so served, and his Heirs, Successors, and Assignees, as Vassals unentered: Provided also, that nothing herein contained shall be held to repeal or alter an Act of the Parliament of Scotland passed in the Year One thousand six hundred and sixty-one, intituled "Act concerning Appealand Heirs, their Payment of their Predecessors and their own Debts," or an Act of the said Parliament passed in the Year One thousand six hundred and ninety-five, intituled "Act for obviating the Frauds of Appealand Heirs."

47. No Decree of Special Service obtained in virtue of the said recited Act Tenth and Eleventh of the Reign of Her present Majesty, Chapter Forty-seven, or to be obtained in virtue of this Act, shall operate or be held as equivalent to or as implying a General Service to the Deceased in the same Character, except as to the particular Lands therein embraced; and every such Decree

of Special Service shall infer only a limited passive Representation of the Deceased, and the Person thereby served as Heir shall be liable in respect of such Service for the Deceased's Debts and Deeds only to the Extent or Value of the Lands embraced by such Special Service, and no further.

48. In any Petition for Special Service, in whatever Character, it shall be competent to the Petitioner to pray for General Service in the same Character as that in which Special Service is sought, and Decree may be pronounced in Terms of such Prayer as well as for Special Service; and no further Notice or Publication of the Petition of Service shall in such Case be necessary than is hereby required for such Petition of Special Service.

49. It shall be lawful for any Person presenting a Petition for General Service to a deceased Person to state in such Petition, in the Form or as nearly as may be in the Form No. 1. of Schedule (R.) hereunto annexed, that he desires the Effect thereof to be limited to certain Lands which belonged to the Deceased, and which shall be embraced in a particular Specification thereof, to be annexed to such Petition for General Service, which Specification shall be in the Form or as nearly as may be in the Form No. 2. of the said Schedule (R.), and shall be subscribed by the Petitioner or his Mandatory; and in preparing an Abstract of such Petition for Insertion in the Minute Book of the Court in which it shall be presented, and for Publication, it shall be described as a Petition for General Service with Specification annexed; and the Sheriff to whom such Petition for General Service with Specification annexed shall be presented shall, in pronouncing Decree of Service on such Petition, make reference to the Specification annexed thereto, and shall limit such Decree of Service to the Lands described in the said Specification, and the Effect of such Decree shall accordingly be taken and held in Law to be so limited; and a Copy of such Specification shall be embodied in the Extract of the said Decree, and recorded as Part thereof; and every such Decree of General Service, obtained in virtue of said last-recited Act or of this Act, with Specification annexed, shall infer only a limited passive Representation of the Deceased; and the Person thereby served as Heir shall be liable in respect of such Service for the Deceased's Debts and Deeds only to the Extent or Value of the Lands contained in the relative Specification.

50. The Sheriff of Chancery appointed or to be appointed in virtue of this Act shall have and possess such and the like Authority and Jurisdiction to entertain, try, and adjudicate, but in

the Manner prescribed and directed by this Act, all Questions of and relating to the Service of Heirs, as the Sheriff of Chancery appointed in virtue of the said recited Act Tenth and Eleventh of the Reign of Her present Majesty, Chapter Forty-seven, or any Sheriff or Judge Ordinary now has and possesses in any Case competent before such Sheriff or Judge Ordinary, or in any Case now or formerly competent before the Sheriff of Edinburgh acting on Special Commission; and such Sheriff of Chancery shall hold his Court in any Court Room within the Parliament or new Session House of Edinburgh which has been or may be assigned, by the Lords of Session for that Purpose, or in any other Place which may be so assigned.

51. It shall be competent to the said Court of Session and they are hereby authorized and required from Time to Time to pass such Acts of Sederunt as shall be necessary or proper for regulating in all respects the Proceedings under this Act before the Sheriff of Chancery or Sheriff of Counties, and following out the Purposes of this Act in regard of these Proceedings, and regulating the Times at which the Sheriff of Chancery shall hold his Courts, and the Fee to be paid in respect of any of the Proceedings to be taken in virtue hereof; and the Charges to be made by Agents and Solicitors, whether in the Inferior Court or Court of Session, for any Proceedings under this Act, shall be audited and taxed in the same Manner as Charges for other Judicial Proceedings in the said Courts respectively are audited and taxed: Provided always, that Accounts of Expenses in the Sheriff Court of Chancery shall be audited and taxed by the Auditor of the Court of Session, and the Decree for such Expenses shall be extractable by the Extractor of the Court of Session in the same Manner as a Decree of that Court, and all such Decrees shall be held to be Interim Decrees, and the Warrants shall, after Extract, be retransmitted to the Sheriff Clerk of Chancery.

52. The Sheriff of Chancery, and Sheriff Clerk of Chancery, and Clerk to the Presenter of Signatures in Exchequer appointed in virtue of the said recited Act Tenth and Eleventh of the Reign of Her present Majesty, Chapter Forty-seven, shall until their respective Deaths or Resignations be appointed and are hereby respectively appointed to be Sheriff of Chancery, and Sheriff Clerk of Chancery, and Clerk to the Presenter of Signatures in Exchequer, for the Purposes of this Act; and after the Death or Resignation of the said Sheriff of Chancery it shall be lawful for Her Majesty from Time to Time to appoint a fit Person, being a Person qualified for the Office of Sheriff of a County in Scotland, to be the Sheriff of Chancery for the

Purposes of this Act, and after the Death or Resignation of the present Sheriff Clerk of Chancery, and Clerk to the Presenter of Signatures in Exchequer, also to appoint a fit Person to act both as Sheriff Clerk of Chancery and as Clerk to the Presenter of Signatures in Exchequer for the Purposes of this Act.

53. It shall be lawful and competent for Agents qualified to practise before the Court of Session or before any Sheriff Court to practise before the Sheriff of Chancery as well as in the ordinary Sheriff Courts in Petitions of Service.

54. The Sheriff of Chancery and Sheriff Clerk of Chancery shall respectively receive such Salaries as shall from Time to Time be fixed by the Commissioners of Her Majesty's Treasury, and such Salaries and any Increase thereof shall be payable out of the Funds from which the Salaries of Sheriffs of Counties are payable; and the said Sheriff shall be entitled to a Retiring Annuity, subject to the same Conditions and Provisions as Sheriffs of Counties, and payable out of the same Funds from which the Salaries and Annuities of the said Sheriffs are payable.

55. Whenever any Vacancy shall occur in the Office of Sheriff of Chancery, it shall be lawful for the Commissioners of Her Majesty's Treasury, or any Two or more of them, to regulate the Salary of the Sheriff of Chancery as the then Circumstances of the Office may require.

56. Nothing herein contained shall affect the Right of any Person to whom Compensation shall have been awarded by way of Annuity in virtue of the Provisions of the Thirty-fourth Section of the last-recited Act to receive such Compensation: Provided always, that if any Person to whom such Compensation may have been awarded has been or shall hereafter be appointed to any other Public Office, such Compensation shall be accounted pro tanto of the Salary payable to such Person in respect of such other Office while he shall continue to hold the same.

57. The several Compensations which may have been awarded under the Authority of the last-recited Act shall be payable out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of Her Majesty Queen Anne were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for the keeping up of the Courts of Session, Judiciary, or Exchequer in Scotland.

58. All Petitions for Service which at the Commencement of this Act shall be depending before

the Sheriff of Chancery or the Sheriff of any County acting under the said Act of the Tenth and Eleventh of Her Majesty Queen Victoria shall thereafter depend before the Sheriff of Chancery or the Sheriff of such County respectively acting under this Act, and shall be taken up by such Sheriff at the Stage at which the Proceedings in such Petitions shall have arrived at the Commencement of this Act, and shall be thereafter proceeded with by such Sheriff according to the Provisions of this Act as if the same had been presented to such Sheriff after the Commencement of this Act; and in all Cases in which before or after the Commencement of this Act a Petition for Service shall have been or shall be advocated or appealed to the Court of Session, or a Process of Reduction shall have been or shall be brought of any Decree of Service pronounced before or after the Commencement of this Act, any Remit which in such Process of Advococation or Appeal or Reduction has been or shall be made by the said Court to the Sheriff may and shall be executed and carried out by the Sheriff to whom the Petitions or Petition advocated or appealed, or in which the Decree under Reduction may have been pronounced, was originally presented, or before whom the same would have depended if the same had not been presented till after the Commencement of this Act.

59. Whereas it is inconvenient in Practice to libel and conclude for General Adjudication of Lands as the Alternative only of Special Adjudication, in Terms of an Act of the Parliament of Scotland passed in the Year One thousand six hundred and seventy-two: It shall not be necessary to libel or conclude for Special Adjudication, and it shall be lawful to libel and conclude and decern for General Adjudication without such Alternative, anything in the said last-recited Act of the Parliament of Scotland, or in any other Act or Acts of the Parliament of Scotland or of Great Britain or of the United Kingdom of Great Britain and Ireland, to the contrary notwithstanding.

60. It shall not be competent to use Letters of General or Special Charge, or General Special Charge, but in an Action of Constitution of an Ancestor's Debt or Obligation against his unentered Heir the Citation on and Execution of the Summons in such Action shall be held to imply and be equivalent to a General Charge, the Induciae of which shall expire with the Induciae of such Summons, and shall infer the like Certification with such General Charge; and it shall thereafter be competent to adopt under such Summons the same Procedure in all respects, and to pronounce the same Decree, which would

have been competent had such Summons been preceded by Letters of General Charge duly executed against such Heir, according to the Law and Practice in use prior to the Thirtieth Day of September One thousand eight hundred and forty-seven, which Decree shall be a valid Decree of Constitution; and in an Action of Adjudication, whether for Debt or in Implement, against such Heir, following on such Decree of Constitution, or in an Action of Adjudication against an unentered Heir founded on his own Debt or Obligation, the Citation on and Execution of the Summons of Adjudication shall be held to imply and be equivalent to a Special Charge or General Special Charge, as the Circumstances may require, the Induciae of which Charge shall expire with the Induciae of such Summons, and shall infer the like Certification with such Special Charge or General Special Charge, as the Case may be; and it shall thereafter be competent to adopt under such Summons the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of Special Charge or General Special Charge, as the Case may be, duly executed against such Heir according to the Law and Practice in use prior to the Thirtieth Day of September One thousand eight hundred and forty-seven; which Decree shall be a valid Decree of Adjudication, whether for Debt or in Implement; and in Actions of Constitution and Adjudication against an unentered Heir on account of his Ancestor's Debt or Obligation, for the Purpose of attaching the Ancestor's Heritable Estate, it shall not be necessary to raise a separate Summons of Constitution and a separate Summons of Adjudication, but both Actions may be combined in One Summons, whether the Heir renounce the Succession or not, and the Citation on and Execution of such Summons shall be held to imply and be equivalent to a General Charge, or to a General Charge and a Special Charge, or to a General Charge and a General Special Charge, as the Circumstances of the Case may require, the Induciae of which shall expire with the Induciae of such Summons, and shall infer the like Certification with such General Charge, or General Charge and Special Charge, or General Charge and General Special Charge, as the Case may be; and in such combined Action of Constitution and Adjudication it shall be competent to adopt the same Procedure in all respects, and to pronounce the same Decree or Decrees, which would have been competent had such Summons been preceded by Letters of General Charge duly executed against such Heir according to the Law and Practice in use prior to the Thirtieth Day of September One thousand eight hundred and forty-seven, or which would have been competent had a separate Summons

of Constitution and a separate Summons of Adjudication been raised against such Heir, and been preceded respectively by Letters of General Charge, or of Special Charge, or General Special Charge, duly executed against such Heir according to the Law and Practice in use prior to the Thirtieth Day of September One thousand eight hundred and forty-seven, which Decree or Decrees shall be valid Decrees of Constitution or of Adjudication, whether for Debt or in Implement, or of Constitution and Adjudication, whether for Debt or in Implement, as the Case may be; and in such combined Action of Constitution and Adjudication, whether for Debt or in Implement, it shall be competent to pronounce Decree of Constitution and Adjudication in One and the same Interlocutor, and to extract the same in One and the same Extract, which Decree shall have the full Force and Effect of a Decree following upon a Summons of Constitution preceded by Letters of General Charge, and also of a Decree following upon a Summons of Adjudication, whether for Debt or in Implement, preceded by Letters of Special or General Special Charge, as the Case may be; anything in an Act of the Parliament of Scotland passed in the Year One thousand five hundred and forty, and in another Act of the Parliament of Scotland passed in the Year One thousand six hundred and twenty-one, or in any other Act of the Parliament of Scotland or of Great Britain, or of the United Kingdom of Great Britain and Ireland, or any Law or Practice, to the contrary notwithstanding.

61. Actions of Constitution and Actions of Constitution and Adjudication against an Apparent Heir on account of his Ancestor's Debt or Obligation, for the Purpose of attaching the Ancestor's Heritable Estate, and Actions of Adjudication against such Heir on account of his own Debt or Obligation, for the Purpose of attaching such Estate, may be insisted in at any Time after the Lapse of Six Months from the Date of his becoming Apparent Heir, any Law or Practice to the contrary notwithstanding.

62. In all Cases a Decree of Adjudication, whether for Debt or in Implement, or a Decree of Constitution and Adjudication, whether for Debt or in Implement, or a Decree of Sale, if duly obtained in the Form prescribed by this Act, or obtained, if prior to the Commencement of this Act, in the Form then in use, shall, except in the Case where the Subjects contained in the Decree of Adjudication or of Constitution and Adjudication are Heritable Securities, be held equivalent to and shall have the legal Operation and Effect of a Conveyance in ordinary Form of the Lands therein contained granted in favour of the Adjudger or Purchaser by the Ancestor

such Apparent Heir, or by the Owner or Seller of the Lands adjudged or sold, although in the Case of Lands held by Burgage Tenure in the same Manner and to the Effect and subject to the provisions enacted and provided by the Sixth section of this Act in the Case of Conveyances in which no Manner of holding is expressed, and to be holden of Her Majesty in Free Burgage in the Case of Lands held by Burgage Tenure; and it shall be lawful and competent to such Adjudger or Purchaser to complete feudal Titles in said Lands, not only by Infestment on such Decree as a Conveyance or unrecorded Conveyance, as the Case may be, in the Manner provided by this Act, but also when the Lands are not held by Burgage Tenure, by obtaining from the Superior Charter of Adjudication or of Sale of said Lands and expediting Infestment in such Charter in common Form or as a Conveyance or unrecorded Conveyance, as the Case may be, in the Manner provided by this Act, or where the Ancestor of such Apparent Heir, or the Owner or Seller of the Lands adjudged or sold, shall have been or shall be entered with his Superior, or in a Situation to charge such Superior under the Powers in this Act contained, to grant Entry by Confirmation, by taking Infestment on such Decree as a Conveyance or unrecorded Conveyance, as the Case may be, in the Manner provided by this Act, which Infestment shall, with such Decree, be an effectual feudal Investiture in the said Lands in Terms of such Decree, holding Base of the Party whose Lands are adjudged or sold, and his Heirs, until Confirmation thereof shall be granted by the Superior of the Lands in the same Manner and to the same Effect as if the Party whose Lands are sold or adjudged had granted a Disposition of the Lands to the Adjudger or Purchaser in the Terms of the said Decree, with an Obligation to infest a me vel de me, to be completed by Confirmation, and a Precept of Sasine, and the Adjudger or Purchaser had been infest on such Precept, and the Effect of the Charter or Writ of Confirmation of such Decree or of the Infestment thus proceeding upon the same shall be to make the Lands hold immediately of and under such Superior; but the Right of the Superior to the Composition payable by the Adjudger or Purchaser as due under the existing Law is hereby reserved entire, and the Adjudger or Purchaser, by taking Infestment on any such Decree in any of the Modes above mentioned, shall become indebted in such Composition to the Superior, and shall be bound to pay the same on the Superior tendering a Charter or Writ of Confirmation, whether such Charter or Writ shall be accepted or not, and the Superior shall be entitled to recover such Composition as accords of Law; and it is hereby provided that such Infestment

on any such Decree shall, without Prejudice to any other Diligence or Procedure, be of itself sufficient to make the Adjudication effectual in all Questions of Bankruptcy or Diligence: Provided always, that where the Investiture of any Lands has imposed or shall impose a Prohibition against Sub-infeudation or alternative Holding, such Adjudger or Purchaser shall, in respect of such recorded Decree or Notarial Instrument, and notwithstanding any such Prohibition, be deemed and taken to be duly infest in the Lands adjudged or sold as from the Date of recording such Decree or Instrument, but without Prejudice to the Right of the Superior to require such Adjudger or Purchaser to enter forthwith as accords of Law, and to deal with such Adjudger or Purchaser as with a Vassal unentered.

63. It shall not be necessary, in order to the obtaining of any Crown Writ, that any Signature shall be presented and passed in Exchequer, or that any Precept shall be framed and issued thereon as preliminary to the granting of such Writ, and all Crown Writs shall be obtained in the Manner directed by this Act, and not otherwise.

64. Any Person seeking to obtain a Crown Writ shall lodge or cause to be lodged in the Office of the Presenter of Signatures a Draft of the proposed Writ, as prepared by his Agent, being a Writer to the Signet, whose Signature shall be endorsed thereon, together with a short Note, in the Form or as nearly as may be in the Form of Schedule (S.) hereto annexed, praying for a Crown Writ in Terms of the said Draft; and the Date of lodging such Note shall be marked thereon by the Presenter of Signatures or his Clerk; and along with such Note and Draft there shall be lodged the last Crown Writ and Retour or Decree of Service of the Lands, and all the Title Deeds of the Lands subsequent thereto, together with Evidence of the valued Rent when necessary, and an Inventory and Brief of the Titles, according to the Practice heretofore in use.

65. The Draft Crown Writ so lodged shall be forthwith revised by the Presenter of Signatures, who shall require the Attendance of the Agent of the Person applying for the Writ for the Purpose of receiving his Explanations; and the Presenter of Signatures shall thereafter proceed with the Revision of the said Draft, making such Alterations and Corrections as are necessary; and he shall, after his final Revisal of such Draft, authenticate each Page thereof, and the several Alterations and Corrections thereon, if any, with his Initials, and shall mark on such Draft that the same has been revised by him, and also the Date when such Revisal was completed; and the Fees

on Signatures payable prior to the First Day of October One thousand eight hundred and forty-seven to the Presenter of Signatures shall be chargeable on the Draft Writ to be lodged and revised as aforesaid, and all other Fees payable prior to that Date to the Officers of Exchequer on Signature shall cease and determine.

66. If it shall appear that any Mistake has occurred in the Terms of the last Crown Writ or Retour or Decree of Service, to the Prejudice of the Crown, the Person applying for the Writ shall further, on Requisition made to him or his Agent to that Effect, by Order of the Presenter of Signatures, lodge the prior Title Deeds of the said Lands, and any other Title Deeds of and concerning the same, in so far as such Title Deeds may be in his Possession or at his Command, and in so far as the same may be necessary for the due Revisal of the said Draft on behalf of the Crown, and for the Rectification of such Mistake, which may be rectified accordingly; and, on the other hand, if the Vassal shall allege any Mistake to have occurred in the Terms of the last Crown Writ or Retour or Decree of Service to his Prejudice, the Person applying for the Writ shall be entitled, without such Requisition, to lodge a Note explaining the alleged Mistake, and produce the prior Titles of the said Lands, and any other Title Deeds or other Deeds of and concerning the same, in so far as these may be necessary for the due Revisal of the said Draft and the Rectification of such Mistake, which may be rectified accordingly; but no such Rectification shall in either Case be allowed, nor the Draft be held as finally revised or authenticated as such, until the same shall have been reported by the Presenter of Signatures to and approved of by the Lord Ordinary in Exchequer Causes appointed in Terms of an Act passed in the Nineteenth and Twentieth Years of the Reign of Her Majesty, Chapter Fifty-six, for constituting the Court of Session the Court of Exchequer in Scotland.

67. In every Case where the Draft of any Crown Writ shall be laid before the Lord Ordinary in Exchequer Causes, as before provided for, Intimation thereof, and of the relative Report by the Presenter of Signatures, or Note, as the Case may be, shall be made by the Agent applying for the Writ to the Solicitor in Scotland for the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, and the Lord Advocate shall be entitled to appear in name and on behalf of the Crown, and on behalf of the said Commissioners, or either of them, in all future Proceedings relating to the said Crown Writ; and the Lord Ordinary, before finally approving of any such Draft Writ, shall be satisfied that One Calendar Month's previous Notice in

Writing of such Draft having been laid before him has been given to the said Solicitor, accompanied by a Copy of the said Draft Writ, and of the Report by the Presenter of Signatures, or Note, as the Case may be.

68. When the last Crown Writ or Retour or Decree of Service shall be withheld by the Person applying as aforesaid, or cannot be so lodged from being in the Possession of the Proprietor of other Lands therein contained, or from any other good Cause, it shall be competent for the Presenter of Signatures, or for the Person applying as aforesaid, to refer to the Copy thereof engrossed in the Register of the Great Seal, or in the Register of Retours or Record of Services, and to procure Exhibition thereof as Evidence of the Terms of such last Crown Writ or Retour or Decree of Service; and the Lord Clerk Register is hereby authorized and required to make such Regulation as will enable the Exhibition thereof to be obtained for the Purpose aforesaid, upon the joint Application of the Person so applying and of the Presenter of Signatures.

69. The Presenter of Signatures shall also, with the Aid of the Auditor of Exchequer, ascertain and fix the Amount of Composition or other Duties due and payable to the Crown on granting such Writ, and the Amount of the same shall be marked on the said Draft, and certified by the Signatures of the said Auditor of Exchequer and of the Presenter of Signatures; and in ascertaining and fixing the Amount of such Composition and other Duties payable to the Crown there shall be no Charge added for the Expense of collecting the same, any Law or Practice to the contrary notwithstanding.

70. The Person applying for such Crown Writ shall be bound to pay to the Clerk of the Presenter of Signatures the Fees to be fixed in manner herein-after provided, which Fees shall be paid over by such Clerk to the Director of Chancery, who shall be accountable therefor.

71. Such revised Draft shall, so long as it is retained in the Office of the Presenter of Signatures, be there open to the Inspection of the Party applying for the Crown Writ or his Agent, and a Copy thereof shall be furnished, on Demand, on Payment of the Fees to be fixed as herein-after directed.

72. Where no Objections shall be stated to the Draft as so revised, a Docquet shall be put thereon certifying that the same is approved, which Docquet shall be signed by the Agent applying for the Crown Writ and by the Presenter of Signatures, and the Date of signing the same thereon set forth; and such Draft, so

docketed, shall, without being given up to the Party applying for the said Writ or his Agent, be officially transmitted by the Presenter of Signatures to the Office of the Director of Chancery, and where such Writ is to be engrossed on any Deed or Conveyance, such Deed or Conveyance shall be transmitted along with said Draft, and such Draft shall form a valid and sufficient Warrant for the immediate Preparation of the Writ in Chancery in Terms of such Draft.

73. It shall be competent to apply for any Crown Writ in manner before directed, and to revise the Draft of the same, and in the event of the same being docketed as revised and approved in manner aforesaid to prepare and deliver the Writ as herein-after directed at any Period of the Year, and notwithstanding that it shall not then be Term Time of the Court of Session acting as the Court of Exchequer in Scotland under the said Act passed in the Nineteenth and Twentieth Years of the Reign of Her present Majesty, Chapter Fifty-six.

74. It shall be lawful for the Person applying for the Crown Writ, if dissatisfied with the Draft revised as aforesaid, to state Objections thereto or against the Amount of Duties and Composition thereon marked as payable; and such Objections shall be set forth in a short written Note of Objections, without Argument, to be lodged in the Office of the Presenter of Signatures, subscribed by the Agent of such Person; and the Date of lodging such Note of Objections shall be marked thereon by the Presenter of Signatures or his Clerk.

75. Where any Note of Objections shall be so lodged, such Note shall, together with the whole other Proceedings, be laid before the said Lord Ordinary in Exchequer Causes, and the said Lord Ordinary shall hear the Person so objecting, by himself, his Counsel or his Agent, being a Writer to the Signet, and shall also hear any Report or Statement by the Presenter of Signatures; and wherever it shall appear to the said Lord Ordinary that the said Objections should to any Extent receive Effect he shall cause such Alterations and Corrections as shall appear to him proper, either with reference to the Terms of the said Draft, or to the Amount of Duties or other Payments marked thereon as payable, to be made on such Draft, or to be expressed in a separate Paper marked as relative thereto, and shall authenticate such Draft and relative Paper with his Signature; and the said Lord Ordinary shall at the same Time pronounce a Judgment or Deliverance, to be written on the Note of Objections, appointing the Writ, as so altered and corrected, to be prepared and executed; and the Judgment or Deliverance so pronounced shall

form a valid and sufficient Warrant for the Preparation in Chancery of the Writ as altered and corrected.

76. Wherever the said Lord Ordinary shall be of opinion that the said Objections should not to any Extent receive Effect, he shall pronounce a Judgment, to be written on the said Note of Objections, repelling the said Objections; and the Judgment or Deliverance so pronounced shall form a valid and sufficient Warrant for the Preparation in Chancery of the Writ as revised by the Presenter of Signatures in manner before directed.

77. Wherever the Presenter of Signatures shall be of opinion that the Person applying for the Crown Writ has not produced a Title sufficient to show that he has Right to obtain the same, the Presenter of Signatures shall mark on the said Draft that the same is refused for Want of sufficient Production of Titles, adding thereto his Signature and the Date of affixing the same; and his Clerk shall intimate such Refusal to the Agent of the said Person, and shall on Demand return the Draft to such Agent; and in every such Case it shall be competent for the Person who shall have applied for the Writ to bring such Refusal under Review of the said Lord Ordinary by a Note of Objections lodged in manner aforesaid; and the said Lord Ordinary shall, after considering such Note, and hearing Parties thereon in manner aforesaid, sustain or repel the Objections, or pronounce such Judgment or Deliverance thereon as shall be just; and if the said Lord Ordinary shall be of opinion that a sufficient Title has been shown to authorize the Writ being granted, he shall in that Case remit to the Presenter of Signatures to proceed with the Revisal of the Draft in manner before mentioned.

78. As soon as the Draft Crown Writ shall have been docketed as revised and approved in manner before provided, or, in case of Objections being stated, as soon as the same shall have been disposed of by the said Lord Ordinary in manner before directed, the said Draft shall be officially transmitted by the Presenter of Signatures to the Office of the Director of Chancery; and where such Writ is to be engrossed on any Deed or Conveyance, such Deed or Conveyance shall be transmitted along with said Draft, and immediately thereafter the Writ shall be engrossed in the Office of the Director of Chancery in Terms of the Draft as finally adjusted, signed, and officially transmitted as aforesaid, and shall be signed by the Director of Chancery or his Depute or Substitute; and it shall not be necessary to have the Seal appointed by the Treaty of Union to be kept and used in Scotland in place of the Great Seal thereof

formerly in use affixed to any Writs from Her Majesty, or the Seal of the Prince if the Writs be of Lands holden of the Prince, and a separate Seal be then in use for such Writs, affixed to any Writs from the Prince, unless the Receivers of such Writs shall require the appropriate Seal to be affixed; and when the appropriate Seal is so required and affixed, the Fact shall be stated at the Conclusion of the Writ, and the Date on which the Seal is actually appended stated; and all Crown Writs shall be in all respects as valid and effectual without the Seal as if the same had been appended thereto; and the Writ when signed, or, if required, signed and sealed, as the Case may be, shall be recorded in Chancery in manner hereafter provided, and shall be thereafter delivered to the Person applying for the same, or his Agent, in like Manner in all respects, and on Payment of the same Fees and Charges, as at present used and observed and payable, and the Date of signing, or of sealing when the Seal is appended, shall in all Cases be held and expressed to be the Date of the Writ: Provided always, that before the Writ shall be so delivered Payment shall be made to the Officers who are or may be entitled to receive the same of the Amount of Duties and Compositions payable to Her Majesty or the Prince, ascertained and fixed as aforesaid; and a Record of the Amount of Duties payable to Her Majesty or the Prince shall be kept in Chancery, so as to form a Charge against the Officer or other Person appointed to receive the same.

79. The engrossed Crown Writ, signed, or signed and sealed, recorded and delivered as aforesaid, shall be in all respects a Warrant for Infetment in the Lands described or referred to in the said Writ, as valid and effectual as any Crown Writ of the same Description hitherto in use to be granted, and notwithstanding that the same has not followed on any Signature presented and passed in Exchequer or Precept directed thereon, any Law or Usage heretofore existing to the contrary notwithstanding.

80. Where a Crown Charter or Crown Writ of Resignation is applied for it shall not be necessary to go through any Form or Ceremony of Resignation, but in all Cases Resignation shall be held to be duly made and completed in Terms of the Procuratory or Clause of Resignation, which forms the Warrant for Resignation, by the ingiving of the Note applying for the Charter or Writ as aforesaid, and as of the Date of such ingiving; and every such Charter or Writ of Resignation shall be as valid and effectual as any Crown Charter or Crown Writ of Resignation heretofore granted, any Law or Usage to the contrary notwithstanding.

81. Where Lands are held of the Crown, and a new Investiture by Resignation shall be required, it shall be competent for the Person, in right of the Deed or Conveyance which is the Warrant for Resignation, to apply to the Presenter of Signatures for a Crown Charter of Resignation, or a Crown Writ of Resignation, in or as nearly as may be in the Forms herein-after respectively provided, and such Crown Writ of Resignation shall be engrossed on the said Deed or Conveyance, and it shall be competent to record in the appropriate Register of Sasines such Deed or Conveyance, with the Writ engrossed thereon, and Warrant of Registration also, in the Form or as nearly as may be in the Form No. 1. of Schedule (H.) hereto annexed; and the same being so recorded shall have the same legal Force and Effect in all respects as if a Crown Charter of Resignation had been granted, and such Charter had been followed by an Instrument of Sasine expedite in favour of the Party on whose Behalf such Deed or Conveyance and Writ and Warrant are presented for Registration, and so recorded at the Date of recording such Deed or Conveyance and Writ and Warrant: Provided always, that the recording of such Deed or Conveyance along with such Writ and Warrant shall not have the Effect of an Instrument of Sasine following on such Deed or Conveyance.

82. Where Lands are held of the Crown, and a Confirmation of any Deed or Conveyance recorded in the appropriate Register of Sasines shall be required, it shall be competent for the Person in right of such Deed or Conveyance to apply to the Presenter of Signatures for a Crown Charter of Confirmation, or a Crown Writ of Confirmation in or as nearly as may be in the Forms herein-after respectively provided, and such Crown Writ of Confirmation shall be engrossed on the said Deed or Conveyance, and shall have the same legal Force and Effect as a Crown Charter of Confirmation of such Deed or Conveyance.

83. Crown Writs and Crown Charters of Resignation may be respectively in the Forms or as nearly as may be in the Forms of Nos. 1. and 2. of Schedule (T.) hereto annexed; and Crown Writs and Crown Charters of Confirmation may be respectively in the Forms or as nearly as may be in the Forms of Nos. 3. and 4. of said Schedule (T.); and Crown Writs and Crown Charters of any other Denomination or Nature, except Crown Precepts or Crown Writs of Clare constat, may be in Forms as nearly approaching as may be to the Examples given in the said Schedule (T.), the necessary Alterations being made as the Denomination or Nature of the particular Writ or Charter may require; and all Crown Writs and Crown Charters, including Crown Precepts

and Crown Writs of Clare constat, when granted in or as nearly as may be in any of the Forms provided by this Act, shall have the same Force and legal Effect in all respects as if the same had been granted in any corresponding Forms heretofore in use or competent, and shall be read and construed as largely and beneficially in all respects for the Holders thereof as if the same had been expressed in and had contained the whole Terms and Words which are now used, or were used prior to the First Day of October One thousand eight hundred and forty-seven, in granting such Crown Writs or Charters: Provided, that when the Lands to which the Deed or Conveyance on which any Crown Writ shall be engrossed are held under a Deed of Entail, or under any real Burdens or Conditions or Provisions or Limitations whatsoever appointed to be fully inserted in the Investitures of such Lands, it shall not be necessary in such Writ to insert or refer to the Destination of Heirs, the Conditions, Provisions, and prohibitory, irritant, and resolute Clauses, or Clause authorizing Registration in the Register of Tailles contained in such Deed of Entail, provided the same are inserted at full Length in such Deed or Conveyance or are referred to therein in manner provided by the Ninth Section of this Act, or to insert or refer to such real Burdens or Conditions or Provisions or Limitations, provided the same are inserted at Length in such Deed or Conveyance, or are referred to therein in manner provided by the Tenth Section of this Act.

84. When any Person who has obtained himself specially served as Heir to a deceased Ancestor shall seek to obtain a Crown Writ of Clare constat or Precept from Chancery for infesting himself as such Heir, he shall, in like Manner as before directed, lodge or cause to be lodged in the Office of the Presenter of Signatures the Retour or Decree of his Special Service, and a Draft of the proposed Writ or Precept prepared by his Agent, being a Writer to the Signet, in the Form or as nearly as may be in the Forms, as the Case may require, of Schedule (U.) Nos. 1. or 2. hereto annexed, together with a Note in the Terms or to the Effect before directed, and the last Crown Writ and other Titles of the Lands as aforesaid, and the said Draft shall be revised by the Presenter of Signatures on behalf of the Crown, in manner aforesaid; and all the Provisions herein-before contained with regard to Drafts of Crown Writs shall be and the same are hereby made applicable to such Drafts of Writs of Clare constat or Precepts from Chancery, and the Draft of such Writ of Clare constat or Precept, when docketed as revised and approved in manner before provided, or, in the Case of Objections, the Judgment or Deliverance of the

said Lord Ordinary, shall be officially transmitted to the Office of the Director of Chancery in manner before provided, and shall form a valid and sufficient Warrant for the Preparation in Chancery of the Writ of Clare constat or Precept in Terms of the Draft as corrected and approved, and the same shall forthwith be engrossed in the Office of the Director of Chancery in Terms of the Draft as finally adjusted, signed, corrected, or approved, and officially transmitted as aforesaid, and shall be signed by the Director of Chancery or his Depute or Substitute, and recorded in Chancery in manner herein-after directed, and shall be thereafter delivered to the Person applying for the same or his Agent, in like Manner in all respects and on Payment of the same Fees and Charges as at present used and observed and payable; and the Writ of Clare constat or Precept, when so engrossed and delivered, and with Warrant of Registration thereon recorded in the appropriate Register of Sasines, shall have the same legal Force and Effect in all respects as if a Precept from Chancery had been granted, and an Instrument of Sasine thereon had been duly expedite and recorded in favour of the Person or Persons on whose Behalf such Writ of Clare constat or Precept is presented for Registration at the Date of recording the said Writ or Precept: Provided always, that before the Writ of Clare constat or Precept is so delivered Payment shall be made of the Amount of Duties and Composition payable to the Crown or Prince, as the same shall have been fixed in manner above mentioned.

85. It shall not be necessary that any Crown Writ of Clare constat or Precept from Chancery for infesting Heirs shall proceed exclusively on Special Service in the particular Lands for Infestment in which such Writ or Precept is sought, but it shall be competent for any Person to apply for and obtain such Writ or Precept on lodging along with the last Crown Writ or other Titles as aforesaid an Extract Retour or Decree of General Service, duly expedite and recorded, instructing the Propinquity of such Person to the Party who died last vest and seised in the Lands, or the Character of Heir otherwise belonging to him, and establishing his Right to succeed to the said Lands; and the Writ of Clare constat or Precept granted on Production of such Extract Retour or Decree of General Service shall be in the Form or as nearly as may be in the Form of the said Schedule (U.) No. 1. or 2. hereto annexed, and shall be applied for, revised, and obtained in like Manner as herein-before directed in regard to Crown Writs; and the said Writ or Precept, when recorded, with Warrant of Registration thereon in the appropriate Register of Sasines, shall be as valid and effectual as a Writ

or Precept recorded under the Provisions of the Eighty-fourth Section hereof.

86. All Crown Writs of *Clare constat* or Precepts issued from the Office of Chancery shall be null and void, unless recorded, with a Warrant of Registration thereon on behalf of the Heirs in whose Favour they are granted, in the appropriate Register of Sasines before the First Term of Whitsunday or Martinmas posterior to the Date of such Writ or Precept, without Prejudice to a new Writ of *Clare constat* or Precept being issued; and the proper Officer in Chancery shall receive at the same Time certain Fees on behalf of Sheriffs, Sheriff Substitutes, and Sheriff Clerks of the Counties in which the Lands lie, and on which Sasine would have been taken according to the Form in use prior to the First Day of October One thousand eight hundred and forty-five, and to whom such Officer shall account for the same, in place of the Fees which they had been in use to receive, but such Fees shall be paid only during the Existence of the respective Interests of the Sheriffs, Sheriff Substitutes, and Sheriff Clerks who held these respective Offices at the said First Day of October One thousand eight hundred and forty-five, in their respective Offices; and the Lords of Council and Session are hereby authorized and required by an Act or Acts of Sederunt to regulate and determine the Amount of the Fees to be so received on behalf of each such Sheriff, Sheriff Substitute, and Sheriff Clerk, having due Regard to the existing Interests of each.

87. The Director of Chancery, or his Depute or Substitute, shall enter or cause to be entered in a Book to be kept for the Purpose, and entitled "The Register of Crown Writs," the whole Crown Writ at full Length, and where any such Writ is engrossed on a Deed or Conveyance the Director or his Depute or Substitute shall, in addition to the Writ itself, enter or cause to be entered in the said Register of Crown Writs the leading Name or Names or short distinctive Description of the Lands comprehended in the Deed or Conveyance on which such Writ is engrossed, or of such of those Lands as the Writ applies to, and the Date of or of recording such Deed or Conveyance, and, if recorded, the Register in which the same is recorded: Provided always, that no Crown Writ entered in the Register of Crown Writs before the Commencement of this Act shall be held to be invalidly entered in such Register although the whole of such Writ has been so entered, anything in the "Titles to Land (Scotland) Act, 1858," notwithstanding; and it is hereby provided that Extracts from the said Register of Crown Writs, certified by the Director of Chancery or his De-

pute or Substitute, shall make Faith in Judgment in all Cases except in case of Improbation.

88. In every Case in which a Crown Charter or Writ of *Novodamus*, or a Crown Charter or Writ containing any new or original Grant, shall be sought, the Person applying for the same shall, previously to lodging the Note before mentioned in the Office of the Presenter of Signatures, obtain the Consent and Approbation of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or any One of them, and of the Commissioners of the Board of Trade, under the Hand of their Secretary for the Time being, and written Evidence of such Consent shall be produced along with the Note to be lodged as aforesaid in the Office of the Presenter of Signatures; and the Charter or Writ shall be revised and engrossed as in the ordinary Case, but the same shall be lodged with the Queen's and Lord Treasurer's Remembrancer, and be by him transmitted for the Sign Manual of Her Majesty, and the Signatures of the Commissioners of Her Majesty's Treasury, or any Two of them, or in case such Charter or Writ be of Lands holden of the Prince, and His Royal Highness be then of full Age, for the Consent and Approbation of the Prince, signified under his Sign Manual, after which the proper Seal shall, if desired, be attached to such Charters or Writs, and the other Procedure shall be as is provided in regard to Crown Writs generally.

89. The lodging of a Draft of a proposed Crown Writ, together with a short Note in Terms or to the Effect of Schedule (S.) hereto annexed, praying for a Crown Writ in Terms of such Draft, shall, in competition of Diligence and all other Cases, be deemed and held to be equivalent to the presenting of a Signature in Exchequer; and recording a Copy of such Note, and an Abstract of such Draft Writ, in the Register of Abbreviates of Adjudications, shall be deemed and held to be equivalent to recording in the said Register an Abstract of such Signature.

90. All Crown Writs and Instruments following thereon or relating thereto shall be expressed in the English Language.

91. The Court of Session performing the Duty of the Court of Exchequer as aforesaid shall be and they are hereby authorized from Time to Time to frame and enact by Rule of Court all such Regulations as shall seem to them proper for giving Effect to the Purposes of the present Act, so far as they have reference to Entries with the Crown; and the said Court shall forthwith frame and enact a Rule of Court fixing and determining the Fees to be paid on the various Crown Writs, Steps of Procedure, and other

Matters hereby authorised with reference to such Entries, but such Rule of Court shall be subject to Revision by the Court at any Time or Times thereafter.

92. Whenever any Vacancy shall occur in the Office of Presenter of Signatures, it shall be lawful to the Commissioners of Her Majesty's Treasury, or any Three or more of them, to regulate the Salary of the Presenter of Signatures, as the then Circumstances of the Office may require.

93. Notwithstanding anything in this Act contained, it shall be lawful for the Prince, being of full Age, at any Time or Times hereafter to appoint his own Presenter of Signatures, and other Officer or Officers of Exchequer and Chancery, to discharge, in regard to all Charters and Precepts or Writs of Lands holden of him, the Duties hereby assigned to the Presenter of Signatures and other Officers of Her Majesty's Exchequer and Chancery respectively; and in case of the Office of Presenter of Signatures, or any such other Office in Exchequer or Chancery as aforesaid for the Prince, being conferred on the Person holding the corresponding Office for the Crown, such Officer shall be bound to act for the Prince without additional Salary; and the Fees hereby authorized to be levied in respect of all Charters and Writs from the Prince shall in that Case be paid into the Consolidated Fund; but if any such Appointment by the Prince shall be conferred upon a different Person, the Person so appointed shall draw for his own Use such of the said Fees as shall arise from the Duties performed by him in respect of such Charters and Writs.

94. Nothing herein contained shall affect the Right of any Person to whom Compensation shall have been awarded by way of Annuity in virtue of the Provisions of the Thirty-second Section of the Act Tenth and Eleventh Victoria, Chapter Fifty-one, to receive Compensation: Provided that if any Person to whom Compensation shall be so awarded by way of Annuity shall be afterwards appointed to any other Public Office, such Compensation shall be accounted pro tanto of the Salary payable to such Person in respect of such other Office while he shall continue to hold the same.

95. The several Compensations which may have been awarded under the Authority of the last-recited Act shall be payable out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of Her Majesty Queen Anne were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for

keeping up the Courts of Session, Justiciary, or Exchequer in Scotland.

96. In the event of the temporary Absence or Disability of the Sheriff of Chancery or of the Presenter of Signatures, it shall be competent to the Lord Justice General and President of the Court of Session to appoint a properly qualified Person to act as Substitute to the Sheriff of Chancery or to the Presenter of Signatures, as the Case may be, such Person receiving from the Sheriff of Chancery or from the Presenter of Signatures, as the Case may be, such Remuneration for so acting as shall be fixed by the said Lord Justice General and President of the Court of Session.

97. Where any Person is or shall be infeft in Lands holden of a Subject Superior upon a Conveyance or Deed of or relating to such Lands granted by or derived from the Person last entered with the Superior and infeft, or granted by or derived from a Person whose own Title to such Lands is capable of being made public by Confirmation according to the existing Law and Practice, which Conveyance or Deed shall contain an Obligation to infeft a me or a me vel de me, or shall contain a Clause expressing the Manner of holding to be a me vel de me, or shall imply that the Manner of holding is a me vel de me, or upon any Conveyance or Deed which under this Act or any of the repealed Acts shall be equivalent to or have the Effect of such a Conveyance, it shall be lawful and competent for such Person, upon Production to the Lord Ordinary on the Bills in the Court of Session of his Infetment, whether the same shall consist of such Conveyance or Deed itself, with a Warrant of Registration thereon in his Favour, recorded in the appropriate Register of Sasines, or of an Instrument or Instruments in his Favour, applicable to such Lands, following on such Conveyance or Deed, and recorded in the appropriate Register of Sasines, and Warrants of the same, and upon showing the Terms and Conditions under which the said Lands are holden of the Superior thereof, to obtain Warrant for Letters of Horning to charge the Superior to grant in favour of such Person a Writ or Charter of Confirmation in the same Way and Form as is provided and in use for compelling Entry by Resignation: Provided always, that the Changer shall at the same Time pay or tender to such Superior such Duties or Casualties as he is by Law entitled to receive upon the Entry of the Changer, and that it shall be lawful for every such Superior to show Cause why he ought not to be compelled to give Obedience to such Charge by presenting a Note of Suspension to the Court of Session in the usual Manner.

98. Where such Confirmation by a Subject Superior of any Conveyance or Deed or Instrument recorded as before provided shall be required, it shall be competent for the Superior to confirm such Conveyance or Deed or Instrument by a Writ of Confirmation to be engrossed thereon, as nearly as may be, in the Form given in Schedule (V.) No. 1. hereto annexed, or, in the Option of the Person desiring Confirmation, by a Charter of Confirmation in the Form or as nearly as may be in the Form given in Schedule (V.) No. 2. hereto annexed; and the Confirmation granted in either of these Forms of Schedule (V.) hereto annexed shall be, to all Intents and Purposes, as effectual as a Charter of Confirmation according to the Law and Practice prior to the First Day of October One thousand eight hundred and fifty-eight, and the Superior shall be bound so to confirm such Conveyance or Deed or Instrument in either of the said Forms in which he shall, by the Person desiring Confirmation, be required so to do, instead of in the Form in use prior to the said Date: Provided always, that the Person requiring such Confirmation be entitled to demand an Entry by Confirmation, and that he shall, if required, produce to the Superior a Charter or other Writ showing the Tenendas and Reddendo of the Lands contained in such Conveyance or Deed or Instrument, and shall also at the same Time pay or tender to the Superior such Duties or Casualties as he may be entitled to demand: Provided also, that every Superior shall be entitled to insert or refer in Terms of this Act in the Writ or Charter to be granted by him to the whole Clauses, Burdens, and Conditions contained in the former Charter in so far as they are not set forth at Length or validly referred to in Terms of this Act or of any of the Acts hereby repealed in the Conveyance or Deed or Instrument confirmed.

99. Where a new Investiture from a Subject Superior by Resignation shall be required it shall be competent for the Superior to grant, in favour of the Person in right of the Conveyance or Deed which is the Warrant for Resignation, a Writ of Resignation, which shall be written on such Conveyance or Deed as nearly as may be in the Form given in Schedule (V.) No. 3. hereto annexed, or, in the Option of the Person resigning, by a Charter of Resignation in or as nearly as may be in the Form given in Schedule (V.) No. 4. hereto annexed; and the Conveyance or Deed, with such Writ of Resignation written thereon, or the Charter of Resignation in the separate Form, shall be, to all Intents and Purposes, as effectual as if a Charter of Resignation had been granted in the usual Form, according to the Law and Practice prior to the First Day of October One thousand eight hundred and fifty-eight, and the Superior shall be bound to

grant such Writ of Resignation or such Charter of Resignation, if required so to do, instead of a Charter of Resignation in the Form in use prior to said Date: Provided always, that the Party requiring such Writ or Charter be entitled to demand an Entry by Resignation, and that he shall, if required, produce to the Superior a Charter or other Writ showing the Tenendas and Reddendo of the Lands resigned, and shall also at the same Time pay or tender to the Superior such Duties or Casualties as he may be entitled to demand; and it shall be competent to record in the appropriate Register of Sasines the Conveyance or Deed, with the Writ of Resignation engrossed thereon, and Warrant of Registration also written thereon, or the Charter of Resignation, with Warrant of Registration written thereon, or to expedite a Notarial Instrument on such Charter, and to record such Instrument, with Warrant of Registration thereon, in the appropriate Register of Sasines, and the recording of the Conveyance or Deed, with the Writ of Resignation and Warrant of Registration thereon, or of the Charter, with Warrant of Registration thereon, or of the Instrument, with Warrant of Registration thereon, shall have the same legal Force and Effect in all respects as if a Charter of Resignation had been granted, and such Charter had been followed by an Instrument of Sasine duly expedite and recorded at the Date of recording the said Conveyance or Deed, and Writ or Charter, or Instrument, according to the Law and Practice prior to the First Day of October One thousand eight hundred and fifty-eight, in favour of the Party on whose Behalf the Conveyance or Deed, and Writ or Charter, or Instrument are presented for Registration: Provided always, that the recording of such Conveyance, along with such Writ and Warrant of Registration thereon, shall not have the Effect of an Instrument of Sasine following on such Conveyance or Deed.

100. All Writs and Charters from a Subject Superior of any Denomination or Nature other than Writs or Precepts of Clare constat may be in Forms as nearly approaching as may be, and as the Nature of the Writ or Charter will admit, to the Examples given in the said Schedule (V.), the necessary Alterations being made as the Denomination or Nature of the particular Charter or Writ may require; and such Writs and Charters, when granted in these Forms, or as nearly as may be in these Forms, shall have the same Force and legal Effect in all respects as if the same had been granted in any corresponding Forms heretofore in use or competent, and shall be read and construed as largely and beneficially in all respects for the Holders thereof as if the same had been expressed in and had contained the whole Terms and

Words which are now used, or which were used in granting such Writs or Charters prior to the passing of the Statutes repealed by this Act; and in granting all Writs and Charters by Subject Superiors it shall be competent and sufficient to refer to the Tenendas and Reddendo of the Lands therein contained, as set forth at Length either in the Writ or Charter produced to the Superior in Terms of this Act, or in any Charter or other Writ recorded in any Public Register; and Subject Superiors shall be bound, if required, to grant such Writs and Charters containing such Reference, in like Manner as they were bound to grant similar Charters according to the Forms in use prior to the First Day of October One thousand eight hundred and fifty-eight: Provided that when the Lands to which the Deed or Conveyance on which any Writ shall be engrossed are held under a Deed of Entail, or under any real Burdens or Conditions or Provisions or Limitations whatsoever appointed to be fully inserted in the Investitures of such Lands, it shall not be necessary in such Writ to insert or refer to the Destination of Heirs, or the Conditions, Provisions, and prohibitory, irritant, and resolute Clauses, or Clause authorizing Registration in the Register of Tailies, contained in such Deed of Entail, provided the same are inserted at full Length in such Deed or Conveyance, or are referred to therein in manner provided by the Ninth Section of this Act, or to insert or refer to such real Burdens or Conditions or Provisions or Limitations, provided the same are inserted at full Length in such Deed or Conveyance, or are referred to therein in manner provided by the Tenth Section of this Act.

101. Precepts of Clare constat may be in or as nearly as may be in the Form given in Schedule (W.) No. 2. hereto annexed, and in all Cases in which it is or may be competent to grant Precepts of Clare constat, or Precepts of Clare constat and Charters of Confirmation combined, it shall be competent and sufficient to grant a Writ of Clare constat in or as nearly as may be in the Form given in Schedule (W.) No. 1. hereto annexed, and to record such Writ of Clare constat, with a Warrant of Registration thereon, in the appropriate Register of Sasines; and it shall also be competent so to record any Precept of Clare constat, or Precept of Clare constat and Charter of Confirmation combined, with Warrant of Registration thereon, and such Writ of Clare constat, or Precept of Clare constat, or Precept of Clare constat with Charter of Confirmation combined, being so recorded, shall have the same legal Force and Effect in all respects as if a Precept of Clare constat, or Precept of Clare constat with Charter of Confirmation combined, as the Case may be, had been granted, and an Instrument of Sasine

thereon had been expedite in favour of the Person on whose Behalf such Writ or Precept of Clare constat, or Precept of Clare constat and Charter of Confirmation combined, as the Case may be, and Warrant of Registration, are presented for Registration, and recorded at the Date of recording the said Writ or Precept, or Precept and Charter combined, and Warrant, according to the Law and Practice in force prior to the First Day of October One thousand eight hundred and fifty-eight; and Subject Superiors shall be bound to grant such Writs of Clare constat, if required by the Heir entitled to demand the same: Provided always, that the Heir shall, if required, produce a Charter or other Writ showing the Tenendas and Reddendo of the Lands in which his Ancestor died infest, and shall also at the same Time pay or tender to the Superior such Duties or Casualties as he may be entitled to demand.

102. It shall be competent for the Heir of any Person who died last vest and seised in any Lands held Burgage to obtain from the Magistrates of the Burgh within which said Lands are situated a Writ of Clare constat in or as nearly as may be in the Form given in Schedule (W.) No. 3. to this Act annexed; and such Writ of Clare constat may be signed by the Provost or acting Chief Magistrate for the Time, and by the Town Clerk, or, where there are more than One Town Clerk, by One of the Town Clerks, and when so signed shall be as valid as if signed by the whole of the Magistrates; and such Writ of Clare constat may, with Warrant of Registration thereon in favour of such Heir, be recorded in the appropriate Register of Sasines, and, when so recorded, shall have the same Effect in all respects as if at the Date of such recording Cognition and Entry of such Heir had taken place in due Form, and an Instrument of Cognition and Sasine in regard to such Lands and in favour of such Heir had been expedite and recorded according to the Law and Practice in force prior to the First Day of October One thousand eight hundred and sixty.

103. All Writs and Precepts of Clare constat, whether from Subject Superiors, or from Magistrates of a Burgh, already made and granted, and still subsisting and in force, and all such Writs and Precepts of Clare constat to be made and granted hereafter, shall, notwithstanding the Death of the Grantor thereof, remain in full Force and Effect during the whole Lifetime of the Grantee, and shall continue effectual as a Warrant for giving Lufteftment to the Grantee personally by Sasine in Terms thereof, or by recording the same, with Warrant of Registration thereon in his Favour, at any Time during the Grantee's Life.

104. Where the Person having Right to the Superiority of any Lands, which Superiority is not defeasible at the Will of the Vassal or Disponee, shall not have completed his feudal Title thereto so as to enable him to enter any Heir or Disponee of the Vaasal last publicly infeft in the said Lands, or any Adjudger or other Party deriving Right from or through such Vassal, where such Heir, Disponee, Adjudger, or other Party, if such Person had been infeft in the Superiority, would have been entitled to compel Entry in virtue of this Act, or of an Act passed in the Twentieth Year of the Reign of His Majesty King George the Second, or otherwise, it shall be competent to such Heir, Disponee, Adjudger, or other Party, provided the annual Reddendo attached to such Superiority shall not exceed Five Pounds Sterling in Value or Amount, to present a Petition to the Lord Ordinary on the Bills, in the Form or as nearly as may be in the Form No. 1. of Schedule (X.) hereto annexed, praying for Warrant of Service on such Person, and for Decree in the Terms set forth in such Petition, and the Lord Ordinary on the Bills shall pronounce an Order for Service of such Petition in Terms or as nearly as may be in Terms of the Interlocutor No. 2. of Schedule (X.) hereto annexed; and if after such Service, and the Expiration of the Days of Intimation, such Person shall not comply with the Demand of the Petition by completing his Title and granting Entry to the Petitioner as aforesaid, or shall not show reasonable Cause to the Lord Ordinary why he delays or refuses so to do, he shall, for himself and his Heirs, whether of Line, Conquest, Taillie, or Provision, forfeit and amit all Right to the said Superiority, and the Lord Ordinary shall pronounce Decree or Judgment accordingly to the Effect of entitling the Petitioner, and his Heirs and Successors in the said Lands, in all Time, thereafter to hold the same as Vassals immediately of and under the next Over Superior by the Tenure and for the Reddendo by and for which the forfeited Superiority was held, all in the Form or as nearly as may be in the Form No. 3. of Schedule (X.) hereto annexed; and such Decree or Judgment, and any similar Decree or Judgment which may have been pronounced under any of the Acts of Parliament hereby repealed, when extracted and recorded in the Register of Sasines appropriate to the Lands, shall be held absolutely to extinguish such Right of Superiority, and shall enable the Petitioner to apply to such Over Superior, as his immediate Superior, for an Entry accordingly; and it is hereby provided, that in the renewed Investiture to be so obtained by the Petitioner under the Authority of the said Decree or Judgment the Tenendas and Reddendo contained in the Title Deeds of the forfeited Superiority shall be inserted in room of those contained in the Investiture of

the Petitioner's Predecessor or Author, and the Lands shall be held by the Petitioner and his Successors according to the Tenure of the forfeited Superiority in all Time thereafter; and the Writ in the Petitioner's Favour shall be expressed, as nearly as may be, in one or other of the Forms given in Schedule (AA.) hereto annexed.

105. If in the Case aforesaid the annual Reddendo shall exceed in Value or Amount the Sum of Five Pounds Sterling, or, in the Option of the said Heir, Disponee, Adjudger, or other Party, whether the said annual Reddendo shall exceed the said Sum of Five Pounds Sterling or not, it shall be lawful for such Heir, Disponee, Adjudger, or other Party to present a Petition to the Lord Ordinary on the Bills, in the Form or as nearly as may be in the Form of No. 1. of Schedule (Y.) hereto annexed, praying for Warrant and Decree as there set forth, and the Lord Ordinary shall pronounce an Order for Service, in the Terms or as nearly as may be in the Terms of the Interlocutor given in No. 2. of Schedule (Y.) hereto annexed; and if after such Service and Expiration of the Days mentioned in such Order of Service such Person shall not comply with the Demand of the Petition by completing his Title and granting Entry to such Petitioner as aforesaid, or shall not show reasonable Cause to the Lord Ordinary why he delays or refuses so to do, he shall, for himself and his Heirs, whether of Line, Conquest, Taillie, or Provision, forfeit and amit all Right to the Dues and Casualties payable on the Entry of such Petitioner, who shall also be entitled to retain his Feu Duties or other annual Prestations until fully paid and indemnified for all the Expenses of the Petition and Procedure thereon, and all the Expenses of completing his Title in Terms of this Act; and the Lord Ordinary shall pronounce interim Decree to that Effect, and grant interim Warrant for such Petitioner applying for and obtaining an Entry from the Crown, or, in the Option of the Petitioner, from the mediate Over Superior as acting in the vice of such Superior, all in the Form or as nearly as may be in the Form of No. 3. of Schedule (Y.) hereto annexed; and any Petitioner who shall obtain such Decree under this Act, or who shall have obtained a similar Decree under a Petition presented in virtue of any of the Acts of Parliament hereby repealed, shall be entitled forthwith to lodge, along with an Extract of the said Decree, in the Office of the Presenter of Signatures, a Draft of a proposed Writ from the Crown, as in vice of such Superior, with a short Note in Terms of this Act; and such Writ, for which the said Extract Decree shall be a sufficient Warrant, may be in or as nearly as may be in one or other of the Forms given in Schedule (Z.) hereunto annexed, and shall be as effectual as if granted by the mediate Superior

of the Feu duly infeft in the Superiority; and, when there is a mediate Over Superior duly infeft, such Extract Decree shall, in the Option of the Petitioner, be directed against such mediate Over Superior, and shall be a sufficient Warrant for Letters of Horning to charge such mediate Over Superior to enter the Petitioner by granting a valid Writ as in vice of such Superior; and after Completion of his Title the Petitioner shall be entitled, if he thinks fit, to lodge, as Part of the Proceedings under his Petition, an Account of the Expenses of that Process, and of completing his Title, and the Lord Ordinary shall, if required on the Part of such Petitioner, modify the Amount thereof, and decern for Retention as aforesaid, in the Form of No. 4. of Schedule (Y.) hereto annexed.

106. The Lands and others contained in such Writ to be so obtained shall be holden of the Crown, or the mediate Over Superior, as in the vice of the unentered immediate Superior, while and so long as he and his Successors, the immediate Superiors thereof, shall remain unentered, and thereafter until a new Entry in favour of the Vassal or his Successors shall become requisite.

107. When a Petition shall be presented as aforesaid praying for Warrant of Service and for Decree against any Person so having a Right to the Superiority of any Lands, and not having completed his feudal Title thereto, whether the annual Reddendo shall be above or below the Value or Amount of Five Pounds Sterling, it shall be competent for him, at any Time before Expiration of the Days of Intimation, or before interim Decree shall have been extracted as aforesaid, to lodge, as Part of the Proceedings under such Petition, a Minute, signed by himself or by his Mandatary or Agent duly authorized by him in Writing, stating that he tenders Relinquishment of the Right of Superiority which he holds on Apparency in favour of the Petitioner and his Heirs and Successors, and such Minute shall be in the Form or as nearly as may be in the Form No. 1. of Schedule (BB.) hereto annexed; and if the Petitioner shall, by himself or his Counsel or Agent, subscribe or endorse upon such Minute an Acceptance of the same in the Form or as nearly as may be in the Form No. 2. of Schedule (BB.) hereto annexed, the Lord Ordinary is hereby authorized and required, on the Petitioner's Motion, to interpose his Authority to such Minute and Acceptance, and to decern and declare the Right of Superiority thus relinquished to be extinguished, and to the Effect of making the Petitioner and his Successors in the said Lands hold the Lands as Vassals immediately of and under the Superior of the relinquished Superiority in Permanency

and by the Tenure and for the Reddendo by and for which such relinquished Superiority was held, the Decree so to be pronounced to be in the Form or as nearly as may be in the Form No. 3. of Schedule (BB.) hereto annexed; and the said Decree, when extracted, and recorded in the appropriate Register of Sasines, shall entitle the Petitioner and his foressaids to apply for an Entry to such Superior accordingly as his immediate Superior; and in the renewed Investiture to be obtained by the Petitioner under the Authority of the said Decree, the Tenendas and Reddendo contained in the Title Deeds of the relinquished Superiority shall be inserted in room of those contained in the Investiture of the Petitioner's Predecessor or Author, and the Lands shall be held by himself and his Successors, according to the Tenure of the relinquished Superiority, in all Time thereafter; and the Writ in the Petitioner's Favour may be expressed in one or other of the Forms given in Schedule (AA.) hereto annexed; but nothing herein contained shall be held as rendering it imperative on the Petitioner to accept of the offered Relinquishment, and to take the Place of his immediate Superior, it being hereby provided that if he prefers it he shall be entitled to refuse the same, and to complete his Title by Entry from the Crown, or the mediate Over Superior, as in the vice of his immediate Superior.

108. The Investiture thus completed upon the Forfeiture of such Heir Apparent, or upon the Relinquishment of the Superiority by such Heir Apparent, and Acceptance by the Petitioner, shall in all respects, and to all Intents and Purposes, be as effectual as if such Apparent Heir had completed his Titles to the Superiority, and thereafter conveyed the same to the Petitioner, and the latter, after completing his Titles under the Over Superior, had resigned ad remanentiam in his own Hands: Provided always, that the Title so completed shall not in any respect extend the Interests of such Over Superior, and that he shall be entitled to no more than the Casualties, whether taxed or untaxed, to which he would have been entitled if such Apparent Heir had remained his Vassal.

109. In the Case of such Forfeiture or Relinquishment of Superiority by any Apparent Heir in manner above mentioned, the Vassal obtaining or accepting the same, and making up Titles under the Over Superior, shall be liable, but subject always to Retention of Expenses as aforesaid, for the Value of the said Superiority to the said Heir Apparent, or any Person in his Right, or having Interest, as accords of Law; and such Forfeiture or Relinquishment by such Heir Apparent shall not infer a passive Representation on his Part, nor any Liability for the

Debts of the Person last infest therein, beyond the Price, if any, which he may receive for such Forfeiture or Relinquishment; and the Vassal, if he accepts thereof, shall not be accountable in any Case for more than the Value or Price of the forfeited or relinquished Right.

110. In order to facilitate still further the extinguishing of Mid-superiorities not defeasible by the Vassal, it shall be competent to any Subject Superior, whether himself entered with his Superior or not, and whatever the annual Value of the Reddendo may be, to relinquish his Right of Superiority in favour of his immediate Vassal, by granting a Deed of Relinquishment in the Form or as nearly as may be in the Form No. 1. of Schedule (CC.) hereto annexed; and on the Deed of Relinquishment being accepted by the Vassal, by an Acceptance written on such Deed in the Form or as nearly as may be in the Form No. 2. of Schedule (CC.) hereto annexed, and being followed by a Writ of Investiture by the Over Superior as hereinafter provided, also written upon the Deed of Relinquishment, and on such Deed, with the Acceptance and Writ of Investiture written thereon, whether dated prior or subsequent to the Commencement of this Act, and Warrant of Registration on behalf of the Vassal, also written thereon, being thereafter recorded in the appropriate Register of Sasines, the Superiority so relinquished shall be held to be extinguished, and the Vassal and his Successors in the Lands shall hold the same as immediate Vassals of the Over Superior by the Tenure and for the Reddendo by and for which such relinquished Superiority was held, and the Vassal and his foreshaids shall be entitled to apply for an Entry to such Over Superior accordingly as his immediate Superior; and such Relinquishment by a Superior who shall not have completed his Title to the Superiority relinquished shall not infer a passive Representation on his Part, nor any Liability for the Debts of the Person last infest therein beyond the Price or Consideration, if any, which he may receive for such Relinquishment.

111. On the Application of the Vassal in the relinquished Superiority, and on Production by him of the Deed of Relinquishment, and Acceptance thereof, whether dated prior or subsequent to the Commencement of this Act, and on his paying or tendering such Duties and Casualties as may be exigible by the Over Superior, the Over Superior shall be bound to receive the Vassal as his immediate Vassal by Writ of Investiture in or as nearly as may be in the Form of No. 3. of Schedule (CC.) to be written on the Deed of Relinquishment, and the Tenendas and Reddendo contained in the Title

Deeds of the relinquished Superiority shall be inserted therein in room of those contained in the former Investiture held under the relinquished Superiority; and where the Lands are held of the Crown, such Writ of Investiture shall be obtained from Chancery, in the same Manner as is herein-before directed in regard to Confirmations written on the Deeds confirmed: Provided always, that the Party applying for such Writ of Investiture shall lodge or cause to be lodged in the Office of the Presenter of Signatures a Draft of the proposed Writ, in the same Manner as when a Crown Writ is applied for under the Provisions of this Act; and the Deed of Relinquishment with the Acceptance thereon shall be officially transmitted to the Director of Chancery, and the Crown Writ of Investiture engrossed thereon, and recorded in the same Manner in which Crown Writs are to be recorded, and shall thereafter be delivered to the Vassal or his Agent on Payment of the same Fees as are now payable for recording a Writ or Charter in Chancery; and the Investiture completed upon such Relinquishment of the Superiority shall be as effectual as if the Grantor of the Deed of Relinquishment had completed his Title to the Superiority, and had thereafter conveyed the same to the Vassal, and the latter, after having completed his Titles under the Over Superior, had resigned *ad remanentiam* in his own Hands: Provided always, that the Investiture so completed shall not in any respect extend the Rights or Interests of such Over Superior, and that he shall be entitled to no more than the Duties and Casualties, taxed or untaxed, to which he would have been entitled if the Grantor of the Deed of Relinquishment had remained or entered as his Vassal.

112. Where the Right of Superiority, or the Dues and Casualties payable in respect thereof, forfeited or relinquished under the Provisions of this Act, shall form Part of an Estate held under a Deed of strict Entail, such Forfeiture or Relinquishment shall not operate as a Contravention of such Entail, anything contained in the Deed of Entail or any Act of Parliament notwithstanding; and the Price agreed to be paid for such Superiority so forfeited or relinquished, if any, shall be consigned by the Vassal in one of the chartered Banks in Scotland, subject to the Orders of the Court of Session, and shall be applicable and applied in such and the like Manner and to such and the like Purposes as Purchase Money or Compensation coming to Parties having limited Interests is made applicable, under the Lands Clauses Consolidation (Scotland) Act, 1845, or any Act altering or amending the same, or under the Act of the Eleventh and Twelfth Victoria, Chapter Thirty-six, intituled "An Act for the Amendment of the

"Law of Entail in Scotland," or under an Act of the Sixteenth and Seventeenth Victoria, Chapter Ninety-four, intituled "An Act to extend the Benefits of the Act of the Eleventh and Twelfth Years of Her present Majesty for the Amendment of the Law of Entail in Scotland;" and for that Purpose it shall be competent to the Heir of Entail in Possession to present a summary Petition to the Court of Session, praying to have the Price so applied, and such Petition shall set forth the Names, Designations, and Places of Abode of those Heirs of Entail whose Consents would be required to the Execution of an Instrument of Disentail; and on such Petition being served on such Parties, and being intimated in the Minute Book and on the Walls in common Form, it shall be competent for the Court to direct the Price to be applied to such of the said Purposes as may appear to them to be most expedient: Provided always, that where the Sums agreed to be paid for all the Superiorities which form Part of an Entailed Estate shall not in all exceed the Sum of Two hundred Pounds such Sum shall belong to the Heir in Possession, and the Court shall direct such Sums to be paid to him: Provided also, that the Price of such Superiorities may be applied by the Heir in Possession to such Purposes and in such Manner as may be authorized by any Private Act of Parliament authorizing the Sale of the Entailed Estate or any Portion thereof, and the Application of the Price thereof; and where the Lands of which the Superiority is so forfeited or relinquished shall be held by the Vassal under a Deed of strict Entail, the Vassal in such Lands shall be entitled and he is hereby authorized to grant a Bond and Disposition in Security over the Entailed Estate for the full Amount of the Price paid for the forfeited or relinquished Superiority, together with all Expenses incurred in the relative Proceedings, including the estimated Expense of such Bond and Disposition in Security; and his granting such Bond and Disposition in Security shall not operate as a Contravention of such Entail, anything contained in the Deed of Entail or any Act of Parliament notwithstanding: Provided always, that such Bond and Disposition in Security shall be granted with the Consent of those Heirs of Entail whose Consents would be required to the Execution of an Instrument of Disentail of the Lands, or under the Authority of a Judicial Warrant or Decree of the Court of Session pronounced on a summary Petition by the Heir of Entail in possession praying for such Warrant; and the Proceedings under such Petition shall be the same or as nearly as may be the same as the Proceedings under a Petition to charge an Entailed Estate with Provisions to younger Children, as authorized by the said Acts of the Eleventh and Twelfth Victoria, Chapter Thirty-six, and Sixteenth and Seventeenth Victoria,

Chapter Ninety-four: Provided always, that it shall not be necessary that such Petition be publicly advertised in the Gazette or any Newspaper, but that Service and Intimation only shall be made in common Form.

113. Where no Agreement shall have been made or shall be made with the Superior of Lands of the Nature referred to in the Twenty-sixth Section of this Act for a periodical or other Payment in lieu of the Casualty or Composition payable by Law or in Terms of the Investiture upon the Entry of Heirs and singular Successors, or where the Casualty and Composition shall not have been taxed, and where by Law and under the Terms of the Investiture Composition as on the Entry of a singular Successor would be or but for the Provisions of the said Section would have been payable upon the Entry of any Party or Parties as Successors to the Party or Parties in whose Name the Titles shall have been expedite and recorded as provided by the said Section, it shall be lawful for such Superior, at the Death of the existing Vassal, in such Lands, and at the Expiration of every Period of Twenty-five Years thereafter, so long as such Lands shall belong to or be held for behoof of such Congregation or Society or Body of Men, to demand and take from such Congregation or Society or Body of Men or other Party or Parties to whom such Lands may have been or shall be feued or conveyed, or by whom the same may be held for their Behoof, a Sum corresponding to the Casualty or Composition, if any such shall in the Circumstances be due, which would have been payable upon the Entry of a singular Successor therein; and such Payments shall be in full of all Casualties of Entry and Composition payable to the Superior for or furth of such Lands, while the same shall remain the Property or be held for behoof of such Congregation or Society or Body of Men, and the Superior shall have all such and the like Preference and Execution for the Recovery of such Sums as Superiors have for the Recovery of Casualties of Superiority according to Law: Provided always, that where such Casualty or Composition shall not have been taxed in the Investiture, and the Lands so feued or conveyed shall not be situated in a Town or Village or in the immediate Vicinity thereof, the Casualty or Composition payable therefor shall be held to be the annual Rent or annual Value of the Lands so feued or conveyed, if let as an agricultural Subject at the Time when such Casualty or Composition shall become due and exigible in virtue of this Act.

114. Writs of Confirmation, and Writs of Resignation, and Writs of Clare constat, and all other Writs or Charters granted in Terms of this Act by Subject Superiors, shall be authenticated

in the Form required by the Law of Scotland in the Case of ordinary Conveyances.

115. Every Charter and Writ, whether from the Crown or from a Subject Superior, of whatever Description, shall operate a Confirmation of the whole prior Deeds and Conveyances necessary to be confirmed in order to complete the Investiture of the Person obtaining such Writ or Charter.

116. The Stamp Duty chargeable on Writs of Confirmation, Writs of Resignation, Writs of Clare constat, and Writs of Investiture, granted or to be granted in virtue of this Act, except Crown Writs, and on Writs of Acknowledgment under "The Registration of Leases (Scotland) Act," shall be the same as that chargeable on Charters of Confirmation, Charters of Resignation, and Precepts of Clare constat by Subject Superiors, and the said Duty may be paid by means of adhesive Stamps to be provided for that Purpose by the Commissioners of Inland Revenue, who may from Time to Time make such Rules as may seem fit for regulating the Use of such Stamps and for insuring the proper Cancellation thereof.

117. From and after the Commencement of this Act no Heritable Security granted or obtained either before or after that Date shall, in whatever Terms the same may be conceived, except in the Cases herein-after provided, be heritable as regards the Succession of the Creditor in such Security, and the same, except as herein-after provided, shall be moveable as regards the Succession of such Creditor, and shall belong after the Death of such Creditor to his Executors or Representatives in mobilibus, in the same Manner and to the same Extent and Effect as such Security would, under the Law and Practice now in force, have belonged to the Heirs of such Creditor: Provided always, that where any Heritable Security is or shall be conceived expressly in favour of such Creditor, and his Heirs or Assignees or Successors, excluding Executors, the same shall be heritable as regards the Succession of such Creditor, and shall after the Death of such Creditor belong to his Heirs in the same Manner and to the same Extent and Effect as is the Case under the existing Law and Practice in regard to Heritable Securities: And provided also, that where a Creditor in any existing or future Security recorded, or on which an Instrument has followed recorded in the Register of Sasines, shall desire to exclude Executors, it shall be competent for him to do so by executing a Minute in the Form or as nearly as may be in the Form of Schedule (DD.) hereto annexed, and recording the same in the appropriate Register of Sasines, and upon such Minute being recorded the Security to which it

refers shall be heritable in the Manner and to the Extent and Effect herein-before provided. And further, provided that where in any existing or future Security which has not been recorded or followed by an Instrument recorded in the Register of Sasines, or where in the Case of any Conveyance or Deed of or relating to such Security not recorded in the Register of Sasines the Creditor shall desire to exclude Executors it shall be competent for him to do so by executing a Minute, in the Form or as nearly as may be in the Form of Schedule (DD.) hereto annexed, on the Security or on the Deed or Conveyance thereof in his Favour which has not been recorded as aforesaid, and recording the same, along with such Security or with such Deed or Conveyance, as the Case may be, in the appropriate Register of Sasines, and upon such Security or Deed or Conveyance, as the Case may be, and Minute being so recorded the Security shall be heritable in the Manner and to the Extent and Effect herein-before provided; and, where Executors shall be excluded in the Security, or by Minute recorded as aforesaid, the Security shall continue to be heritable as regards the Succession of the Creditor for the Time holding such Heritable Security, until the Exclusion of Executors shall be removed, which it shall be lawful for such Creditor to do either by executing a Minute in the Form or as nearly as may be in the Form of Schedule (EE.) hereto annexed, and recording the same in the appropriate Register of Sasines, whereupon the Security shall become moveable as regards the Succession of such Creditor, as provided by this Act, or by assigning, conveying, or bequeathing such Security to himself or to any other Person, without expressing or repeating such Exclusion, and upon such Assignment, Conveyance, or Bequest taking effect, the Security shall become moveable as regards the Succession of such Creditor or other Person as the Case may be, as provided by this Act: And further, provided that all Heritable Securities shall continue and shall be heritable quoad fiscum, and as regards all Rights of Courtesy and Terce competent to the Husband or Wife of any such Creditor, and that no Heritable Security, whether granted before or after Marriage, shall to any Extent pertain to the Husband jure mariti, where the same is or shall be conceived in favour of the Wife, or to the Wife jure relicte, where the same is or shall be conceived in favour of the Husband unless the Husband or Relict has or shall have Right and Interest therein otherwise; declaring nevertheless, that this Provision shall in no way prejudice the Rights and Interests of Wife or Husband, or of the Creditors of either, in or to the by-gone Interest and annual Rents due under any such Heritable Security and in bonis of the Husband or Wife respectively prior to his or her Death: And further provided, that where

Legitim is claimed on the Death of the Creditor no Heritable Security shall to any Extent be held to be Part of the Creditor's Moveable Estate in computing the Amount of the Legitim.

118. From and after the Commencement of this Act it shall be lawful and competent for any Person entitled to grant an Heritable Security by way of Bond and Disposition in Security to grant the same in the Form or as nearly as may be in the Form No. 1. of Schedule (FF.) hereto annexed; and the Registration of such Bond and Disposition in Security, or of any Bond and Disposition in Security, granted according to any of the Forms competent or in use prior to the Commencement of this Act, shall be as effectual and operative to all Intents and Purposes as if such Bond and Disposition in Security had contained, in the Case of Lands not held by Burgage Tenure an Obligation to infest a mevel de me, Procuratory of Resignation, and Precept of Sasine, and in the Case of Lands held by Burgage Tenure an Obligation to infest more burgi, and a Procuratory of Resignation, all in the Words and Form in use prior to the Thirtieth Day of September One thousand eight hundred and forty-seven, and as if Sasine or Resignation and Sasine, as the Case may be, had been duly made, accepted, and given thereon in favour of the original Creditor, and an Instrument of Sasine or of Resignation and Sasine, as the Case may be, in favour of such Creditor had been duly recorded in the appropriate Register of Sasines of the Date of the Registration of the said Bond and Disposition in Security as aforesaid.

119. The Import of the Clauses of the Form of No. 1. of the said Schedule (FF.) occurring in any Bond and Disposition in Security, whether granted before or after the Commencement of this Act, shall be as follows; videlicet, the Clause obliging the Grantor to pay the Amount due under the Bond, Principal, Interest, and Penalty, to the Creditor, his Heirs, Executors, or Assignees, shall, unless where Executors are excluded, be held to import an Obligation to pay the same to the Creditor and his Representatives in mobilibus and his Assignees, and, where there is or shall be such Exclusion, to the Creditor and his Heirs and Assignees; the Clause disposing the Lands to such Creditor and his foreshaids heritably shall, unless where Executors are excluded, be held to import a Disposition of such Lands to such Creditor and his Representatives in mobilibus and his Assignees, and, where there is or shall be no such Exclusion, to such Creditor and his Heirs and Assignees, in Security, in manner specified in the Bond and Disposition in Security, with all the Rights and Powers at present competent to a Creditor and his Heirs under such a Security; the Clause of Assignment

of Rents shall be held to import an Assignment to the Creditor and his Representatives in mobilibus or his Heirs, as the Case may be, and to his Assignees, to the Rents to become due or payable from and after the Date from which Interest on the Sum in the Security commences to run, in the fuller Form generally in use prior to the Thirtieth Day of September One thousand eight hundred and forty-seven, including therein a Power to the Creditor and his foreshaids on default in Payment to enter into Possession of the Lands disposed in Security and uplift the Rents thereof, or to uplift the Rents thereof if the Lands are not disposed in Security, and to insure all Buildings against Loss by Fire, and to make all necessary Repairs on the Buildings, subject to accounting to the Debtor for any Balance of Rents actually recovered beyond what is necessary for Payment to such Creditor and his foreshaids of the Sums, Principal, Interest, and Penalty due to him or them under such Security, and of all Expenses incurred by him or them in reference to such Possession, including the Expenses of Management, Insurance, and Repairs; and the Clause of Assignment of Writs shall be held to import an Assignment to the Creditor and his foreshaids to Writs and Evidents to the same Effect as in the fuller Form generally in use in a Bond and Disposition in Security with Power of Sale prior to the Thirtieth Day of September One thousand eight hundred and forty-seven; and the Clause of Warrandice shall be held to import absolute Warrandice as regards the Lands and the Title Deeds thereof, and Warrandice from Fact and Deed as regards the Rents; and the Clause consenting to Registration for Preservation and Execution shall have the Meaning and Effect assigned to such Clause in the One hundred and thirty-eighth Section of this Act; the Clauses reserving Right of Redemption, and obliging the Grantor to pay the Expenses of assigning or discharging the Security, and, on default in Payment, granting Power of Sale, shall have the same Import, and shall be in all respects as valid, effectual, and operative, as if it had been in such Bond and Disposition in Security specially provided and declared that the Lands and others thereby disposed should be redeemable by the Grantor from the Grantee, at the Term and Place of Payment, or at any Term of Whitsunday or Martinmas thereafter, upon Premonition of Three Months, to be made by the Grantor to the Grantee, personally or at his Dwelling Place, if within Scotland, and if furth thereof at the Time, then at the Office of the Keeper of the Record of Edictal Citations within the General Register House, Edinburgh, in Presence of a Notary Public and Witnesses, and that by Payment to him of the whole Principal Sum payable under the Bond and Disposition in Security, Interest due thereon, and

liquidated Expenses and termly Failures corresponding thereto, if incurred, and, in case of his Absence or Refusal to receive the same, by Consignation thereof in the Bank specified in the Security, if any Bank shall be so specified, and if not then in one or other of the Banks in Scotland incorporated by Act of Parliament or Royal Charter, having an Office or Branch at the Place of Payment, to be made forthcoming on the Peril of the Consigner, the Place of Redemption to be within the Office of such Bank or Branch thereof; and as if it had been thereby further provided and declared that any Discharge and Renunciation, Disposition and Assignment, or other Deed necessary to be granted by the Grantee upon the Grantor making Payment and redeeming as aforesaid, and also the recording thereof, should always be at the Expense of the Grantor; and as if it had been thereby further provided and declared that if the Grantor should fail to make Payment of the Sums that should be due by the personal Obligation contained in the said Bond and Disposition in Security, within Three Months after a Demand of Payment intimated to the Grantor, whether of full Age or in Pupillarity or Minority, or although subject to any legal Incapacity, personally or at his Dwelling Place if within Scotland, or if furth thereof at the Office of the Keeper of the Record of Edictal Citations above mentioned, in Presence of a Notary Public and Witnesses, and which Demand for Payment may be in or as nearly as may be in the Form of No. 2. of Schedule (FF.) hereto annexed, and a Copy thereof certified by such Notary Public in the Form of No. 3. of Schedule (FF.) hereto annexed, shall be sufficient Evidence of such Demand, then and in that Case it should be lawful to and in the Power of the Grantee, immediately after the Expiration of the said Three Months, and without any other Intimation or Process at Law, to sell and dispose, in whole or in Lots, of the said Lands and others, by Public Roup at Edinburgh or Glasgow, or at the Head Burgh of the County within which the said Lands and others, or the chief Part thereof, are situated, or at the Burgh or Town sending or contributing to send a Member to Parliament which, whether within or without the County, shall be nearest to such Lands, or the chief Part thereof, on previous Advertisement stating the Time and Place of Sale, and published once weekly for at least Six Weeks subsequent to the Expiry of the said Three Months, in any Newspaper published in Edinburgh or in Glasgow, and also in every Case in a Newspaper published in the County in which such Lands are situated, or if there be no Newspaper published in such County, then in any Newspaper published in the next or a neighbouring County, and a Certificate by the Publishers of such Newspapers for the Time shall be *prima facie* Evidence of such Ad-

vertisement, the Grantee being always bound, upon Payment of the Price, to hold Count and Reckoning with the Grantor for the same, after Deduction of the Principal Sum secured, Interest due thereon, and liquidated Penalties corresponding to both which may be incurred, and all Expenses attending the Sale, and for that end to enter into Articles of Roup, to grant Dispositions containing all usual and necessary Clauses, and in particular a Clause binding the Grantor of the said Bond and Disposition in Security, in absolute Warrandice of such Dispositions, and obliging him to corroborate and confirm the same, and to grant all other Deeds and Securities requisite and necessary by the Laws of Scotland for rendering such Sale or Sales effectual, in the same Manner and as amply in every respect as the Grantor could do himself; and as if it had been thereby further provided and declared that the said Proceedings should all be valid and effectual, whether the Debtor in the said Bond and Disposition in Security for the Time should be of full Age, or in Pupillarity or Minority, or although he should be subject to any legal Incapacity, and that such Sale or Sales should be equally good to the Purchaser or Purchasers as if the Grantor himself had made them, and also that in carrying such Sale or Sales into execution it should be lawful to the Grantee to prorogate and adjourn the Day of Sale from Time to Time as he should think proper, previous Advertisement of such adjourned Day of Sale being given in the Newspapers above mentioned, once weekly for at least Three Weeks; and as if the Grantor had bound and obliged himself to ratify, approve of, and confirm any Sale or Sales that should be made in consequence thereof, and to grant absolute and irredeemable Dispositions of the Lands and others so to be sold to the Purchaser, and to execute and deliver all other Deeds and Writings necessary for rendering their Rights complete.

120. Heritable Securities, whether dated before or after the Commencement of this Act, may be registered in the appropriate Register of Sasines at any Time during the Lifetime of the Grantee, and shall in Competition be preferred according to the Date of the Registration thereof: Provided always, that if an Heritable Security has not been so registered in the Lifetime of the Grantee, such Heritable Security shall be as full and sufficient Warrant for Completion of the Title in favour of the Party having Right thereto as if it had been a Bond and Disposition in Security, containing Precept of Sasine and other Clauses, in the ordinary Form in use prior to the Thirtieth Day of September One thousand eight hundred and forty-seven, which Title may be completed as after provided, or by Service or Notarial Instrument, as the Circumstances of the Case may require.

121. Any Sale duly carried through in Terms of the Heritable Security and of this Act, or partly in Terms of any Act now in force and partly in Terms of this Act if the Proceedings shall have been begun before the Commencement of this Act, shall be as valid and effectual to the Purchaser as if made by the Grantor of the Security himself, and that whether the Grantor shall have died before or after such Sale, and without the Necessity of Confirmation by him or his Successors, and notwithstanding that the Party Debtor in the Security and in right of the Lands at the Time shall be in Pupillarity or Minority, or subject to any legal Incapacity: Provided always, that nothing herein contained shall be held to affect or prejudice the Obligation of the Grantor and his Successors to execute, or the Right of the Creditor or Purchaser to require the Grantor and his Successors to execute, any Deed or Deeds which, independently of this Enactment, would at Common Law be necessary for rendering the Sale effectual, or otherwise completing in due Form the Titles of such Purchaser.

122. The Creditor, upon Receipt of the Price, shall be bound to hold Count and Reckoning hereof with the Debtor and postponed Creditors, if any such there be, or with any other Party having Interest, and to consign the Surplus which may remain, after deducting the Debt secured, with the Interest due thereon and Penalties incurred and Expenses in reference to the Possession of the Estate if such Creditor has been in possession, including Expense of Insurance, Repairs, and Management, and whole Expenses attending such Sale, and after paying all previous incumbrances and the Expense of discharging the same, in one or other of the said Banks, or in a Branch of any such Bank, in the joint Names of the Seller and Purchaser, for behoof of the Party or Parties having best Right thereto; and the particular Bank in which such Consignation is to be made shall be specified in the Articles of Roup.

123. Upon a Sale being carried through in Terms of this Act, and upon Consignation of the Surplus of the Price, if any be, as aforesaid, the Disposition by the Creditor to the Purchaser shall have the Effect of completely disencumbering the Lands and others sold, of all Securities and Diligences posterior to the Security of such Creditor, as well as of the Security and Diligence of such Creditor himself.

124. Where an Heritable Security, whether dated before or after the passing of this Act, has been constituted by Infestment, whether such Infestment has been taken by recording the Security or an Instrument thereon in the appropriate Register of Sasines in Terms of this Act

or any of the repealed Acts, or by any Mode competent or in use prior to the Thirtieth Day of September One thousand eight hundred and forty-seven, in the appropriate Register of Sasines, the Right of the Creditor therein may be transferred, either in whole or in part, by an Assignment or other Conveyance in the Form or as nearly as may be in the Form of Schedule (GG.) hereto annexed; and on such Assignment or Conveyance being recorded in the appropriate Register of Sasines, the said Security or Part of such Security, as the Case may be, shall be transferred to the Assignee as effectually as if such Security had been disposed and assigned, and the Disposition and Assignment or Conveyance had been followed by Sasine duly recorded according to the Law and Practice prior to the First Day of October One thousand eight hundred and forty-five at the Date of recording such Assignment or Conveyance; and such Assignee or Donee shall thereupon be held to be as fully entered as if he had obtained a Renewal of the Investiture in his Favour, according to the Law and Practice in use before that Date: Provided always, that where the Assignment or Conveyance of an Heritable Security constituted as aforesaid is contained in any other Conveyance or Deed, it shall not be necessary to record the whole of such Conveyance or Deed, but it shall be sufficient to expedite and record in the appropriate Register of Sasines a Notarial Instrument in the Form or as nearly as may be in the Form of Schedule (HH.) hereto annexed, and upon such Notarial Instrument being recorded the Person or Persons expediting the same shall be in the same Position as if the Assignment or Conveyance of the Heritable Security on which it proceeds had been itself recorded as of the Date of recording the said Instrument.

125. Upon the Death of any Creditor in right of an Heritable Security, constituted by Infestment as aforesaid, from which Executors shall not have been excluded, who shall die leaving a Testamentary or mortis causa Deed or Writing naming Executors, or disposing or bequeathing his Moveable Estate to Donees, or disposing or bequeathing the Security to Legatees, it shall be competent for the Executors or Donees, duly confirmed, or for the Legatees, as the Case may be, to complete a Title thereto by a Writ of Acknowledgment to be granted in their Favour by the Debtor in the said Security infest in the Lands comprehended therein, in or as nearly as may be in the Form set forth in Schedule (II.) hereto annexed; and when the Executors or Donees (being more than One) shall be appointed under such Deed or Writing for holding the Moveable Estate of the Deceased in trust for the Purposes of the Deed or Writing, and not wholly for their own beneficial Interest, it shall be com-

petent (when not expressly precluded by the Terms of the Deed or Writing) to take the said Writ in favour of the said Executors or Disponees, and the Survivors or Survivor of them; and where any Creditor has died or shall die before the Commencement of this Act in right of such an Heritable Security, or where any Creditor shall die thereafter in right of such an Heritable Security, from which Executors shall have been excluded, it shall be competent for the Heir of such Creditor to complete a Title to the Security by a Writ of Acknowledgment as aforesaid; and on such Writ being recorded in the appropriate Register of Sasines, the Executors, Disponees, or Legatees, or Heirs, as the Case may be, in whose Favour such Writ has been granted, shall be vested with the full Right of the Creditor in such Security, and shall be held to be entered with the Superior in like Manner and to the same effect as the original Creditor himself.

126. Upon the Death of any Creditor who shall die intestate in right of an Heritable Security constituted by Infefment as aforesaid, from which Executors shall not have been excluded, it shall be competent to the Executors duly confirmed to such deceased Creditor to complete a Title to such Security by expeding and recording an Instrument under the Hands of a Notary Public in the Form or as nearly as may be in the Form set forth in Schedule (JJ.) hereto annexed; and when the Executors (being more than One) duly confirmed as aforesaid shall not be entitled to the Deceased's Moveable Estate wholly for their own beneficial Interest, it shall be competent to take such Notarial Instrument in favour of the said Executors and the Survivors or Survivor of them; and on such Instrument being recorded in the appropriate Register of Sasines such Executors or Executor shall be held to be vested with the full Right of the Creditor in such Security, and to be entered with the Superior in the same Manner and to the same Effect as the original Creditor himself.

127. Upon the Death of any Creditor in right of an Heritable Security constituted by Infefment as aforesaid, from which Executors shall not have been excluded, and who shall die leaving a Testamentary or mortis causa Deed or Writing naming Executors, or disposing or bequeathing his Moveable Estate to Disponees, or disposing or bequeathing the Security to Legatees, it shall be competent for the Executors or Disponees, duly confirmed, or for the Legatees, as the Case may be, to complete a Title thereto by expeding and recording in the appropriate Register of Sasines an Instrument under the Hands of a Notary Public in the Form or as nearly as may be in the Form of Schedule (KK.) hereto annexed; and when such Executors or Disponees

or Assignees or Legatees, being more than One, shall not be entitled to such Security wholly for their own beneficial Interest, it shall be competent to take such Notarial Instrument in favour of such Executors or Disponees or Assignees or Legatees, and the Survivors or Survivor of them, unless such a Destination be expressly excluded by the Terms of the Conveyance or Deed or Writing; and where any Creditor has died or shall die before the Commencement of this Act, in right of such an Heritable Security and leaving a mortis causa Conveyance thereof or of his Heritable Estate generally, or where any Creditor shall die thereafter in right of such an Heritable Security from which Executors shall have been excluded, and leaving such a mortis causa Conveyance, or a Testamentary Deed or Writing within the Meaning of the Twentieth Section of this Act, it shall be competent to the Grantee or Legatee under such mortis causa Conveyance or Testamentary Deed or Writing to complete a Title to the Security by Notarial Instrument as aforesaid; and on such Instrument being so recorded the Executors, Disponees, Legatees, or Grantees, as the Case may be, in whose Favour such Instrument has been expedite shall be vested with the full Right of the Creditor in such Security, and shall be held to be entered with the Superior in like Manner and to the same Effect as the original Creditor himself.

128. Where any Creditor has died or shall die before the Commencement of this Act in right of an Heritable Security constituted by Infefment as aforesaid, or where any Creditor shall die thereafter in right of such an Heritable Security from which Executors shall have been excluded, it shall be competent for the nearest and lawful Heir of such Creditor who, according to the present Law and Practice, would be entitled to succeed to such Security, on obtaining a Decree of General or Special Service in the proper Character, to complete his Title thereto by expeding and recording an Instrument under the Hands of a Notary Public, in the Form or as nearly as may be in the Form, adapted to the Circumstances, of Schedule (JJ.) hereto annexed; and on such Instrument being recorded in the appropriate Register of Sasines, such Heir shall be taken to be vested with the full Right of the Creditor in such Security, and to be entered with the Superior, in the same Manner and to the same Effect as the original Creditor himself.

129. In all Cases of Adjudication, whether for Debt or in Implement, or of Constitution and Adjudication, whether for Debt or in Implement, in which the Adjudger has obtained a Decree of Adjudication or of Constitution and Adjudication, in the Manner and to the Effect provided by this

Act, where the Subjects contained in such Decree are Heritable Securities, it shall be competent for the Adjudger to complete his Title to such Securities either by recording the Abbreviate of Adjudication in the appropriate Register of Sasines, which Registration shall have the same Effect as if at the Date thereof the Adjudger had been entered and infert on a Charter of Adjudication, or by recording the said Decree in the appropriate Register of Sasines, in which Case he shall be in the same Position as if an Assignment of such Heritable Securities had been granted in his Favour by the Ancestor or Person whose Estate is adjudged, and as if such Assignment had been duly recorded in the appropriate Register of Sasines at the Date of so recording such Decree.

Twentieth Section of this Act, or in favour of the Heirs of such Creditor having Right to the Security by Decree of General or Special Service as Heir to such Creditor; and on such Instrument being recorded in the appropriate Register of Sasines, the Executors or Disponees or Assignees or Legatees or Heirs, as the Case may be, in whose Favour such Instrument is expedite, shall be vested with the full Right of the Creditor in such Security, and shall be held to be entered with the Superior in like Manner and to the same Effect as the original Creditor himself.

130. In the event of an Heritable Security from which Executors shall not have been excluded, dated before or after the Commencement of this Act, not being constituted by Infertment during the Lifetime of the Grantee, or of any Assignment, dated before or after the Commencement of this Act, of a Security from which Executors shall not have been excluded but which has been constituted by Infertment, not being completed by Infertment during the Lifetime of the Assignee, and where such Grantee or Assignee shall be in Life at the Commencement of this Act, such Security or Assignment shall form a Warrant for an Instrument in the Form or as nearly as may be in the Form of Schedule (MM.) hereto annexed under the Hands of a Notary Public, being passed upon the same in favour of the Executors of the Creditor duly confirmed, whether the same be Executors nominate or Executors dative, or in favour of the Disponees or Assignees of such Security or of the Moveable Estate of such Creditor under any Deed or Conveyance inter vivos or mortis causa, or in favour of any Legatees of such Security; and where such Executors or Disponees or Assignees, being more than One, shall not be entitled to such Security wholly for their own beneficial Interest, it shall be competent to take such Notarial Instrument in favour of such Executors or Disponees or Assignees, and the Survivors or Survivor of them, unless such a Destination be expressly excluded by the Terms of the Conveyance, or Deed, or Writing; and where Executors shall be excluded from such Security or the Creditor has died before the Commencement of this Act, the Security or Assignment, as the Case may be, shall form a Warrant for a Notarial Instrument as aforesaid, in favour of any Disponees or Assignees or Legatees of such Security or of the Heritable Estate of such Creditor under any Deed or Conveyance by him inter vivos or mortis causa, or under any Testamentary Deed or Writing by him within the Meaning of the

131. Nothing contained in this Act shall affect or interfere with the present Law and Practice in regard to the Liability of the Lands contained in any Security, or of the Debtor, or with the Rights and Remedies of the Creditor, or of the Creditors of the Creditor.

132. Any Heritable Security, whether dated before or after the Commencement of this Act, constituted by Infertment as aforesaid, may be effectually renounced and discharged, in whole or in part, and the Lands therein contained effectually disburdened of the same, by a Discharge in the Form or as nearly as may be in the Form of Schedule (NN.) hereto annexed, and by the Registration of such Discharge in the appropriate Register of Sasines as aforesaid.

133. Any Heritable Security constituted as aforesaid may be restricted, as regards any Portion of the Lands therein contained, by a Deed of Restriction in the Form or as nearly as may be in the Form of Schedule (OO.) hereto annexed, and on such Deed of Restriction being recorded in the appropriate Register of Sasines the Security shall be restricted accordingly to the Lands therein contained, other than those discharged by such Deed of Restriction, which Lands thereby discharged shall be released from the Security to the same Effect as if the same had never been contained in such Security.

134. The whole Provisions, Enactments, and Forms of this Act relative to Bonds and Dispositions in Security shall be taken to apply and shall apply as nearly as may be to all Heritable Securities, unless in so far as such Provisions, Enactments, or Forms may be inapplicable to the Form or Objects of such Securities.

135. Nothing in this Act contained shall prevent the Constitution, Transmission, or Extinction of Heritable Securities in the Forms in use prior to the First Day of October One thousand eight hundred and forty-five.

136. Nothing herein contained shall be construed to prevent the Town Clerks of Royal

Burghs in Scotland who were appointed to their respective Offices prior to the First Day of October One thousand eight hundred and forty-five, during the Existence of their respective Rights of Office, from exacting and receiving the same Fees in respect of the recording of Assignations or Conveyances of a Bond and Disposition in Security, or of Abbreviates of Adjudication, Writs of Acknowledgment, or Instruments for completing a Title to such Securities under this Act, as the same Town Clerks would before the said First Day of October One thousand eight hundred and forty-five have been legally entitled to exact or receive on their own Account, in respect of passing the Infestments within Burgh, and preparing and recording the Instruments of Sasine and Resignation rendered unnecessary by such Assignations, Conveyances, Writs of Acknowledgment, Instruments or Abbreviates of Adjudication as aforesaid; and also nothing shall be construed to prevent the said Town Clerks who were appointed to their respective Offices prior to the Thirtieth Day of September One thousand eight hundred and forty-seven, during the Existence of their respective Rights of Office, from exacting and receiving the same Fees in respect of recording Bonds and Dispositions in Security, or other Deeds constituting Heritable Securities, over Lands held Burgage, as the same Town Clerks would prior to that Date have been legally entitled to exact or receive on their own Account, in respect of passing the Infestment within Burgh, and preparing and recording the Instruments of Sasine and Resignation on such Bonds and Dispositions in Security or other Deeds: Provided always, that in computing the said Fees such Instruments of Sasine and Resignation shall not be computed as of greater Length than the Writings actually recorded whereby such Instruments of Sasine and Resignation have been rendered unnecessary; and all other Keepers of Registers of Sasines who were in Office on the First Day of October One thousand eight hundred and forty-five and on the Thirtieth Day of September One thousand eight hundred and forty-seven respectively as aforesaid shall, during the Existence of their respective Rights of Office, or, until otherwise regulated by Law, upon the Registration by them of each Assignation, Conveyance, Writ of Acknowledgment, Abbreviate of Adjudication, or Instrument aforesaid, for transferring or completing the Title to such Securities, or of each Bond and Disposition in Security or other Deed registered under the Provisions of this Act, be entitled to the same Fees as such Keeper would have been entitled to upon the Registration of an Instrument of Sasine of the same Length in favour of the same Party in reference to the same Right, and to no other or further Fee whatever.

137. The whole of this Act shall apply to Lands by whatever Tenure the same may be held, except in so far as any of the Provisions of this Act shall be limited expressly or by necessary Implication to Lands held by One particular Tenure.

138. The short Clauses of Consent to Registration for Preservation, and for Preservation and Execution, contained in Forms Numbers 1 and 2 of Schedule (B.) hereto annexed, when occurring in any Deed or Conveyance under this Act, or in any Deed or Writing or Document of whatsoever Nature, and whether relating to Lands or not, shall unless specially qualified import a Consent to Registration and a Procuratory of Registration in the Books of Council and Session, or other Judges Books competent, therein to remain for Preservation; and also, if for Execution, that Letters of Horning, and all necessary Execution, shall pass thereon, upon Six Days Charge, on a Decree to be interponed thereto in common Form.

139. It shall be competent for any Female Person of the Age of Fourteen Years or upwards, and not subject to any legal Incapacity, to act as an instrumentary Witness in the same Manner as any Male Person of that Age, who is subject to no legal Incapacity, can act according to the present Law and Practice, and it shall not be competent to challenge any Deed or Conveyance or Writing or Document of whatever Nature, whether executed before or after the passing of this Act, on the Ground that any Instrumentary Witness thereto was a Female Person.

140. In all Cases where Writs or Deeds of any Description are by this or any other Act permitted or directed to be engrossed on any Conveyance or Deed, it shall be competent, when necessary, to engross such Deeds or Writs on a Sheet or Sheets of Paper, or of whatever other Material the Conveyance itself consists, added to such Conveyance, provided that the engrossing of the Deed or Writ shall be commenced on some Part of the Conveyance or Deed itself on which it is permitted or directed to be engrossed; and the first of such additional Sheets shall be chargeable with the Stamp Duty applicable to the Writ or Deed partly engrossed thereon, and subsequent Sheets (if any) shall be chargeable with the appropriate progressive Duty.

141. All Conveyances and Deeds, and all Writings whatsoever which may be recorded in any Register of Sasines, shall, previous to being presented for Registration, have a Warrant of Registration endorsed or written thereon in or as nearly as may be in such one or other of the

Forms of Warrants of Registration contained in the following Schedules hereto annexed, viz. Schedule (F.) No. 2. and Schedule (H.) No. 1, 2, and 3, as may be applicable to the particular Conveyance, Deed, or Writing so to be presented, which Warrant shall in every Case specify the Person or Persons on whose Behalf the Conveyance, Deed, or Writing is presented for Registration, and in the Case of Lands not held by Burgage Tenure the Register or Registers of the County or Counties, and in the Case of Lands held by Burgage Tenure the Register or Registers of the Burgh or Burghs in which the Lands to which such Conveyance or Deed or Writing has reference are situated, and shall be signed by such Person or Persons, or by his or their Agent or Agents, and in the latter Case the Warrant may be signed either by an individual Agent or by the Subscription of any Firm of which such Agent may be a Partner: Provided always, that nothing herein contained shall render it necessary to have a Warrant of Registration endorsed or written upon any Conveyance, Deed, or Writing of or relating to Lands held by Burgage Tenure which according to the existing Law or Practice may be recorded in any Burgh Register without such Warrant.

142. All Conveyances and Deeds, and all Instruments hereby authorized to be recorded in the Register of Sasines, may, with Warrants of Registration written thereon respectively, be recorded at any Time in the Life of the Person on whose Behalf the same shall be presented for Registration, in the same Manner as Instruments of Sasine, or of Resignation and Sasine, or of Cognition and Sasine, or Notarial Instruments, are at present recorded, and the same when presented for Registration shall be forthwith shortly registered in the Minute Books of the said Register in common Form, and shall with all due Despatch be fully registered in the Register Books, and thereafter re-delivered to the Parties with Certificates of due Registration thereon, which shall specify the Date of Presentation, and the Book and Folios in which the Engrossment has been made, and shall be subscribed by the Keeper of the Register, and shall be probative of such Registration, and when so registered shall in Competition be preferable according to the Date of Registration, and the Date of Entry in the Minute Book shall be held to be the Date of Registration; provided, that where Two or more Deeds or Conveyances transmitted by Post in Terms of "The Land Writs Registration (Scotland) Act, 1868," shall be received by the Keeper of the Register of Sasines at the same Time, the Entries thereof in the Presentment Book and Minute Book shall be of the same Year, Month, Day, and Hour, and such Deeds and Conveyances shall be deemed and taken to be

presented and registered contemporaneously; and Extracts of all such Conveyances or Deeds, Warrants of Registration, and Instruments so recorded shall make Faith in all Cases as the recorded Conveyances or Deeds, Warrants, and Instruments themselves would have done, except where any such Conveyance or Deed, Warrant, or Instrument so recorded shall be offered to be improved.

143. In case of any Error or Defect in any Instrument or in the recording of any Deed or Conveyance, or of any Warrant of Registration, recorded or to be recorded in any Register of Sasines, or in any Warrant of Registration thereon, or in the recording of such Warrant, it shall be competent of new to make and record such Instrument, or of new to record the Deed or Conveyance with the original or a new Warrant of Registration, as the Case may require.

144. The Act of the Sixth and Seventh of His late Majesty King William the Fourth, Chapter Thirty-three, intitled "An Act to amend and regulate the Law of Scotland as to Erasures in Instruments of Sasine and of Resignation ad remanentiam," shall extend and be applicable to all Instruments.

145. It shall not be competent to challenge the Validity of any existing Warrants of Registration upon Conveyances under the Titles to Lands (Scotland) Acts, of the Twenty-first and Twenty-second Years of the Reign of Her present Majesty, Chapter Seventy-six, and the Twenty-third and Twenty-fourth Years of the Reign of Her present Majesty, Chapter One hundred and forty-three, hereby repealed, or the Real Rights completed in the Persons of those in whose Favour the said Conveyances are recorded by the Registration thereof in the appropriate Register of Sasines, on the Ground that the said Warrants of Registration are disconform to the Terms of the Schedules annexed to the said Acts, provided that the said Warrants contain the Name of the Party or Parties on whose Behalf the Warrant is written, and contain the Designation of such Party or Parties, or refer to the same as given in the Conveyance on which such Warrants are engrossed, and are signed by the Party or Parties themselves, or by his or their Agent or Agents, either individually or as a Partnership; and the Designation "Agent" or "Agents," without any further Designation, shall be valid and sufficient in the Case of all Warrants expedite in virtue of the said repealed Acts.

146. Where any Real Burden, Condition, Provision, or Limitation, or other Matter has been or shall be appointed to be inserted or referred to in the Instruments of Sasine or of Resignation ad

remanentiam, or other Instruments applicable to any Lands, such Real Burden, Condition, Provision, or Limitation, or other Matter, shall be inserted or referred to in manner provided by this Act in every Instrument applicable to such Lands to be expedite in virtue of this Act, and in every Conveyance or Deed of or relating to such Lands the Registration of which in the Register of Sasines is by this Act equivalent to Infestment or Resignation ad remanentiam: Provided always, that where such Real Burdens, Conditions, Provisions, Limitations, or other Matters have been already inserted in any Conveyance or Deed or Instrument recorded in the appropriate Register of Sasines, it shall not be necessary to insert the same at Length in any subsequent Conveyance or Deed or Instrument, provided the same be therein referred to in manner provided in the Ninth or Tenth Sections of this Act, as the Circumstances of the Case may require.

147. Where the Investiture of any Lands has imposed or shall impose a Prohibition against Sub-infeudation or against alternative Holding, nothing contained in this Act shall operate to authorize Sub-infeudation or an alternative Holding in respect to such Lands; and nothing in this Act contained shall be construed to take away or impair any of the Rights or Remedies competent to a Superior against his Vassal lying out unentered.

148. In all Questions under an Act passed by the Parliament of Scotland in the Year One thousand six hundred and ninety-six, intituled "Act for declaring noutour Bankrupts," and under an Act passed in the Fifty-fourth Year of the Reign of His Majesty King George the Third, intituled "An Act for rendering the Payment of Creditors more equal and expeditious in Scotland," and under an Act passed in the Session of Parliament held in the Nineteenth and Twentieth Years of the Reign of Her present Majesty, intituled "An Act for regulating the Sequestration of the Estates of Bankrupts in Scotland," the Date of the Registration of all Conveyances or Deeds and Discharges granted or taken in pursuance of this Act shall be held to be the Date of such Conveyances or Deeds and Discharges respectively, without Prejudice to their Validity or Invalidity in other respects.

149. All Deeds and Conveyances and all Documents whatever mentioned or not mentioned in this Act, and whether relating or not relating to Land, having a Testing Clause, may be partly written and partly printed or engraved or lithographed: Provided always, that in the Testing Clause the Date, if any, and the Names and Designations of the Witnesses and the Number of the Pages of the Deed or Conveyance or Document, if the Number be specified, and the Name and De-

signation of the Writer of the written Portions of the Body of the Deed or Conveyance or Document shall be expressed at Length, and all such Deeds, Conveyances, and Documents shall be as valid and effectual as if they had been wholly in Writing: Declaring that no such Deeds, Conveyances, and Documents executed prior to the Commencement of this Act shall be challengeable on the Ground that the Name of the Writer of the written Portions of the Testing Clause is not mentioned.

150. When any Lands disposed before or after the Commencement of this Act, under the Authority of an Act of Parliament, in excambion for other Lands, are burdened with Debts, the Lands so disposed shall, from and after the Date of Registration, whether before or after the Commencement of this Act, in the appropriate Register of Sasines of the Contract or Deed of Excambion of such Lands, be freed and discharged of such Debts so far as previously affecting the same, and shall be burdened with the Debts, if any, which previously affected the Lands acquired in exchange for the same, in the Order of Preference in which such Debts were a Burden upon such last-mentioned Lands: Provided always, in the Case of Excambions after the Thirty-first Day of December One thousand eight hundred and sixty-eight, that before any such Excambion is authorized (in addition to such Procedure as may be prescribed by such Act) such Intimation as the Court of Session may consider necessary shall be made to all Creditors having Interest, and such Creditors shall be entitled to state any Objections thereto, of which the Court shall judge: Provided also, that in such Contract or Deed of Excambion, whether executed before or after the Commencement of this Act, or in a Schedule subscribed as relative thereto, and declared to be Part thereof, and recorded therewith, there have been or shall be set forth as to each of the said Debts the following Particulars; namely, the Amount of the Debt, the Date of recording the Writ by which its Constitution was originally published, the Register in which the same was so published, the Name and Designation of the original Creditor, and, if the Debt has been transferred, the Name and Designation of the Creditor understood to be in right thereof for the Time, and the Date of recording the Writ whereby his Right was published, and the Register in which the same was so published: Provided further, that in such Contract or Deed of Excambion such Debts have been or shall be expressly declared to burden the Lands to which the same are transferred as aforesaid.

151. From and after the Commencement of this Act, and during the Period to which the Rights of any Town Clerk appointed prior to the

Eighth Day of March One thousand eight hundred and sixty, in any Burgh in which Lands are held Burgage, and no Register of Sasines is kept, extend under legal Appointment, and no longer, no Conveyance or Deed of or relating to Lands in such Burgh held Burgage, and which under the Provisions of this Act shall come in place of any Conveyance or Deed which such Town Clerk would by Law have been exclusively entitled to prepare had the Act Twenty-third and Twenty-fourth Victoria, Chapter One hundred and forty-three, or this Act, not been passed, shall, as regards such Lands, be validly recorded in any Register of Sasines, unless the Warrant of Registration of such Conveyance or Deed shall be subscribed or endorsed with the Signature of such Town Clerk, which Signature he shall be bound to attach or endorse on receipt in respect thereof of One Half of the Fees which would have been chargeable by him for the Preparation of the Conveyance or Deed which he would have been entitled to prepare as aforesaid, and of no other Fees; but if the said Conveyance or Deed be prepared by him, he shall not be entitled, in respect of his Signature as aforesaid, to any other beyond the ordinary Fees for preparing such Conveyance or Deed: Provided always, that in estimating the said Fees the said Conveyance or Deed which he would have been entitled to prepare as aforesaid shall not be computed as of any greater Length than the Conveyance or Deed signed by such Town Clerk.

152. All the Provisions of this Act applicable to Lands held by the ordinary Burgage Tenure shall be applicable also to Lands in the Burgh of Paisley held by the peculiar Tenure of Booking; and all the Provisions of this Act applicable to Resignation, and to Instruments of Sasine, and of Resignation and Sasine, and of Cognition and Sasine, and Registers of Sasines, respectively, of Lands held Burgage, shall be applicable also to Booking, and to Instruments of Resignation and Booking, and to Extract Bookings, and to the Register of Booking, respectively, of Lands in the said Burgh of Paisley held by said Tenure of Booking: Provided always, that nothing in this Act contained shall prevent the Constitution, Transmission, or Completion of Rights to Lands held by the said Tenure of Booking by the Forms competent prior to the passing of this Act.

153. No Town Clerk of any Royal or other Burgh in Scotland who has been appointed subsequent to the Eighth Day of March One thousand eight hundred and sixty shall have any exclusive Right or Privilege of preparing or expediting any Conveyance or Deed of or relating to Land, or shall have any Right to Compensation in respect of any Alterations affecting the Rights, Duties, or Emoluments of Town Clerks, which

may be made by this Act, or any Act which may hereafter be passed: Provided always, that Town Clerks, whether sole or joint, who, according to the Law and Practice prior to the Eighth Day of March One thousand eight hundred and sixty, were exclusively entitled to prepare Instruments of Sasine or of Resignation and Sasine in Burgage Subjects, shall, each during the Period to which his Rights shall extend under any legal Appointment or Agreement existing at the fore-said Date, but no longer, be entitled to claim and receive from the Person presenting for Registration in the Burgh Register of Sasines kept by such Town Clerk any Conveyance or Deed which, when recorded, will operate the Effect of a recorded Instrument of Sasine or of Resignation and Sasine, such Fees as, but no other Fees than, he would have had Right to draw and to appropriate to his own Use and Benefit in respect of the Preparation and recording of the Instrument of Sasine or of Resignation and Sasine which, if this Act had not been passed, must have been recorded in the Burgh Register of Sasines, in order to operate the like Effect as the recording therein of such Conveyance or Deed; and the Person recording such Conveyance or Deed in the said Register of Sasines shall be bound to pay such but no other Fees to such Town Clerk in respect thereof: Provided always, that in estimating the said Fees such Instruments of Sasine or of Resignation and Sasine shall not be computed as of greater Length than the Writings actually recorded whereby such Instruments of Sasine or of Resignation and Sasine have been rendered unnecessary.

154. It shall be competent for the Town Clerk of any Burgh to expedite and record, and for the Keeper of any Burgh or other Register of Sasines, Reversions, &c. to record, any Conveyance or Deed in which such Town Clerk or Keeper may be personally interested, either individually or as Trustee for another or otherwise; and no Conveyance or Deed expedite or recorded prior to the Date of the passing of this Act, or which may hereafter be expedite or recorded, shall be challengeable or in any way affected by reason of persons Interest in the Town Clerk or Keeper of the Register by whom the same has been expedite or recorded as aforesaid: Provided that this Enactment shall not prejudice or affect any Action or Proceeding which may have been instituted prior to the passing of this Act.

155. It shall be competent, before or after Execution of any Inhibition, whether by separate Letters or contained in a Summons before the Court of Session, to register in the General Register of Inhibitions a Notice thereof, setting forth the Names and Designations of the Persons

by and against whom the same is raised, and the Date of signeting the same, in the Form or as nearly as may be in the Form of Schedule (PP.) hereto annexed; and where any such Inhibition and the Execution thereof shall be duly registered in the General Register of Inhibitions not later than Twenty-one Days from the Date of the Registration therein of such Notice thereof, such Inhibition shall take effect from the Date when such Notice was registered as aforesaid, but otherwise only from the Date of the Registration of such Inhibition and the Execution thereof; and no Inhibition shall have any Effect against any Act or Deed done, committed, or executed prior to the Registration of such Notice thereof, or of such Inhibition and the Execution thereof, as the Case may be.

156. Letters of Inhibition may be in the Form as nearly as may be of the Schedule (QQ.) to this Act annexed; and Letters of Inhibition in such Form shall have all the like Force and Effect as Letters of Inhibition in the Form in use at the passing of this Act.

157. No Inhibition to be recorded from and after the Thirty-first Day of December One thousand eight hundred and sixty-eight shall have any Force or Effect as against any Lands to be acquired by the Person or Persons against whom such Inhibition is used after the Date of recording such Inhibition, or of recording the previous Notice thereof prescribed by this Act, as the Case may be: Provided always, that where such Inhibition is used against a Person or Persons who shall thereafter succeed to any Lands which, at the Date of recording the Inhibition or previous Notice thereof, as the Case may be, were destined to such Person or Persons by a Deed of Entail, or by a similar indefeasible Title, then and in that Case such Inhibition shall affect the said Person or Persons in so far as regards the Lands so destined, and to which he or they shall succeed as aforesaid, but no further.

158. From and after the Commencement of this Act it shall be competent to the Lord Ordinary in the Court of Session, before whom any Summons containing Warrant for Inhibition shall be enrolled as Judge therein, or before whom any Action on the Dependence whereof Letters of Inhibition have been executed, has been or shall be enrolled as Judge therein, and to the Lord Ordinary on the Bills in Time of Vacation, on the Application of the Defender or Debtor by Petition duly intimated to the Creditor or Pursuer, to which Answers may be ordered, to recall or restrict such Inhibition on Caution, or without Caution, and dispose of the Question of Expenses, as shall appear just; provided that his Judgment shall be subject to the Review of

the Court by a Reclaiming Note duly lodged within Ten Days from the Date thereof.

159. It shall be competent to register in the General Register of Inhibitions a Notice of any signeted Summons of Reduction of any Conveyance or Deed of or relating to Lands, and in the Register of Adjudications a Notice of any signeted Summons of Adjudication or of Constitution and Adjudication combined for Debt or in Security or in Implement, which Notice shall set forth the Names and Designations of the Pursuer and Defender of such Action and the Date of signeting such Summons in the Form or as nearly as may be in the Form of Schedule (RR.) hereto annexed; and no Summons of Reduction, Constitution, Adjudication, or Constitution and Adjudication combined, shall have any Effect in rendering litigious the Lands to which such Summons relates, except from and after the Date of the Registration of such Notice.

160. From and after the passing of this Act no Heir of Line of a Party deceased shall be entitled to claim in that Character any Portion of the Moveable Estate of such Predecessor as Heirship Moveables, such Claim being hereby abolished.

161. Any Judgment pronounced by the Lord Ordinary in virtue of this Act shall be subject to Review by a Reclaiming Note in ordinary Form; and the Judgment of either Division of the Court upon such Reclaiming Note, or upon any Advocation or Appeal, shall be subject to Review by Appeal to the House of Lords, or in any other competent Mode or Form; but the Judgments of the Lord Ordinary and of the Court respectively, if not so brought under Review, and whether the same shall have been pronounced in Absence of the Respondent or not, shall be final, and not subject to Review in any Mode or Form whatever; provided always, that the Judgments of the Lord Ordinary in Petitions relating to the Forfeiture or Relinquishment of Superiority under this or any of the repealed Acts, if not so brought under Review, and the Judgment of either Division of the Court of Session upon a Reclaiming Note against such Judgment of the Lord Ordinary, whether such Judgment shall have been pronounced in absence of the Respondent or not, shall be final and conclusive, and not subject to Review in any Mode or Form whatever; and it shall be competent to the Lord Ordinary, or to either Division of the Court reviewing any Judgment of the Lord Ordinary, if it shall appear to him or them to be just in the whole Circumstances of the Case, to find and decern in ordinary Form for the Expenses of any Proceedings.

162. It shall be lawful for the Court of Session from Time to Time to pass Acts of Sederunt

fixing and regulating the Fees payable to Town Clerks and Keepers of Registers of Sasines in Burghs for and with respect to all Deeds, Conveyances, and Proceedings under this Act, and the recording of the same; and the said Court may either make a General Table of Fees which shall be applicable to all the Burghs in Scotland, or may make Special Tables of Fees which shall be applicable to any One or more of such Burghs, as they think fit; and the Tables of Fees applicable to each Burgh shall come into operation on the Death, Resignation, or Removal of any Town Clerk of such Burgh who was appointed prior to the Eighth Day of March One thousand eight hundred and sixty; and it shall not be lawful for any Town Clerk, or the Keeper of the Register of Sasines of any Burgh, who shall have been appointed after the said Eighth Day of March One thousand eight hundred and sixty, to demand or receive any higher Fees for or in respect of any Deeds or Conveyances or Proceedings under this Act, or the recording thereof, than the Fees specified in the Table which for the Time shall be applicable to such Burgh; and the said Court may meet for the Purpose of passing and may pass all such Acts of Sederunt and Rules of Court as they deem proper for carrying into effect the Purposes of this Act, and that either during Session or Vacation, and may from Time to Time repeal Acts of Sederunt and Rules of

Court, or alter such Acts and Rules of Court and Tables of Fees: Provided that all Acts of Sederunt and Rules of Court passed under the Authority of this Act shall, within One Month after the Date thereof, be transmitted by the Lord President of the said Court to One of Her Majesty's Principal Secretaries of State, that the same may be laid before both Houses of Parliament; and until such Act or Acts or Rule or Rules of Court shall be passed, all Acts of Sederunt and Rules of Court now in force passed under the Authority of any of the Acts of Parliament hereby repealed, and all Tables of Fees thereby sanctioned, shall remain in force as Acts of Sederunt, Rules of Court, and Tables of Fees for the Purposes of this Act.

163. Nothing contained in this Act shall prevent the Constitution, Transmission, Completion, or Extinction of Land Rights, or of Securities affecting Lands, in the Forms which were in use or competent for these Purposes prior to the passing of the Acts hereby repealed, except in so far as such prior Forms are hereby expressly abolished; and, notwithstanding the Repeal of the said Acts, the same shall be held to be still in force so far as regards any Reference which may be made to them or any of them in any Statute not hereby repealed, and to the Effect of giving full Effect to such Reference.

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SCHEDULES referred to in foregoing Act.

SCHEDULE (A.)

No. 1.

Acts and Part of Act repealed.

Date of Act.	Title.	Extent of Repeal.
8 & 9 Vict. c. 31. - -	An Act to facilitate the Transmission and Extinction of Heritable Securities for Debt in Scotland.	The whole.
8 & 9 Vict. c. 35. - -	An Act to simplify the Form and diminish the Expense of obtaining Infeftment in Heritable Property in Scotland.	Section Sixth in the Copy No. 2. of this Schedule.
10 & 11 Vict. c. 47.	An Act to amend the Law and Practice in Scotland as to the Service of Heirs.	The whole.
10 & 11 Vict. c. 48.	An Act to facilitate the Transference of Lands and other Heritages in Scotland not held in Burgage Tenure.	The whole.

Date of Act.	Title.	Extent of Repeal.
10 & 11 Vict. c. 49.	- An Act to facilitate the Transference of Lands and other Heritages in Scotland held in Burgage Tenure.	The whole.
10 & 11 Vict. c. 50.	- An Act to facilitate the Constitution and Transmission of Heritable Securities for Debt in Scotland, and to render the same more effectual for the Recovery of Debts.	The whole.
10 & 11 Vict. c. 51.	- An Act to amend the Practice in Scotland with regard to Crown Charters and Precepts from Chancery.	The whole.
13 & 14 Vict. c. 13.	- An Act to render more simple and effectual the Titles by which Congregations or Societies associated for Purposes of Religious Worship or Education in Scotland to hold Real Property required for such Purposes.	The whole.
17 & 18 Vict. c. 62.	- An Act to extend the Benefits of Two Acts of Her Majesty relating to the Constitution, Transmission, and Extension of Heritable Securities in Scotland.	The whole.
21 & 22 Vict. c. 76.	- An Act to simplify the Forms and diminish the Expense of completing Titles to Land in Scotland.	The whole.
23 & 24 Vict. c. 143.	- An Act to extend certain Provisions of the Titles to Land (Scotland) Act, 1858, to Titles to Land held by Burgage Tenure, and to amend the said Act.	The whole.

No. 2.

CAP. XXXV.

An Act to simplify the Form and diminish the Expense of obtaining Infefment in Heritable Property in Scotland. [21st July 1845.]

Whereas it is expedient to simplify the Form and diminish the Expense of obtaining Infefment in Heritable Property in Scotland: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same :

How Sasine to be given in future.

That from and after the First Day of October in the present Year One thousand eight hundred

and forty-five it shall not be necessary to proceed to the Lands in which Sasine is to be given, or to perform any Act of Infefment thereon, but Sasine shall be effectually given therein and Infefment obtained by producing to a Notary Public the Warrants of Sasine and relative Writs, as now in use to be produced at taking Infefment, and by expediting and recording in the General Register of Sasines, or the Particular Register of Sasines applicable to the Lands contained in the Warrant of Infefment, in manner herein-after directed, an Instrument of Sasine, setting forth that Sasine had been given in the said Lands, and subscribed by the said Notary Public and Witnesses, according to the Form and as nearly as may be in the Terms of Schedule (B.) hereto annexed; and such Form of Infefment shall be effectual, whether the Lands lie contiguous or discontiguous, or are held by the same or by

different Titles, or of One or more Superiors; or whether the Deed entitling the Party to obtain Infefment be dated prior or subsequent to the present Act, or whether the Precept of Sasine herein be in the Form heretofore in use, or in the Form authorized by the present Act.

Instruments of Sasine to be entered and recorded.

II. And be it enacted, That from and after the said First Day of October every such Instrument of Sasine shall be recorded in manner heretofore in use with regard to Instruments of Sasine, and the Keepers of the Registers of Sasines are hereby required to receive and register the same accordingly; and such Instrument of Sasine, being so recorded, shall in all respects have the same Effect as if Sasine had been taken and an Instrument of Sasine duly recorded according to the Law and Practice heretofore in use.

May be recorded at any Time, but the Date of the Presentment to be the Date of the Infefment.

III. And be it enacted, That from and after the said First Day of October every such Instrument of Sasine may be competently and effectually recorded at any Time during the Life of the Party in whose Favour such Instrument has been expedited, but the Date of Presentment and Entry set forth on any such Instrument by the Keeper of the Record shall be taken to be the Date of the Instrument of Sasine and Infefment.

In Case of Error or Defect another Instrument may be recorded.

IV. And be it enacted, That in case of any Error or Defect in any such Instrument of Sasine, or in the recording thereof, it shall be competent of new to make and record an Instrument of Sasine, which shall have Effect from the Date of the recording thereof, as if no previous Instrument or Instruments had been made or recorded.

Forms of the Precept and Instrument of Sasine.

V. And be it enacted, That in all Deeds containing a Precept of Sasine such Precept may be in the Form and as nearly as may be in the Terms of the Schedule (A.) hereto annexed, and the Instrument of Sasine on any such Deed shall be in the Form and as nearly as may be in the Terms of the said Schedule (B.) hereto annexed, which Precepts and Instruments of Sasine respectively shall be as valid and effectual as the Precepts and Instruments of Sasine heretofore in use.

Precept from Chancery to be issued to Notaries upon Payment of Retour Duties and Casualties. Fees to be paid to Sheriffs and Sheriff Clerks for a limited Period.

VI. And be it enacted, That where Infefment is to be completed under a Precept issuing from the Office of Chancery, which Precept has hitherto been directed to the

Sheriff of the County in which the Lands or some Part thereof lie, such Precept shall, after the said First Day of October, be addressed to any Notary Public: Provided always, that such Precept shall be null and void unless an Instrument of Sasine thereon be recorded in the General Register of Sasines, or the Register of Sasines applicable to the Lands therein contained, before the first Term of Whitsunday or Martinmas posterior to the Date of such Precept, without Prejudice to a new Precept being issued as heretofore, and that before such Precept is issued from Chancery the Retour Duties and Casualties due to the Crown shall be paid to the proper Officer there, who shall account to the Exchequer for the same in like Manner as the Sheriffs were wont to do; and the same Officer shall also receive at the same Time certain Fees on behalf of the Sheriffs, Sheriffs Substitute, and Sheriff Clerks of the Counties in which the Lands lie, and on which Sasine would have been taken according to the Form heretofore in use, and to whom such Officer shall account for the same, in place of the Fees which they have heretofore been in use to receive, but such Fees shall be paid only during the Existence of the respective Interests of the present Sheriffs, Sheriffs Substitute, and Sheriff Clerks in their respective Offices; and the Lords of Council and Session are hereby authorized and required, by an Act or Acts of Sederunt, to regulate and determine the Amount of the Fees to be so received on behalf of each Sheriff, Sheriff Substitute, and Sheriff Clerk, having due Regard to the existing Interest of each.

Forms of Burgage Sasines to continue as at present.

VII. And whereas it is not hereby intended to make any Alterations in the Law with regard to Instruments of Sasine and Instruments of Cognition, and Sasine of Subjects held Burgage, or by any similar Mode of Tenure known and effectual in Law, excepting as after specified; be it enacted, That the Forms and Modes of Registration of these Instruments shall continue the same as at present, excepting only that the same shall be valid and effectual, if attested by the Town Clerk as a Notary, without the Addition of his Docquet, and by the Witnesses, and that the Delivery of Symbols may lawfully be given, either on the Ground of the Subjects as heretofore, or within the Council Chamber of the Burgh by Delivery of a Pen.

Instruments of Resignation ad remanentiam regulated.

VIII. And be it enacted, That Instruments of Resignation ad remanentiam shall be written in

Repealed by this Act.

the same Form as at present, but it shall be unnecessary for the Notary Public to adhibit his long Docquet to such Instruments; and further, that all Resignations ad remanentiam may be accepted by the Superior himself, or on his Behalf, by his known Agent for the Time, or by any Person having a formal Commission for that Purpose.

Instruments of Resignation in favorem abolished.

IX. And whereas Instruments of Resignation in favorem, as separate Instruments intended merely to connect the Procuratory with the Charter of Resignation, are now rarely used in Practice, and are wholly unnecessary; be it enacted, That from and after the said First Day of October the same shall be and are hereby abolished: Provided always, that the Deduction of Titles required by the Act of the Parliament of Scotland made in the Year One thousand six hundred and ninety-three, intituled "Act anent Procuratories of Resignation and Precepts of "Seisin," to be made in such Instruments, shall from and after the Date of this Act be made in the Charter of Resignation.

Interpretation of Act.

X. And be it enacted, That in the Construction of this Act the Words "Notary Public" shall be held to mean a Notary Public in Scotland duly admitted and practising there; the Word "Deed" shall be held to include any Warrant or Document upon which Sasine may follow; and the Word "Lands," or the Words "Heritable Property," shall be held to include Houses, Fishings, Mills, Minerals, Patronages, Teinds, and in general all Heritable Subjects or Rights in which Infeftment may be taken; and all Words in the Singular Number shall be held to include a Plurality of Persons or Things; and in general this Act shall be construed in the most liberal Manner, so as to accomplish the Objects thereby intended.

Alteration of Act.

XI. And be it enacted, That this Act may be amended or repealed by any Act to be passed in present Session of Parliament.

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

FORM OF PRECEPT OF SASINE.

Moreover I desire any Notary Public to whom these Presents may be presented to give to the said A.B. or his forssalds Sasine [or Life-rent

Sasine, or Sasine in Life-rent and Fee respectively, *as the Case may be,*] of the Lands and others above disposed [*if the Deed be granted under the Burden of a Real Lien or Servitude, or any other Incumbrance, Condition, or Qualification of the Right, or under Redemption, then there will be added here, "but always under the Burden of the Real Lien," &c. (as the Case may be) before specified*]. In witness whereof, &c. [*here insert a Testing Clause in legal Form*].

SCHEDULE (B.)

FORM OF INSTRUMENT OF SASINE.

At _____ there was, by or on behalf of A. B. of Z., Esquire, presented to me, Notary Public subscribing, a Disposition [*or other Deed, or an Extract of a Deed (as the Case may be)*] granted by C. D. of Y., Esquire, and bearing Date as in the Precept of Sasine herein-after inserted [*here describe also any connecting Deed or Writ, or Extract thereof, in virtue of which the Sasine is to be given to A. B.*], by which Disposition the said C. D. sold, alienated, and disposed to the said A. B. [*or to E. F. (as the Case may be)*] and his Heirs and Assignees, [*here insert the Destination, if any,*] heritably and irredeemably, [*or redeemably, or in Life-rent, or otherwise (as the Case may be),*] all and whole [*here insert the Description of the Subjects conveyed; and if the Disposition by C. D. was not to A. B. himself, but is vested in him as Assignee, Heir, or Adjudger, or otherwise, in whole or in part, state the successive Transferences, and the Way in which he has Right thereto*], which Disposition contains an Obligation to infeft [*here state whether a se or de se, or both or either (as the Case may be),*] and a Precept of Sasine in the following Terms [*here insert the Precept, which may be either according to the Form at present in use, or according to the abbreviated Form in Schedule (A.)*], in virtue of which Precept I hereby give Sasine [*or Life-rent Sasine, or Sasine in Life-rent and Fee respectively*] to the said A. B. of the Lands and others above described. [*If the Precept of Sasine contains a Reference to a Real Burden, or to any Conditions or Qualifications of the Right, or to a Power of Redemption, then add, "but always under the Burden of the Real Right, &c. before specified."*]

In witness whereof I have subscribed these Presents, written on this and the preceding Pages by G. H., my Clerk, before these Witnesses, the said G. H. and J. K., Accountant in Edinburgh.

(Signed) L. M., Notary Public.

G. H., Witness.

J. K., Witness.

SCHEDULE (B.)

No. 1.

Formal Clauses of a Disposition of Land, &c. not held Burgage.

[After the inductive and dispositive Clauses the Deed may proceed thus:] With Entry at the Term of [here specify the Date of Entry]; to be sold the said Lands and others [or Subjects] to me [or a me vel de me, as the Case may be]; and I resign the said Lands and others [or Subjects] for new Infeftment or Investiture; and I assign the Writs, and have delivered the same according to Inventory; and I assign the Rents; and I bind myself to free and relieve the said Disponee and his foresaids of all Feu Duties, Casualties, and public Burdens; and I grant Warrandice; and I consent to Registration hereof for Preservation [or for Preservation and Execution]. In witness whereof [insert a Testing Clause in the usual Form].

NOTE.—The Clauses are assumed here as occurring in a Disposition, but they may be used in other Deeds and Conveyances; and in the event of it being necessary to omit, vary, or qualify any One or more of them, this may be done, and the other Clauses may be retained.

No. 2.

Formal Clauses of a Disposition of Land, &c. held Burgage.

[After the inductive and dispositive Clauses the Deed may proceed thus:] With Entry at the Term of [here specify the Date of Entry]; to be sold the said Lands and others [or Subjects] of Her Majesty in Free Burgage; and I assign the Writs, and have delivered the same according to Inventory; and I assign the Rents; and I bind myself to free and relieve the said Disponee and his foresaids of all Ground Annual, Cess, Annuity, and other public Burdens; and I grant Warrandice; and I consent to the Registration hereof for Preservation [or for Preservation and Execution]. In witness whereof [insert a Testing Clause in the usual Form].

NOTE.—The Clauses are assumed here as occurring in a Disposition, but they may be used in other Deeds and Conveyances; and in the event of it being necessary to omit, vary, or qualify any One or more of them, this may be done, and the other Clauses may be retained.

SCHEDULE (C.)

Clause of Reference to Destinations and Conditions of Entail, &c.

[After inserting such Part of the Destination as may be thought necessary, add,] and to the other Heirs specified in a Disposition and Deed of Entail [or as the Case may be] of the said Lands executed by the Deceased, E.F., dated the Day of in the Year , and recorded in the Register of Tailzies on the Day of in the Year , [or in the said Disposition and Deed of Entail dated and recorded as aforesaid, or in a Deed [or Instrument specify the Deed or Conveyance] recorded [specify Register of Sasines] upon the Day of in the Year].

[And after the Description of the Lands insert,] but always with and under the Conditions, Provisions, and prohibitory, irritant, and resolute Clauses [or Clause authorizing Registration in the Register of Tailzies, as the Case may be,] contained in the said Disposition and Deed of Entail, dated and recorded as aforesaid [or in (specify Deed or Conveyance) recorded in (specify Register of Sasines) upon the Day of in the Year].

[And in subsequent Clauses in which it is usual or requisite to refer again to the Conditions of the Entail, &c. the Reference may be made thus:] but always with and under the Conditions, Provisions, and Prohibitory irritant and resolute Clauses [or Clause authorizing Registration in the Register of Tailzies, as the Case may be,] before referred to.

SCHEDULE (D.)

Clause of Reference to Real Burdens, Conditions, &c., in Investiture.

[After the Description of the Lands, instead of inserting the Burdens, &c. at Length, these may be referred to as follows, viz. :] but always with and under the real Burdens, Conditions, Provisions, and Limitations [or such of these as may apply or have reference to the Case] specified in a Deed [or Instrument here specify a Deed or Conveyance in which the Burdens, &c., were first inserted, or any subsequent Deed or Conveyance in which they are inserted, forming Part of the Progress of the Titles to the Lands] recorded [specify Register of Sasines or, if the Deed or Conveyance as recorded has been previously referred to, say in the said Deed [or Instrument] recorded as aforesaid] on the Day of in the Year

[And in subsequent Clauses in which it is requisite or usual to refer again to the Burdens, &c. the Reference may be made thus:] but always with and under the real Burdens, Conditions,

F F

Provisions, and Limitations [or such of these as may apply or have reference to the Case] before referred to.

SCHEDULE (E.)

Clause of Reference to particular Description contained in a prior Deed.

[After giving some leading Name or Names or some other distinctive Description of the Lands as contained in the Titles thereof and the Name of the County, and in the Case of Lands held by Burgage Tenure, the Name of the Burgh and County in which the Lands lie, add] being the Lands [or Subjects] particularly described in the [here specify a prior Deed or Instrument containing the particular Description of the Lands or Subjects] recorded [specify Register of Sasines, or if the Deed or Instrument as recorded has been previously referred to say in the said Deed [or Instrument] recorded as aforesaid] on the

Day of _____ in the Year _____.

[If Part only of Lands is conveyed, describe such Part and add, being Part of the Lands particularly described, &c.; or thus, being the Lands [or Subjects] as particularly described, &c., with the Exception of, and describe the Part excepted.]

SCHEDULE (F.)

No. 1.

Clause of Direction specifying Part of Deed which Grantor desires to be recorded.

And I direct to be recorded in the Register of Sasines the Part of this Deed from its Commencement to the Words [insert Words] on the _____ Line of the _____ Page [and also the Part from the Words [insert Words] on the _____ Line of the _____ Page to the Words [insert Words] on the _____ Line of the _____ Page]. [Or, I direct the whole of this Deed to be recorded in the Register of Sasines, with the Exception of the Part [or Parts, as the Case may be, specifying the Part or Parts excepted, as above].]

No. 2.

Warrant of Registration to be written on Deed where it is intended to record it in Terms of a Clause of Direction.

Register the above Deed in Terms of the Clause of Direction therein contained on behalf of A.B. [insert Designation] in the Register of the County of C. [or if the Writ contains Land in more than One County, in the Registers of the Counties of C., D., E., and F., or, if the Lands

be held Burgage in the Register, or Registers of the Burgh of M., or Burghs of M., N., O., and P.]

(Signed) A. B.

[or] G. H.,

W. S., Edinburgh, Agent,

[or] J., K. & L.,

W. S., Edinburgh, Agents,

[or as the Case may be].

SCHEDULE (G.)

Clause of Reference to Conveyance, containing general Designation of Lands.

[After giving the general Name or Names of the Lands and the Name of the County, or Burgh and County, as the Case may be, add] as particularly described in the Disposition [or other Deed, as the Case may be] granted by C. D., and bearing Date [here insert Date], and recorded in the [specify the Register of Sasines] on the _____ Day of _____ in the Year _____, and in which the Lands hereby conveyed are declared to be designed and known by the said Name of " [here insert Name], [or "as particularly described in the Instrument (specify Instrument) recorded, &c., and in which the Lands hereby conveyed are declared," &c.] [If Part only of Lands is conveyed, then follow Form for similar Case given in Schedule (E.)]

SCHEDULE (H.)

No. 1.

Warrant of Registration to be written on a Conveyance, &c., when presented without Assignment apart, or with Writ of Resignation or other similar Writ thereon.

Register on behalf of A.B. [insert Designation] in the Register of the County of C. [or if the Conveyance, &c. or Writ contains Lands in more than One County, in the Registers of the Counties of C., D., E., and F., or, if the Lands be held Burgage, in the Register of the Burgh of M., or in the Registers of the Burghs of M., N., O., and P.] [or Register, &c., along with Assignment (or Assignations) (or Writ of Resignation) hereon in the Register of the County of C., &c., or in the Register of the Burgh of M., &c., or otherwise as the Case may be].

(Signed) A. B.,

[or] G. H.,

W. S., Edinburgh, Agent,

[or] J., K. & L.,

W. S., Edinburgh, Agents,

[or as the Case may be].

No. 2.

Warrant of Registration to be written on a Conveyance, &c. when presented with Assignment apart or Notarial Instrument.

Register on behalf of A. B. (insert Designation) the Register of the County of C. [or if the conveyance, &c. or Writ contains Lands in more than one County, in the Registers of the Counties C., D., E., and F., or if the Lands be held in Mortgage in the Register of the Burgh of M., or the Registers of the Burghs of M., N., O., and along with the Assignment [or Assignations, Notarial Instrument] docketed with reference thereto [or otherwise as the Case may be].

(Signed) A. B.,
[or] G. H.,
W. S., Edinburgh, Agent,
[or] J. K. & L.,
W. S., Edinburgh, Agents,
[or as the Case may be.]

No. 3.

Warrant of Registration to be written on a Conveyance presented for Registration propriis manibus.

Register on behalf of A. B. (insert Designation) the Register of the County of C. [or if the conveyance, &c. or Writ contains Lands in more than one County, in the Registers of the Counties C., D., E., and F., or if the Lands be held in Mortgage in the Register of the Burgh of M., or the Registers of the Burghs of M., N., O., and And also ex propriis manibus on behalf of L., wife of the said A. B. in Liferent [or as the Case may be].

(Signed) A. B.

SCHEDULE (I.)

Instrument of Sasine in Burgage Subjects.

At there was by [or on behalf of] A. B. [design the Disposer or other person to whom Sasine is given] presented to me, Notary Public subscribing, a Disposition [or her Deed, or an Extract of a Deed, or any her Warrant, as the Case may be,] granted by A. B. [here design the Grantor], and dated the Day of [here describe shortly any connecting Deed or Extract thereof in virtue of which Sasine is given,] by which Disposition [or otherwise as the Case may be] the said A. B. sold, alienated, and disposed to the said A. B. [or to E. F., as the Case may be,] and his heirs and Assigns whomsoever, [here insert the destination, if any,] heritably and irredeemably or redeemably in Liferent, or otherwise, as the

Case may be,] all and whole [here insert the Description of the Lands conveyed, and any Real Burdens, Conditions, Provisions, and Limitations, or any Reference to the same, all as in the Disposition, and if the Disposition by C. D. was not to A. B. himself, but has been acquired by him as Assignee, Heir, or Adjudger, or otherwise in whole or in part, state shortly the successive Transferences, and the way in which he has Right thereto,] which Disposition contains an Obligation to infest the said A. B. [or E. F., as the Case may be,] to be holden of Her Majesty in Free Burgage, and also contains Procuratory [or a Clause] to make Resignation of the said Lands and others in favour of the said Disposer and his forebears, for new Infestment [or for new Liferent Infestment, or for new Infestment in Liferent and Fee respectively, or as the Case may be]; in virtue of which Procuratory the said Lands and others were resigned; and in Terms of the said Disposition [or otherwise as the Case may be] I hereby give Sasine to the said A. B. of the foresaid Lands and others [if the Deed contains any Conditions, &c., or any Reference to the same as aforesaid, then add "but always under the Conditions, &c. before specified" or "referred to," as the Case may be.] In witness whereof these Presents, written on this and the preceding Pages by G. H., my Clerk, are subscribed by me before these Witnesses, the said G. H. and J. K., also my Clerk.

(Signed) L. M., Notary Public.
G. H., Witness.
J. K., Witness.

SCHEDULE (J.)

Notarial Instrument in favour of Disposer or his Assignee, &c.

At there was by [or on behalf of] A. B. of Z., presented to me, Notary Public subscribing, a Disposition [or other Deed, or an Extract of a Deed, as the Case may be,] granted by C. D. of Y., and dated [insert the Date,] by which Disposition [or otherwise as the Case may be,] the said C. D. sold, alienated, and disposed to the said A. B. [or gave, granted, and disposed, or otherwise, as the Case may be, to the said A. B.] [or to E. F.], and his Heirs and Assigns [insert the Destination, if any, so far as may be necessary,] heritably and irredeemably [or redeemably, or in Liferent, or otherwise, as the Case may be,] all and whole [insert the Description of the Lands conveyed, and any Real Burdens, Conditions, Provisions, and Limitations, or any Reference to the same all as in the Disposition or the Deed, &c.] [If the Person expeding the Instrument be other than the original Disposer, add,] As also there was presented to me [here specify

the Title or Series of Titles by which such Person acquired Right, and the Nature of his Right]. Whereupon this Instrument is taken in the Hands of *L. M.* [insert Name and Designation of Notary Public] in the Terms of the "Titles to Land Consolidation (Scotland) Act, 1868." In witness whereof [insert Testing Clause as in Schedule (I.)]

SCHEDULE (K.)

Instrument of Resignation ad remanentiam.

At there was by [or on behalf of] *A. B.* [here insert the Name and Designation of the Superior], presented to me, Notary Public subscribing, a Disposition [or other Deed or Extract, as the Case may be], dated the Day of , granted by *C. D.* [here insert the Name and Designation of the Vassal], being the Vassal in the Lands after described, holding the same of the said *A. B.* as his Superior thereof, by which Disposition the said *C. D.* disposed to the said *A. B.* and his Heirs and Assignees whomsoever [or as the Case may be] all and whole [here insert Description of the Lands as in the Disposition or other Deed, &c.]; in virtue of which Disposition [or other Deed, &c.] the said Lands were resigned in the Hands of the said *A. B.* [or "in the Hands of *E. F.* as his Commissioner duly authorised, conform to Commission" (describe by Date and other Particulars), "as in the Hands of the said *A. B.* himself" [or "in the Hands of *E. F.*, being the known Agent of the said *A. B.*, and as such duly authorized in virtue of the Act of the Eighth and Ninth Years of the Reign of Her Majesty Queen Victoria, Chapter Thirty-five, intituled 'An Act to simplify the Form and diminish the Expence of obtaining Infestment in Heritable Property in Scotland,' as in the Hands of the said *A. B.* himself,"] ad perpetuum remanentiam and to the Effect that the Right of Property of the foresaid Lands and others might be united and consolidated with the Right of Superiority of the same in the Person of the said *A. B.* in all Time coming. Whereupon this Instrument is taken by [or on behalf of] the said "*A. B.* and *C. D.*" in the Hands of , &c., as in Schedule (J.) to the End.

SCHEDULE (L.)

Notarial Instrument in favour of a general Disponee, or his Assignee, &c.

At there was by [or on behalf of] *A. B.* of *Z.*, presented to me, Notary Public subscribing, a Disposition [specify the

*Disposition or other Deed or Instrument or Extract thereof, as the Case may be] recorded in the [specify Register of Sasines and Date of recording], by which recorded Disposition [or otherwise as the Case may be] *C. D.* of *Y.* was infest in all and whole [describe the Lands or other Subjects, as the Case may be, as the same are described in the said Disposition or other Deed or Instrument]; as also there was presented to me a general Disposition [or other Deed or Conveyance or Testamentary Deed or Writing, as the Case may be, or an Extract of such Deed] granted by the said *C. D.*, and dated [insert Date], by which general Disposition [or otherwise as the Case may be] the said *C. D.* disposed [or gave or granted or bequeathed, or otherwise as the Case may be] to the said *A. B.* and his Heirs and Assignees or otherwise as the Case may be, heritably and irredeemably [or in Liferent, or otherwise as the Case may be], all and sundry the whole Heritable Estate [or otherwise as the Case may be], of which he was [or might die] possessed [or otherwise, as the Case may be]. [If the Deed be granted under any Real Burden or Condition or Qualification, add here, but always under the Real Burdens, &c.; and if the Deed be granted in trust, or for specific Purposes, add, but always in trust or for the Uses and Purposes mentioned in said general Disposition, or otherwise as the Case may be. If the Person executing the Instrument be other than the original Disponee, or Grantor or Legatee under the Deed, add, as also there was presented to me (specify the Title or Series of Titles by which such Person acquired Right, and the Nature of his Right.)] Whereupon, &c., as in Schedule (J.) to the End.*

SCHEDULE (M.)

No. 1.

Assignment of an unrecorded Conveyance.

I, A. B., in consideration of, &c. [or otherwise, as the Case may be], hereby assign to *C. D.*, and his Heirs and Assignees [or otherwise, as the Case may be], the Disposition [or other Deed, as the Case may be] granted by *E. F.*, dated &c., by which he conveyed the Lands of *X.*, as therein described, to me [or otherwise, as the Case may be, specifying the connecting Title, if any, and the Nature of the Right conveyed or assigned. State the Term of the Assignee's Entry, and other Particulars, if any, which ought to be specified. In witness whereof [insert a Testing Clause in the usual Form].

NOTE.—Before being presented for Registration along with the Disposition or other Deed and Warrant of Registration thereon, the Assignment must be docketed in or as nearly as may be in the Form following; viz.:

" Docquetted with reference to Warrant of Registration on behalf of C.D., written on the said Disposition [or other Deed, as the Case may be]."

The Docquet shall be signed by the Person or his Agent or Agents signing the Warrant.

No. 2.

signation of an unrecorded Conveyance written upon the Conveyance.

A.B., in consideration of, &c. [or otherwise, the Case may be], hereby assign to C.D., and His Heirs and Assignees [or otherwise, as the Case may be], the foregoing Disposition [or other Deed, the Case may be] of the Lands of X., as therein described, granted in my Favour [or otherwise, as the Case may be, specifying the connecting Title, the Nature of the Right conveyed or assigned, the Term of the Assignee's Entry, and other particulars, if any, which ought to be specified.] witness whereof [insert a Testing Clause in the usual Form].

SCHEDULE (N.)

Notarial Instrument in favour of an Assignee to an unrecorded Conveyance to be recorded along with the Conveyance.

At there was by [or on behalf of] A.B. of Z. presented to me, Notary public subscribing, a Disposition [or other Deed or Extract, as the Case may be, specifying the Nature of the Deed] granted by C.D. of Y., and dated [insert Date], by which Disposition the said C.D. conveyed to E.F. all and whole the Lands of X. as therein described, and which Disposition is to be recorded along with this Instrument; as also there was presented to me [specify the Title or Series of Titles by which A.B. acquired right, and the Nature of his Right]. Whereupon, &c., as in Schedule (J.) to the End.

NOTE.—Before being presented for Registration along with the Disposition or other Deed and Warrant of Registration thereon, the Notarial Instrument must be docquetted in or as nearly as may be in the Form following, viz., " Docquetted with reference to Warrant of Registration on Behalf of A.B., written on the said Disposition [or other Deed, as the Case may be]." The Docquet shall be signed by the Person or his Agent or Agents signing the Warrant.

SCHEDULE (O.)

Notarial Instrument in favour of a Trustee in a Sequestration or of Liquidators of Joint Stock Companies.

At there was, by [or on Behalf of] A.B., as Trustee on the sequestrated Estate of C.D., [or as Liquidator for winding up the, specify Name of Company, or Partner thereof for whom Liquidator acts] presented to me, Notary Public subscribing, a Disposition [or other Deed or Extract, as the Case may be], [insert Date], recorded in the [specify Register and Date of recording], by which, &c. [specify the Title or Series of Titles by which the Bankrupt, or Company, or Partner thereof, as the Case may be, held the Lands], as also there was presented to me an Extract Act and Warrant of Confirmation in favour of the said A.B., dated [insert Date] [or here specify the Appointment of the Liquidator or Liquidators, and the Date thereof]. Whereupon, &c., as in Schedule (J.) to the End.

SCHEDULE (P.)

Form of Petition of General Service.

Unto the Honourable the Sheriff of [specify the County, or say "of Channery,"] the Petition of A.B. [here name and design the Petitioner],

Humbly sheweth,

That the late C.D. [here name and design the Ancestor to whom Service is sought] died on or about the Day of

and had at the Time of his Death his ordinary or principal Domicile in the County of

[or furth of Scotland, as the Case may be]. [In Cases where the Deceased died upwards of Ten Years before the Date of the Petition, and the Petitioner cannot ascertain the Place of the Domicile, say that the late C.D. [here name and design the Ancestor to whom Service is sought] died on or about the Day of

but the Petitioner is unable to prove at what Place the Deceased had his ordinary or principal Domicile at the Time of his Death.

That the Petitioner is the eldest Son [or state what other Relationship or Character of Heir the Petitioner bears] and nearest lawful Heir in general of the said C.D. If the Service is as Heir of Provision, say that the Petitioner is the eldest Son [or state what other Relationship or Character of Heir the Petitioner bears] and nearest lawful Heir of Provision in general of the said C.D., under and by virtue of a Deed [specify the Deed of Provision] executed by E.F., dated the

Day of [or otherwise describe the Deed so as to clearly identify it, or, if the Service is as Heir of Tailzie, say that the

Petitioner is the eldest Son [or state what other Relationship, &c. the Petitioner bears], and nearest and lawful Heir of Tailzie and Provision in general of the said C. D., under and by virtue of a Disposition and Deed of Entail granted by E. F., dated the _____ Day of _____, and recorded in the Register of Tailzies the _____ Day of _____,

whereby the said E. F. conveyed the Lands of M. to and in favour of J. K. [here set forth the Destination or such Part thereof as may be deemed necessary, or say, and the other Heirs therein mentioned]; but always with and under the Conditions, Provisions, and prohibitory, irritant, and resolute Clauses, [or Clause authorizing Registration in the Register of Tailzies, as the Case may be,] contained in the said recorded Deed of Entail, and here referred to as at Length set forth therein.

May it therefore please your Lordship to serve the Petitioner nearest and lawful Heir in general to the said C. D. [or whatever other Character of Heir is sought to be established here set it forth].

According to Justice, &c.

[Signed by the Petitioner or his Mandatory.]

SCHEDULE (Q.)

Form of Petition of Special Service.

Unto the Honourable the Sheriff of [specify the County, or say "of Chancery,"] the Petition of A. B. [here name and design the Petitioner],

Humbly sheweth,

That the late C. D. here name and design the Ancestor] died on or about the _____ Day of _____ [state the Month and the Year at full Length], last vest and seld in [here describe or refer as in Schedule (E.) or Schedule (G.) to the Lands with reference to which the Service is sought] conform to Disposition [or other Deed or Conveyance] dated the _____ Day of _____

and along with Warrant of Registration thereon, on behalf of the said C. D. recorded in the _____ Register of Sasines (specify Register) on the _____ the _____ Day of _____ [or conform to Disposition, or whatever else was the Deed or Conveyance on which the Ancestor's Infestment proceeded, here specify it, dated the _____ Day of _____, and to Instrument of Sasine following thereon, recorded in the _____ Register of Sasines (specify Register) on the _____ the _____ Day of _____, or otherwise specify the Title of Deceased as recorded in the Register of Sasines]; and when the Lands are held under a Deed of Entail here insert the Conditions, &c. at full Length, or refer to them in or as nearly as may be in the Form of Schedule (C.) or, if desired,

refer to them as follows, but always with and under the Conditions, Provisions, and prohibitory, irritant, and resolute Clauses, [or Clause authorizing Registration in the Register of Tailzies, as the Case may be,] contained in a Deed of Entail granted by G. H. [here name and design the Grantor] dated the _____ Day of _____,

in favour of I. K. [here set forth the Destination, or such Part thereof as may be deemed necessary, or say and the Heirs therein specified], and which Conditions, Provisions, and prohibitory, irritant, and resolute Clauses, [or Clause authorizing Registration in the Register of Tailzies, as the Case may be,] are herein referred to, as at Length set forth in the said Deed of Entail, which is recorded in the Register of Tailzies on the _____ Day of _____ [or as at Length set forth in the above-mentioned recorded Disposition or other Deed or Conveyance in favour of the Deceased, or as at Length set forth in any other recorded Deed or Conveyance. And in every Case where there are any Real Burdens, Conditions, Provisions, or Limitations, proper to be inserted or referred to, insert them here, or refer to them in or as nearly as may be in the Form of Schedule (D.)].

That the Petitioner is the eldest Son [or state what other Relationship or Character the Petitioner bears] and nearest lawful Heir in special of the said C. D. in the Lands and others foresaid. [If the Service is as Heir of Provision, say, that the Petitioner is the eldest Son (or state what other Relationship or Character the Petitioner bears) and nearest lawful Heir of Provision in special of the said C. D. in the Lands and others foresaid, under and by virtue of a Deed [or other Conveyance] executed by E. F. dated [here describe the Deed or Conveyance by Date, or otherwise describe it so as clearly to identify it]. And if the Service is as Heir of Entail, say, that the Petitioner is the eldest Son (or state what other Relationship or Character the Petitioner bears), and nearest and lawful Heir of Tailzie and Provision in special of the said C. D. in the Lands and others foresaid, under and by virtue of the said Deed of Entail.

[If it is wished to embrace a Service in general in the same Character as that in which special Service is sought, say, That the Petitioner is likewise Heir in general, or of Provision in general, or of Tailzie and Provision in general, or otherwise, as the Case may be, of the said C. D.]

May it therefore please your Lordship to serve the Petitioner nearest and lawful Heir [or Heir of Provision, or Heir of Tailzie and Provision, or otherwise as the Case may be] in special of the said deceased C. D., in the Lands and others above described [and where a general Service is wished, add, and likewise nearest and lawful Heir (or Heir of Provision, or Heir of Tailzie and Provision) in general of the said C. D., or whatever else is the

Character of Heir sought to be established, here set it forth as above]. And where the Service is as Heir of Tailzie and Provision, say here, but always with and under the Conditions, Provisions, prohibitory, irritant, and resolute Clauses [or Clause authorizing Registration in the Register of Tailzies,] above referred to [or above written]; and where there are Real Burdens, &c., say, but always with and under the Real Burdens, &c., above referred to [or above written]. And where there are several Parcels of Land or separate Estates, here add, if desired, and to grant Warrant to the Director of Chancery to issue separate Extract Decrees applicable to One or more of such Parcels of Land or separate Estates.

According to Justice, &c.
[Signed by the Petitioner or his Mandatory.]

SCHEDULE (R.)

Form for a General Service where it is to be limited in its Effects by a Specification annexed.

No. 1.

The Petition will be in the Form of Schedule (P.), adding at the close of the Statement of the Petitioner, but the Petitioner desires that his General Service shall be limited to the Contents of the Specification annexed; and adding at the close of the Prayer of Petition, but under Limitation as aforesaid to the Contents of the Specification annexed.

No. 2.

Specification of the Lands and other Heritages which belonged to the deceased C. D. referred to in the Petition for General Service presented to the Sheriff of _____ by A.B. as Heir of _____ in general to the said deceased C. D.

[Here insert a Description of the Lands and other Heritages intended to be included in the Service, distinguishing each separate Property or Heritage, if there are more than One, by a separate Number.]

[Signed by the Petitioner or his Mandatory.]

SCHEDULE (S.)

Note for A. B. [insert Name and Designation.]

The said A. B. humbly prays that a Writ [or Charter, or Precept, or other Deed, as the Case may be] may be granted by Her Majesty [or the

Prince and Steward of Scotland, as the Case may be] in Terms of the Draft herewith lodged and marked as relative hereto.

(Signed) C. D. (W.S.)
Agent for the said A. B.

SCHEDULE (T.)

No. 1.

Crown Writ of Resignation.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. We, in respect of the within Clause [or Procuratory] of Resignation, dispose to C. D. the Lands contained in this Disposition [or other Deed or Conveyance, as the Case may be] in his Favour [or in favour of A. B., or otherwise, as the Case may be, specifying shortly the connecting Title], as Vassal in room and place of E. F. [here name and design last Vassal in the Lands], entered by [here specify the Crown Charter or other Crown Writ by which the last Vassal was entered, and Instrument thereon, if any, and Date of Registration in the Register of Sasines if recorded, and of recording in the Register of Crown Writs], but only in so far as consistent with the [here specify, or refer to if previously specified, a Crown Charter or other Crown Writ containing the Tenendas and Reddendo, &c.,] and with Our own Rights. [If the Reddendo is to be different from that in the Crown Charter or other Crown Writ specified or referred to, or if the Vassal should desire, specify the Reddendo here.] Given at Edinburgh, the _____ Day of _____ in the Year _____

[Signed by the Director of Chancery, or his Depute or Substitute.]

No. 2.

Crown Charter of Resignation.

Victoria, &c. We do hereby give, grant, and dispose, and for ever confirm to A. B. and his Heirs and Assignees whomsoever [or in case there be a Substitution of Heirs, here insert it at full Length, or refer to it as in Schedule (C.)], heritably and irredeemably, all and whole [here insert, or refer as in Schedule (E.) or Schedule (G.), as the Case may be, to the Lands. In case there be any Conditions of Entail, or any Real Burdens, &c., proper to be inserted or referred to, insert them here immediately after the Description of the Lands, or refer to them as in Schedule (C.) or Schedule (D.), as the Case may be], which Lands and others formerly belonged to C. D., holden by him immediately of the Crown, in Terms of [here state briefly the Investiture of the last entered Vassal, whether a Crown Precept and Sasine, or

Crown Charter and Sasine, or other Crown Writ, as recorded in the Register of Sasines, or otherwise, as the Case may be, and were at the Date of applying for these Presents resigned by him into Our Hands by virtue of a Procuratory [or Clause] of Resignation contained in a Disposition [or other Deed or Conveyance, as the Case may be] of the said Lands and others, granted by him in favour of the said A. B., dated [here insert the Date], to be holden, the said Lands and others, of Us, and Our Royal Successors, in Free Blench Farm, for ever, paying therefor a Penny Scots yearly of Blench Duty, if asked only, [or if the Lands were held formerly in Ward, say here, in Free Blench as in room of Ward, paying therefor a Penny Scots yearly, as in room of the Ward Duties, if asked only, or if held in Feu Farm, say here, in Feu Farm, and specify the Feu Duty and other Duties and Services, or otherwise, as the Case may be].

In witness whereof, We have ordered the Seal now used for the Great Seal of Scotland, to be appended hereto of this Date [if the Vassal desires the Seal to be appended, say here, and the same is accordingly at the Request of the said A. B. appended,] at Edinburgh, the Day of [state the Day, Month, and Year].

[Signed by the Director of Chancery, or his Depute or Substitute.]

No. 3.

Crown Writ of Confirmation.

Victoria, &c. We confirm this Disposition [or other Deed or Conveyance, as the Case may be] in favour of C. D., as Vassal in room and place of E. F. [here name and design last Vassal in the Lands], entered by [here specify the Crown Charter or other Crown Writ by which the last Vassal was entered, and Instrument thereon, if any, and Date of Registration in Register of Sasines if recorded, and of recording in the Register of Crown Writs], but only in so far as consistent with the [here specify, or refer to if previously specified, a Crown Charter or other Crown Writ containing the Tenendas and Reddendo, &c.], and with Our own Rights, [If the Reddendo is to be different from that in the Crown Charter or other Crown Writ specified or referred to, or, if the Vassal should desire, specify the Reddendo here.] Given at Edinburgh, the Day of in the Year

[Signed by the Director of Chancery, or his Depute or Substitute.]

No. 4.

Crown Charter of Confirmation.

Victoria, &c. We do hereby confirm for ever, to and in favour of A. B. and his Heirs and Assignees whomsoever [or in case there be a Sub-

stitution of Heirs, here insert it at full Length, or refer to it as in Schedule (C.)], heritably and irredeemably, all and whole [here insert, or refer as in Schedule (B.) or Schedule (G.), as the Case may be, to the Lands to be confirmed. In case there be any Conditions of Entail, or any Real Bardens, &c. proper to be inserted or referred to, insert them here immediately after the Description of the Lands, or refer to them as in Schedule (C.) or Schedule (D.), as the Case may be,] and a [here specify the Deed or Conveyance which is to be confirmed in favour of A. B., and if the same has been recorded with Warrant of Registration in his favour, add,] with Warrant of Registration thereon in favour of the said A. B., recorded in the [here describe the Register in which the said Deed or Conveyance is recorded,] on the

Day of [state the Day, Month, and Year], [or of whatever other Date the said Deed or Conveyance, or recording thereof may be], in so far as they relate to the Lands and others hereby confirmed, to be holden, the said Lands and others, of Us, &c. [as in No. 2. of this Schedule].

In witness whereof, &c. [as in No. 2. of this Schedule].

GENERAL NOTE TO SCHEDULE (T.)—When the Writs and Charters Nos. 1, 2, 3, and 4 are to be granted by or on behalf of the Prince and Steward of Scotland, they will be in similar Form but will run in Name of the "Prince and Steward of Scotland," without adding His Highness' other Titles; and the Lands, instead of being described as holding of Her Majesty and Her Royal Successors, will, where it is necessary by the Form of the Writ or Charter to specify the holding, and be described as holding of the "Prince and Steward of Scotland," and the Seal referred to in the Testing Clause will be the Prince's Seal.

SCHEDULE (U.)

No. 1.

Crown Writ of Clare constat.

Victoria, &c. Whereas by Decree of General Service [or of Special Service, as the Case may be] of A. B. [here insert the Name and Designation of the Heir], dated [here insert the Date of the Decree], and recorded in Chancery [here insert the Date of Registration], and other authentic Instruments and Documents, it clearly appears that C. D. [here insert the Name and Designation of the Ancestor] died last vest and seised as of Fee in [here describe the Lands, or refer to them as in Schedule (E.) or Schedule (G.), as the Case may be]; and that in virtue of [here describe the Crown Charter or Crown Precept and Sasine, or recorded Crown Charter, or Crown Precept, or

er Crown Writ or Writ forming the last Investiture, by Dates, and Dates of Registration in the Register of Sasines and Register of Crown Writs, and when the Lands are held under a Deed of Entail, here insert the Destination, Conditions, and Provisions, at full Length, or refer to them in, or as nearly as may be in, the Form of Schedule (C.), if desired refer to them as follows, but always with and under the Conditions, Provisions, and prohibitory, irritant, and resolute Clauses (or Clause authorizing Registration in the Register of Tailzies, as the Case may be) contained in a Deed of Entail granted by G. H. (here name and design the Grantor) dated the _____ Day of _____

in favour of I. K. (here set forth the Destination or such Part thereof as may be deemed necessary, or say and the Heirs therein specified) and which Conditions, Provisions, and prohibitory, irritant, and resolute Clauses (or Clause authorizing Registration in the Register of Tailzies, as the Case may be) are herein referred to as at length set forth in the said Deed of Entail which is recorded in the Register of Tailzies on the _____ Day of _____ [or as at length set forth in the above-mentioned recorded Charter, &c., forming the last Investiture, or as at length set forth in any other recorded Deed or Conveyance. And in every Case where there are real Burdens, Conditions, Provisions, or Limitations proper to be inserted or referred to, insert them here or refer to them in, or as nearly as may be in, the Form of Schedule (D.);] and that the said A. B. is eldest son and nearest and lawful Heir of the said C. D. or whatever Relationship and Character of Heir the Party holds, here state it]. Therefore We hereby declare the said A. B. to be the Heir entitled to succeed to the said C. D. in the said Lands to be holden of Us and Our Royal Successors in manner and for Payment of the Duties specified in the [here specify, or refer to, if previously specified, a Crown Charter or other Crown Writ containing the Tenendas and Reddendo. If the Reddendo is different from that in the Crown Charter or other Crown Writ specified or referred to, or if the Vassal should desire, specify the Reddendo here]. Given at Edinburgh, the _____ Day of _____ in the Year _____

[Signed by the Director of Chancery, or his Depute or Substitute.]

No. 2.

Precept from Chancery.

Victoria, &c. Whereas by Decree of General Service [or of Special Service, as the Case may be.] of A. B. [here insert the Name and Designation of the Heir], dated [here insert the Date of the Decree], and recorded in Chancery [here insert the Date of Registration], and other authentic Instruments and Documents, it clearly appears

that C. D. [here insert the Name and Designation of the Ancestor] died last vest and seised as of Fee in, &c., [as in No. 1. of this Schedule down to and including the Statement of the Relationship and Character of Heir which the Party holds, then say] and that the said Lands and others are holden of Us and Our Royal Successors [here state the Tenure, Blench, Feu, or other], for Payment [here state the Reddendo from the last Charter or other Writ, as the Case may be]. Therefore We hereby desire any Notary Public to whom these Presents may be presented to give to the said A. B. as Heir foressaid Sasine of the Lands and others before described; [if there are Conditions of Entail, &c., or real Burdens, here add] but always with and under the Conditions, Provisions, and prohibitory, irritant, and resolute Clauses [or Clause authorizing Registration in the Register of Tailzies, as the Case may be,] [or with and under the Burdens, Conditions, Provisions, and Limitations, as the Case may be,] above specified or referred to, as the Case may be. Given at Edinburgh, the _____ Day of _____ in the Year _____

[Signed by the Director of Chancery, or his Depute or Substitute.]

GENERAL NOTE TO SCHEDULE (U).—When the Writ or Precept is to be granted by or on behalf of the Prince and Steward of Scotland, they will be in similar Form, but will run in Name of the Prince and Steward of Scotland without adding His Highness' other Titles; and the Lands, instead of being described as holding of Her Majesty and Her Royal Successors, will be described as holding of the Prince and Steward of Scotland.

SCHEDULE (V.)

No. 1.

Writ of Confirmation by Subject Superior.

I, A. B. [here insert Name and Designation of Superior], hereby confirm this Disposition [or other Deed or Conveyance, as the Case may be] in favour of C. D., as Vassal in room and place of E. F. [here name and design last Vassal in the Lands] entered by [here specify the Charter or other Writ by which the last Vassal was entered, Instrument thereon if any, and Date of Registration in the Register of Sasines, if recorded], but only in so far as consistent with the [here specify, or refer to if previously specified, a Charter or other Writ containing the Tenendas and Reddendo, &c.], and with my own Rights. [If the Reddendo is to be different from that in the Charter or other Writ specified or referred to, or if the Vassal should desire, specify the Reddendo here.] In witness whereof [insert a Testing Clause in usual Form].

No. 2.

Charter of Confirmation by Subject Superior.

I, A. B., immediate lawful Superior of the Lands and others after mentioned, do hereby confirm for ever to and in favour of C. D. [*here name the Party in whose Favour the Charter is granted*], and his Heirs and Assignees whomsoever, heritably and irredeemably, all and whole [*here insert, or refer, as in Schedule (E.) or Schedule (G.), as the Case may be, to the Lands to be confirmed, and if under Conditions of Entail or Real Burdens, &c., insert them or refer to them as in Schedule (C.) or Schedule (D.), as the Case may be*], and a [*here specify the Deed or Conveyance which is to be confirmed in favour of C. D., and if the same has been recorded with Warrant of Registration in his favour add with Warrant of Registration thereon*], in favour of the said C. D., recorded in the [*here describe the Register in which the said Deed or Conveyance is recorded*] on the _____ Day of _____, or of whatever other Date or Tenor the said Disposition [*or other Deed or Conveyance*] may be, and that in so far as relates to the Lands and others hereby confirmed, to be holden, the said Lands and others, immediately of me and my Successors, Superiors thereof, in Free Blench Farm [*or in Feu Farm, as the Case may be*], for ever, paying therefor [*here insert the Reddendo*]. And I consent to the Registration hereof for Preservation. In witness whereof [*insert a Testing Clause in usual Form*].

No. 3.

Writ of Resignation by Subject Superior.

I, A. B. [*here insert Name and Designation of Superior*], in respect of the within Clause [*or Procuratory*] of Resignation, dispoise to C. D. the Lands contained in this Disposition [*or other Deed or Conveyance, as the Case may be,*] in his Favour [*or in favour of G. H., or otherwise as the Case may be, specifying shortly the connecting Title*], as Vassal in room and place of B. F. [*here name and design last Vassal in the Lands*] entered by [*here specify the Charter or other Writ by which the last Vassal was entered, and Instrument thereon, if any, and Date of Registration in Register of Sasines if recorded*] but only in so far as consistent with the [*here specify or refer to if previously specified a Charter or other Writ containing the Tenendas and Reddendo, &c.*] and with my own Rights. [*If the Reddendo is to be different from that in the Charter or other Writ specified or referred to; or if the Vassal should desire, specify the Reddendo here.*] In witness whereof [*insert a Testing Clause in usual Form*].

No. 4.

Charter of Resignation by a Subject Superior.

I, L. M., immediate lawful Superior of the Lands and others after mentioned, do hereby give, grant, dispoise, and for ever confirm to A. B. and his Heirs and Assignees whomsoever [*or in case there be a Substitution of Heirs here insert it at full Length or refer to it as in Schedule (C.)*], heritably and irredeemably, all and whole [*here insert or refer as in Schedule (E.) or Schedule (G.), as the Case may be, to the Lands, and if held under Conditions of Entail or Real Burdens, &c., insert them or refer to them as in Schedule (C.) or Schedule (D.), as the Case may be*], which Lands and others formerly belonged to C. D., holden by him of me as his immediate lawful Superior thereof, in Terms of [*here state briefly the Investiture of the last entered Vassal*], and have been resigned by him into my Hands by virtue of a Procuratory [*or Clause*] of Resignation contained in a Disposition [*or other Deed or Conveyance, as the Case may be*] of the said Lands and others granted by him in favour of the said A. B., dated [*here insert the Date*]; to be holden the said Lands and others of me, my Heirs and Successors, in Free Blench Farm [*or in Feu Farm, as the Case may be*] for ever, paying therefor [*here insert the Reddendo*]; and I consent to the Registration hereof for Preservation. In witness whereof [*insert a Testing Clause in usual Form*].

SCHEDULE (W.)

No. 1.

Writ of Clare constat by a Subject Superior.

I, A. B. [*insert Name and Designation of Superior*]: Whereas by Decree of General Service, [*or of Special Service, as the Case may be*] of C. D. [*here insert the Name and Designation of the Heir*], dated [*here insert the Date of the Decree*], and recorded in Chancery [*here insert the Date of Registration*], and other authentic Instruments and Documents [*or by authentic Instruments and Documents*], it clearly appears that B. F. [*here insert the Name and Designation of the Ancestor*] died last vest and seised as of Fee in [*here describe the Lands, or refer to them as in Schedule (E.) or Schedule (G.), as the Case may be*] and that in virtue of [*here describe the Charter or Precept and Sasine, or recorded Charter or Precept, or other Writ or other Deed or Conveyance forming the last Investiture, by Dates, and Dates of Registration in the Register of Sasines, and where the Lands are held under a Deed of Entail here insert the Destination, Conditions, &c.*]

at full length, or refer to them in or as nearly as may be in the Form of Schedule (C.), or if desired refer to them as follows, but always with and under the Conditions, Provisions, and prohibitory, irritant, and resolute Clauses (or Clause authorizing Registration in the Register of Tailzies, as the Case may be) contained in a Deed of Entail granted by G. H. (here name and design the Grantor) dated the _____ Day of _____

in favour of I. K. (here set forth the Destination or such Part thereof as may be deemed necessary, or say and the Heirs therein specified) and which Conditions, Provisions, and prohibitory, irritant, and resolute Clauses (or Clause authorizing Registration in the Register of Tailzies, as the Case may be) are herein referred to as at length set forth in the said Deed of Entail, which is recorded in the Register of Tailzies, on the _____ Day of _____

(or as at length set forth in the above-mentioned recorded Charter, &c. forming the last Investiture, or as at length set forth in any other recorded Deed or Conveyance. And in every Case where there are any Real Burdens, Conditions, Provisions, or Limitations proper to be inserted or referred to insert them here, or refer to them in or as nearly as may be in the Form of Schedule (D.)); and that the said C. D. [or if the Heir has not been previously named, here say,] and that C. D. [here insert his Name and Designation] is eldest Son and nearest lawful Heir of the said E. F. [or whatever Relationship and Character of Heir the Party holds, here state it]. Therefore, I hereby declare the said C. D. to be the Heir entitled to succeed to the said E. F. in the said Lands, to be holden of me and my Successors in manner and for Payment of the Duties specified in the [here specify or refer to if previously specified a Charter or other Writ containing the Tenendas and Reddendo. If the Reddendo is different from that in the Charter or other Writ specified or referred to, or if the Vassal should desire, specify the Reddendo here.] In witness whereof [insert a Testing Clause in usual Form].

No. 2.

Precept of Clare constat by a Subject Superior.

I, A. B. [here insert Name and Designation of Superior]: Whereas, &c. [as in No. 1. of this Schedule] it clearly appears that E. F. [here insert the Name and Designation of the Ancestor] died last vest and seised as of Fee in, &c. [as in No. 1. of this Schedule down to and including the Statement of the Relationship and Character of Heir which the Party holds]; and that the said Lands and others are holden of me and my Successors, as Superiors thereof, in Free Blench Farm [or Feu Farm, as the Case may be], for ever, for Payment of [here specify the Reddendo]. Therefore

I desire any Notary Public to whom these Presents may be presented to give to the said C. D., as Heir aforesaid, *Seisme of the Lands and others above described.* [If there are Conditions of Entail, &c. or other Burdens or Qualifications, here add, but always with and under the Conditions, Provisions, and prohibitory, irritant, and resolute Clauses, (or Clause authorizing Registration in the Register of Tailzies,) (or with and under the Real Burdens, Conditions, Provisions, and Limitations, as the Case may be,) above specified or referred to, as the Case may be.] In witness whereof [insert a Testing Clause in usual Form].

No. 3.

Writ of Clare constat in Burgage Subjects.

We, the Provost and Bailies of the Burgh of [insert Name], being the Magistrates of said Burgh, acting under and in Terms of "The Titles to Land Consolidation (Scotland) Act, 1868": Whereas it clearly appears that C. D. [insert Name and Designation of the Ancestor] died last vest and seised as of Fee in, &c. [as in No. 1. of this Schedule down to and including the Statement of the Relationship and Character of Heir which the Party holds]. Therefore, we hereby declare the said A. B. to have Right to the said Lands as Heir foresaid. In witness whereof [to be signed by the Provost or Acting Chief Magistrate for the Time, and the Town Clerk (or by One of the Town Clerks where there are more than One), and tested in usual Form].

SCHEDULE (X.)

No. 1.

Petition to the Lord Ordinary for Forfeiture of Superiority where Reddendo does not exceed Five Pounds.

Unto the Honourable the Lord Ordinary on the Bills, the Petition of A. B. humbly sheweth, That by Disposition dated the _____ granted by C. D. of _____ the said C. D. disposed to the Petitioner all and whole [here describe the Subjects as in the Disposition] to be held of the Disposer's Superior, with Warrants of Resignation and Infektment:

That the Petitioner's Author, the said C. D., held the said Lands and others, of and under the late E. F. as his immediate lawful Superior, for an annual Reddendo not exceeding in Value or Amount Five Pounds Sterling; that G. H. is the eldest Son [or whatever other Relation he is] and Apparent Heir of the said E. F., and as such has Right to the Superiority of the said Lands and others, but he has not made up a feudal Title

thereto, and is therefore not in a Situation to grant Entry to the Petitioner, although demanded from him; and the Petitioner now applies to your Lordship for Redress in Terms of the Act [*here mention this Act*], and produces the above-mentioned Disposition in his Favour.

May it therefore please your Lordship, in Terms of the said Act, to grant Warrant for serving this Petition on the said G. H. personally, or at his Dwelling Place [*here add a Prayer for Edictal Citation in the usual Form, if the Party is furth of Scotland*], and to ordain him, within Thirty Days after the Date of such Service [*or within Sixty Days if he be furth of Scotland, or in Orkney or Shetland*], to procure himself entered and infeft in the said Lands and others, and to enter the Petitioner in the same, on Payment of the Duties and Casualties exigible on such Entry, or else to show Cause for delaying or refusing to do so, with Certification that if he fail he shall forfeit and amit all Right to the said Superiority; and in the event of the said G. H. failing so to complete his Title and grant Entry to the Petitioner, or to show reasonable Cause why he delays or refuses so to do, to find and declare that the said G. H. has forfeited and amitted all Right to the said Superiority, and that the Petitioner and his Heirs and Successors are entitled to hold the said Lands and others in all Time coming as Vassals immediately of and under the next Over Superior by the Tenure and for the Reddendo by and for which the forfeited Superiority was held. According to Justice, &c.

NOTE.—The above Form is applicable to the Case where the Petitioner requires a Charter or Writ of Resignation. In other Cases the Form must be varied, so far as necessary, to suit the Circumstances.

No. 2.

Interlocutor by Lord Ordinary on above Petition,

The Lord Ordinary grants Warrant to Messengers-at-Arms to serve the said Petition and this Deliverance on the said G. H. as prayed for, and ordains the said G. H. within Thirty Days [*or Sixty Days, as the Case may be*] after the Date of such Service, to procure himself entered and infeft in the Lands and others described in the Petition, and to enter the Petitioner in the same, on Payment of the Duties and Casualties exigible on such Entry, or else to show Cause for delaying or refusing to do so, with Certification that if he fail he shall forfeit and amit all Right to the said Superiority in Terms of the said Act.

No. 3.

Decree by Lord Ordinary on above Petition.

The Lord Ordinary, having resumed Consideration of the said Petition, with the Execution thereon, now expired, in respect the said G. H. has not shown Cause for delaying or refusing to complete his Title to the Superiority, and to grant an Entry to the Petitioner, finds and declares, that the said G. H. has forfeited and amitted all Right to the said Superiority, and that the Petitioner and his Heirs and Successors are entitled to hold the Lands and others described in the Petition in all Time coming as Vassals immediately of and under the next Over Superior by the Tenure and for the Reddendo by and for which the said forfeited Superiority was held; grants Warrant to the Petitioner and his foressaids to apply for and obtain an Entry in the said Lands and others from the said Over Superior, in the Terms foressaid, and decrees and ordains the Decree to be extracted hereon to be recorded in the Register of Sasines.

SCHEDULE (Y.)

No. 1.

Petition to the Lord Ordinary for Forfeiture of Feu Duties under or above Five Pounds.

Unto the Honourable the Lord Ordinary on the Bills, the Petition of A. B. humbly sheweth. That by Disposition dated the _____ day of _____ granted by C. D. of the said C. D. disposed to the Petitioner all and whole [*here describe the Subjects as in the Disposition*] to be held of the Disposer's Superior, with Warrants of Resignation and Sasine;

That the Petitioner's Author, the said C. D., held the said Lands and others of and under the late E. F. as his immediate lawful Superior; that G. H. is the eldest Son [*or whatever other Relation he is*] and Apparent Heir of the said E. F., and as such has Right to the Superiority of the said Lands and others, but he has not made up a feudal Title thereto, and is therefore not in a Situation to grant Entry to the Petitioner, although demanded from him. The Petitioner now applies to your Lordship for Redress in Terms of the Act [*here mention this Act*], and produces the above-mentioned Disposition in his Favour.

May it therefore please your Lordship, in Terms of the said Act, to grant Warrant for serving this Petition on the said G. H. personally, or at his Dwelling Place [*here add a Prayer for Edictal Citation in the usual Form, if the Party is furth of Scotland*], and to ordain him, within Thirty Days after the Date of such Service [*or within Sixty Days, if he be furth of Scotland, or in Orkney or Shetland*], to procure himself entered

and infeit in the said Lands and others, and to enter the Petitioner in the same, on Payment of the Duties and Casualties exigible on such Entry, or else to show Cause for delaying or refusing to do so, with Certification that if he fail he shall forfeit and amit all Right to the Duties and Casualties payable on the Entry of the Petitioner, and that the Petitioner shall be entitled to retain from him and his Successors, as immediate Superiors, the yearly Feu Duties and whole other Prestations, until fully paid and indemnified for all the Expenses of this Petition and Procedure to follow hereon, and for all the Expenses of completing the Petitioner's Title in Terms of the said Act; and thereafter, on resuming Consideration of this Petition, with or without Answers, to find and declare that the said G. H. has forfeited and amit all Right to the Dues and Casualties payable on the Entry of the Petitioner, and that the Petitioner is entitled to retain from him and his Successors, as immediate Superiors, the yearly Feu Duties and whole other Prestations until fully paid and indemnified for all the Expenses of this Petition, and of the Procedure to follow hereon, and for all the Expenses of completing the Petitioner's Title in Terms of the said Act; and also to grant Warrant to the Petitioner to apply for and obtain an Entry in the said Lands and others from the Crown [or Prince of Scotland, or I. K., the mediate Over Superior], as acting in the vice of the said G. H., and to authorize Decree to the above Effect to be extracted ad interim; and thereafter, upon the Completion of the Petitioner's Title by an Entry from the Crown [or Prince of Scotland, or such mediate Over Superior] as aforesaid, to remit the Accounts of the Expenses of this Petition and Procedure hereon, and of the Expenses of completing the Petitioner's Title, to the Auditor to tax the same, and to report, and to modify the Amount of the said Expenses, and to decern for Retention of the Amount thereof as aforesaid, [if the Parties have agreed to or are in Treaty for a Relinquishment, add, or in the event of the said G. H. relinquishing the Superiority, to find, decern, and declare the same to be extinguished in Manner and to the Effect expressed in the Statute,] or to do otherwise in the Premises as to your Lordship shall seem just. According to Justice, &c.

NOTE.—The above Form is applicable to the Case where the Petitioner requires a Writ of Registration. In other Cases the Form must be varied so far as necessary to suit the Circumstances.

No. 2.

Interlocutor by Lord Ordinary in above Petition.

The Lord Ordinary grants Warrant to Messengers-at-Arms to serve the said Petition and this Deliverance on the said G. H., as prayed for, and ordains the said G. H., within Thirty Days [or Sixty Days, as the Case may be] after the Date of such Service, to procure himself entered and infeit in the Lands and others described in the Petition, and to enter the Petitioner in the same, on Payment of the Duties and Casualties exigible on such Entry, or else to show Cause for delaying or refusing to do so, with Certification that if he fail he shall forfeit and amit all Right to the Duties and Casualties payable on the Petitioner's Entry, and that the Petitioner shall be entitled to retain from him and his Successors, as immediate Superiors, the yearly Feu Duties and the whole other Prestations, until fully paid and indemnified for the Expenses of the Petition and Procedure thereon, and for all the Expenses of completing the Petitioner's Title in Terms of the said Act.

No. 3.

Decree by Lord Ordinary in above Petition.

The Lord Ordinary, having resumed Consideration of the said Petition, with the Execution thereon; now expired, in respect the said G. H. has not shown Cause for delaying or refusing to complete his Title to the Superiority and to grant an Entry to the Petitioner, finds and declares, That the said G. H. has forfeited and amit all Right to the Duties and Casualties payable on the Entry of the Petitioner, and that the Petitioner is entitled to retain from him and his Successors, as immediate Superiors, the yearly Feu Duties and whole other Prestations, until fully paid and indemnified for all the Expenses of the said Petition and Procedure thereon, and for all the Expenses of completing the Petitioner's Title; grants Warrant to the Petitioner to apply for and obtain an Entry in the Lands and others described in the Petition from the Crown [or Prince of Scotland, or I. K., the mediate Over Superior], as acting in vice of the said G. H., and decerns and allows this Decree to go out and be extracted ad interim; and, on the Petitioner's Title being completed, appoints Accounts of the Expenses of the Petition and Procedure thereon, and of completing the Title, to be lodged, and remits the same, when lodged, to the Auditor to tax and report.

No. 4.

Finding for Expenses in above Petition.

The Lord Ordinary approves of the Auditor's Report on the Petitioner's Account of Expenses, modifies the same to £ Sterling, and decerns against the said G. H. for Payment thereof to the Petitioner by Retention, as prayed for [or personally against the said G. H., as the Case may be].

SCHEDULE (Z.)

No. 1.

Writ of Confirmation on Decree of Forfeiture in case of Feu Duties above Five Pounds.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. We confirm this Disposition [or other Deed or Conveyance, as the Case may be] in favour of A. B.; to be holden the said Lands and others of the Crown as in room of G. H. [here name and design the Person against whom Decree has been obtained], the eldest Son [or whatever other Relation he may be] of E. F. [here name and design the Person last infeft in the Superiority], who was last infeft in the immediate Superiority of the said Lands, in respect that the said G. H. having failed to complete his Title to the said Superiority, and to grant an Entry to the said A. B., the said A. B., in virtue of an Act [here set forth the Title of this Act], obtained a Decree by the Lord Ordinary on the Bills, dated the _____ day of _____ granting Warrant to the said A. B. to apply for and obtain an Entry in the said Lands and others from the Crown, as acting in vice of the said G. H., and that while and so long as the said G. H. and his Successors, the immediate Superiors thereof, shall remain unentered, and thereafter until a new Entry shall become requisite, and that by the same Tenure by which the same were or might have been holden of the said G. H.; and for Payment to him and his Successors, who are properly immediate lawful Superiors of the said Lands and others, of the annual Duties and Casualties heretofore payable, but only upon the Completion of their Title in the Superiority. Given at Edinburgh, the _____ Day of _____ in the _____ Year

[Signed by the Director of Chancery,
or his Depute or Substitute.]

No. 2.

Writ of Resignation on Decree of Forfeiture in case of Feu Duties above Five Pounds.

Victoria, &c. We do hereby dispoine to A. B. [here name the Dispoinee] the Lands contained in this Disposition [or other Deed or Conveyance, as the Case may be], in his Favour, which Lands formerly belonged to C. D. [here name and design the Disposer], holden by him immediately of E. F. [here name and design the Person who died last infeft in the Superiority], in Terms of [here state the Investiture of the Disposer], and now of the Crown as in vice of the immediate Superior thereof, in respect that the said E. F. being dead, and G. H., his eldest Son [or whatever other Relation he may be] and Heir Apparent, who is in Right of the Superiority, having failed to complete his Title thereto, and to grant an Entry to the said A. B., the said A. B., in virtue of an Act [here set forth the Title of this Act], obtained a Decree by the Lord Ordinary on the Bills, dated the _____ day of _____ granting Warrant to the said A. B. to apply for and obtain an Entry in the said Lands and others from the Crown as acting in vice of the said G. H., and which Lands and others have been resigned into Our Hands as in vice of the said G. H., by virtue of the Clause [or Procuratory] of Resignation contained in this Disposition [or other Deed or Conveyance, as the Case may be]; to be holden the said Lands and others of the Crown as in room of the said G. H., who is properly the immediate lawful Superior thereof, while and so long as he and his Successors, the immediate Superiors thereof, shall remain unentered, and thereafter until a new Entry shall become requisite, and that by the same Tenure by which the same were or might have been holden of the said G. H.; and for Payment to him and his Successors, who are properly the immediate lawful Superiors of the said Lands and others, of the annual Duties and Casualties heretofore payable, but only upon the Completion of their Title in the Superiority. Given at Edinburgh the _____ Day of _____ in the _____ Year

[Signed by the Director of Chancery,
or his Depute or Substitute.]

NOTE.—The Writ in favour of an Adjudger will be in similar Terms, but under the proper Modification; and a Writ of Clare constat from Chancery in favour of the Vassal's Heir, who has obtained Decree against the unentered Heir Apparent of his Superior, will be in similar Terms as applied to the Style of such a Writ; and if the Writ is by the Prince or the mediate Over Superior, the necessary Alterations will be made.

SCHEDULE (AA).

No. 1.

Writ of Confirmation proceeding on a Decree of Forfeiture or Relinquishment.

I, L. M., immediate lawful Superior of the Lands and others contained in the within Disposition [or other Deed or Conveyance, as the Case may be], in virtue of a Decree of Forfeiture [or Relinquishment, as the Case may be] against G. H., Heir Apparent of my immediate Vassal last infest in the said Lands and others, pronounced by Lord Ordinary on the Bills, upon the

Day of _____ in a Petition at the Instance of A. B. [here design the Donee], do hereby confirm this Disposition [or other Deed or Conveyance, as the Case may be], in favour of the said A. B.; to be holden, the said Lands and others, by the said A. B. and his forebears, in all Time hereafter, immediately of me and my Successors, as Superiors thereof, in Free Blench Farm, [or in Feu Farm, as the Case may be, according to the Tenure by which the forfeited or relinquished Superiority was held,] for ever, paying therefor [here specify the Reddendo for which the forfeited or relinquished Superiority was held]. In witness whereof [insert a Testing Clause in the usual Form].

No. 2.

Writ of Resignation proceeding on a Decree of Forfeiture or Relinquishment.

I, L. M., immediate lawful Superior of the Lands and others contained in the within Disposition [or other Deed or Conveyance, as the Case may be], in virtue of a Decree of Forfeiture [or Relinquishment, as the Case may be] against G. H., Heir Apparent of my immediate Vassal last infest in the said Lands and others, pronounced by Lord

Ordinary on the Bills, upon the Day of _____ in a Petition at the Instance of A. B. [here design the Donee], do hereby dispoise to the said A. B. the Lands contained in this Disposition [or other Deed or Conveyance, as the Case may be,] in his Favour, [or in favour of C. D., or otherwise, as the Case may be, specifying shortly the connecting Title,] which Lands formerly belonged to [here insert the Designation of the Disposer], holden by him under my immediate Vassal, and now of myself, in Terms of [here state briefly the Investiture of the last entered Vassal], and have been resigned by the said A. B. in my Hands, as now coming in place of his immediate Superior, by virtue of the Clause [or Procuratory] of Resignation contained in the within Disposition [or other Deed or Conveyance, as the Case may be]; to be holden the said Lands immediately of me and my Suc-

cessors, as Superiors thereof, in Free Blench Farm, [or in Feu Farm, as the Case may be, according to the Tenure by which the forfeited or relinquished Superiority was held,] for ever, paying therefor [here specify the Reddendo for which the forfeited or relinquished Superiority was held]. In witness whereof [insert a Testing Clause in the usual Form].

No. 3.

Writ of Clave constat proceeding on a Decree of Forfeiture or Relinquishment.

I, A. B., immediate lawful Superior of the Lands and others after mentioned, in virtue of a Decree of Forfeiture [or Relinquishment, as the Case may be] against G. H., Heir Apparent of my immediate Vassal last infest in the said Lands and others, pronounced by Lord Ordinary on the Bills, dated the

Day of _____ in a Petition at the Instance of C. D. [here name and design the Heir in whose Favour the Writ is to be granted]: Whereas by authentic Instruments and Documents it clearly appears that E. F., [here name and design the Ancestor] died last vest and seised as of Fee in, &c. [as in Schedule (W). No. 1. down to and including the Statement of the Relationship and Character of Heir which the Party holds]; and that the said Lands and others are, in virtue of the said Decree, now holden of me and my Successors, as Superiors thereof, in Free Blench Farm, [or Feu Farm, as the Case may be, according to the Tenure by which the forfeited or relinquished Superiority was held,] for ever, for Payment of [here specify the Reddendo for which the forfeited or relinquished Superiority was held]. Therefore, I hereby declare the said C. D. to be the Heir entitled to succeed to the said E. F. in the said Lands to be holden of me and my forebears for Payment of the said Duties. In witness whereof [insert a Testing Clause in the usual Form].

NOTE.—Where the next Superior is the Crown, Writs by the Crown will be granted in similar Terms to the above, but adapted to the Forms of Chancery.

SCHEDULE (BB.)

No. 1.

Form of Minute of Relinquishment of Superiority by Apparent Heir.

Minute of Relinquishment by _____ as Heir Apparent of _____ in the Lands after-mentioned in the Petition at the Instance of [here Name and describe the Petitioner].

I, A. B., eldest lawful Son [or whatever Relation he may be] and nearest lawful Heir Ap-

parent of C. D., the Person last infeft in the Superiority of the Lands of [*here describe the Lands fully*], which Right of Superiority is holden immediately of and under the Crown [*or other Over Superior, as the Case may be*], do absolutely and gratuitously [*or if any Price paid, say, in consideration of £ Sterling to be paid to me,*] relinquish and renounce the Superiority of the said Lands to which I hold Right as Heir Apparent aforesaid in favour of the Petitioner and his Successors in the said Lands. In witness whereof, &c. [*To be signed by the Party, or by his Mandatory or Agent duly authorized in Writing, and duly tested.*]

No. 2.

Minute of Acceptance of above Relinquishment.

I accept Relinquishment in Terms of this Minute. [*To be signed by the Petitioner, or his Counsel or Agent.*]

No. 3.

Decree of Lord Ordinary following on the above Minutes.

The Lord Ordinary interpones his Authority to the Minute of Relinquishment lodged by the Respondent, and decerns and declares the Right of Superiority thereby relinquished to be extinguished to the Effect of giving Right to the Petitioner and his Successors to hold the Lands and others described in the Petition, immediately of and under the Party who is Superior of the Feu now given up and extinguished, and by the Tenure and for the Reddendo by and for which the relinquished Feu was held, and decerns and appoints the Decree to be extracted hereon to be recorded in the Register of Sasines.

SCHEDULE (CC.)

No. 1.

Deed of Relinquishment of Superiority.

I, A. B., immediate lawful Superior of all and whole [*here describe the Lands*], do hereby absolutely and gratuitously, [*or in consideration of the Sum of Pounds paid to me, or, if the Superiority is entailed, consigned in the (specify Bank) subject to the Orders of the Court of Session,*] relinquish and renounce my Right of Superiority of the said Lands in favour of C. D., my immediate Vassal, and his Successors therein, and declare that the said Lands shall no longer be held of me as Superior, but shall be held of my immediate lawful Superior in all Time to come. In witness whereof [*insert Testing Clause in the usual Form*].

No. 2.

Acceptance by Vassal written on Deed of Relinquishment.

I, C. D., the immediate Vassal in the Lands described in this Deed, accept the Relinquishment of the Superiority of the said Lands. In witness whereof [*insert a Testing Clause in the usual Form*].

No. 3.

Crown Writ of Investiture written on Deed of Relinquishment.

Victoria, &c. We, lawful Superior of the Lands contained in this Deed, accept and receive C. D., and his Heirs and Successors whomsoever [*or otherwise, according to the Destination contained in the Title to the Lands*], in place of E. F., and his Heirs and Successors, in virtue of the above Deed of Relinquishment, and Acceptance thereof; to be holden the said Lands by the said C. D. and his foresaids of us, &c. [*specify the Tenendas and Reddendo contained in the Titles of the relinquished Superiority; also insert or refer to the Conditions and Limitations, if any, under which the Lands are held by the Vassal as in No. 1. Schedule (U).*]. Given at Edinburgh, the Day of in the Year

[*Signed by the Director of Chancery, or his Depute or Substitute.*]

NOTE.—If the Writ is by the Prince or the mediate Over Superior the necessary Alteration will be made.

SCHEDULE (DD.)

Form of Minute excluding Executors in an Heritable Security.

I, A. B., [*here name and design the Creditor*] hereby exclude Executors from the Bond and Disposition in Security [*or other Security, here specify it by Date, &c., and if recorded in Register of Sasines specify the Date of such recording, or if followed by an Instrument so recorded specify the Date of recording such Instrument, and if the Security has not been completed by Infestment, here say, the within Bond and Disposition in Security (or Assignment, or other Deed or Conveyance thereof, as the Case may be)*]. In witness whereof, &c. [*insert Testing Clause in usual Form*].

SCHEDULE (EE.)

Form of a Minute of Removal of the Exclusion of Executors in an Heritable Security.

I, A. B., [here name and design the Creditor,] hereby remove the Exclusion of Executors contained in [or endorsed on] the Bond and Disposition in Security [or Assignment, or otherwise, as the Case may be, specifying the same as in Schedule (DD.) or contained in the Minute of Exclusion of Executors (specify Date of Minute and of recording the same in the Register of Sasines)]. In witness whereof, &c. [insert a Testing Clause in usual Form.]

SCHEDULE (FF.)

No. 1.

Form of a Bond and Disposition in Security.

I, A. B., [here name and design the Grantor,] grant me to have instantly borrowed and received from C. D. [here name and design the Creditor] the Sum of [insert the Sum] Sterling; which Sum I bind myself, and my Heirs, Executors, and Representatives whomsoever, without the Necessity of discussing them in their Order, to repay to the said C. D., his Executors [or his Heirs, excluding Executors] or Assignees whomsoever, at the Term of [here insert the Date and Place of Payment], with a Fifth Part more of liquidate Penalty in case of Failure, and the Interest of said Principal Sum at the Rate of _____ per Centum per Annum from the Date hereof to the said Term of Payment, and half-yearly, termly, and proportionally thereafter during the Not-payment of the same, and that at Two Terms in the Year, Whitsunday and Martinmas, by equal Portions, beginning the First Term's Payment of the said Interest at the Term of _____ next, for the Interest due preceding that Date, and the next Term's Payment thereof at _____ following, and so forth half-yearly, termly, and proportionally thereafter during the Not-payment of the Principal Sum, with a Fifth Part more of the Interest due at each Term of liquidate Penalty in case of Failure in the punctual Payment thereof. And in Security of the personal Obligation before written I dispoise to and in favour of the said C. D. and his forebears, heritably, but redeemably as after mentioned, yet irredeemably in the event of a Sale by virtue hereof, all and whole [here describe or refer as in Schedule (E.) or Schedule (G.) to the Lands] (a), and that in Real Security to the said C. D. and his forebears of the whole Sums of Money above written, Principal, Interest, and Penalties; and I assign the Rents, and I assign the Writs, and I grant Warrandice, and I reserve Power of Redemption,

and I oblige myself for the Expenses of assigning and discharging this Security; and on default in Payment I grant Power of Sale; and I consent to Registration for Preservation and Execution. In witness whereof, &c. [insert a Testing Clause in usual Form].

(a) If the Lands are held under any Real Burdens, Conditions, Provisions, or Limitations, insert them here or refer to them in or as nearly as the Circumstances may require in the Form of Schedule (D).

No. 2.

Form of Schedule of Intimation, Requisition, and Protest.

I, A. B. [design him], Procurator for C. D. [design Creditor in right of the Security], in whose Favour the Bond and Disposition in Security after mentioned was granted, [or, if he is not the original Creditor, now in right of the Bond and Disposition in Security after mentioned,] do hereby give Notice to you E. F. [design Debtor under the Security] that Payment is now required of the Sum of £ _____ being the Principal Sum due under the Bond and Disposition in Security, dated _____ and recorded _____, granted by you E. F. [or by G. H.] in favour of the said C. D. [or original Creditor], [if C. D. is not the original Creditor, add, to which C. D. has now Right by various Transmissions, but these Transmissions need not be particularly specified], and of the Sum of £ _____ being the Interest due at present on the said Principal Sum, with such further Sum of Interest as shall accrue on the said Principal Sum till paid. And I further give you Notice, that if at the Expiry of the Period of Three Months from the Date hereof the Sums, Principal and Interest, and liquidate Penalty incurred and to be incurred, of which Payment is now required, shall not be paid in Terms of the said Bond and Disposition in Security, then the said C. D., or the Person or Persons who may then be in right of the said Bond and Disposition in Security, may proceed to sell the Lands and others [or Subjects] thereby conveyed in the Manner provided by the "Titles to Land Consolidation (Scotland) Act, 1868," and with all Powers and Privileges conferred on or competent to Creditors under Bonds and Dispositions in Security by that Act. This I do at _____ on the _____ Day of _____ before and in Presence of L. M., Notary Public, and N. O. and P. Q. [design them], Witnesses to the Premises, called and required, and hereto with me subscribing.

(Signed) A. B.

N. O., Witness.

P. Q., Witness.

No. 3.

SCHEDULE (HH.)

Certificate by Notary on Copy of foregoing Schedule.

I certify that what is above written is a true Copy.

(Signed) L.M., Notary Public.

SCHEDULE (GG.)

Form of Assignment of a Bond and Disposition in Security constituted by Infestment.

I, A. B., [name and design Cedent,] in consideration of the Sum of [insert Sum] now paid to me by C. D. [name and design Assignee], do hereby assign and dispone, to and in favour of C. D. and his Executors [or Heirs excluding Executors] and Assignees whomsoever, a Bond and Disposition in Security, [or Heritable Bond, or other Security, as the Case may be,] dated the [insert the Date, and when recorded, add and recorded as after mentioned], for the Sum of [insert Sum] granted by E. F. [name and design Debtor] in my Favour, [or in favour of G. H., as the Case may be,] with Interest from the [insert Date], and also all and whole [describe or refer as in Schedule (E.) or Schedule (G.), as the Case may be, to the Lands] (a), all as specified and described in the said Bond and Disposition in Security, and Instrument of Sasine thereon, [if the Bond is recorded omit the Words "and Instrument of Sasine thereon,"] recorded in the [here specify the Register of Sasines in which the Sasine or Bond is registered] on the [specify Date of Registration] (b). In witness whereof, &c. [insert a Testing Clause in usual Form].

(Signed) A. B.

G. H., Witness.

I. K., Witness.

NOTE.—(a) Where the Assignment is made under any Real Burdens, Conditions, Provisions, or Limitations, here insert or refer to them in or as nearly as the Circumstances of the Case may require in the Form of Schedule (D).

(b) If the Assignment is granted, not by the original Creditor in the Security, but by a Person to whom the Security has already been assigned, or in whom it has become vested by Succession or Diligence, the Conveyance will shortly narrate here the Title or Series of Titles by which the Grantor of the Conveyance has Right to it.

Form of Instrument in favour of an Assignee to an Heritable Security following on a Deed granted for further Purposes or Objects.

At there was by [or on behalf of] A. B. of Z., presented to me, Notary Public subscribing, a Bond and Disposition in Security [or other Security, or Extract, as the Case may be], dated [insert Date, and where recorded in the Register of Sasines insert Date of recording, and specify Register of Sasines, and where Sasine has been expedite thereon, add and Sasine thereon, recorded in the (specify Register of Sasines) on the (insert Date)], granted by C. D. [insert Designation] in favour of E. F. [insert Designation], by which Bond and Disposition in Security [or as the Case may be] the said C. D. bound and obliged himself [insert the personal Obligation so far as necessary, and Disposition of the Lands in Security, with the Description of them, and also all Real Burdens, &c., if any, all as set forth at full Length or by reference in the Bond and Disposition or other Security]. As also there was presented to me an Assignment [or other Conveyance or Extract], dated [insert Date], granted by the said E. F., by which the said E. F. assigned the said Bond and Disposition in Security [or other Security, as the Case may be], and Sums of Money and Lands therein contained, to the said A. B., and his Heirs, Executors, and Representatives whomsoever [or otherwise, as the Case may be, and if the Deed be granted in trust, or for specific Purposes, add, but in trust always, or for the Uses and Purposes specified in said Assignment, or otherwise, as the Case may be. If the Person in whose Favour the Instrument is taken is not the Disponent of the original Creditor, but of one who has acquired Right to the Security, here specify shortly the Title or Series of Titles by which the Deceased acquired such Right]. Whereupon, &c., as in Schedule (J.) to the End.

SCHEDULE (II.)

Form of Writ of Acknowledgment by a Person infest in Lands, in favour of the Executors or Executor nominate, or of the Disponents or Disponent, Legatees or Legatee, or Heir of the Creditor in an Heritable Security affecting such Lands.

I, A. B., [insert Name and Designation of Grantor,] hereby acknowledge C. D. [insert Name and Designation of Executors or Executor, or of Disponents or Disponent, Legatees or Legatee, or Heir, and where the Executors or Disponents, being more than One, are appointed to hold the Estate of the Deceased in trust for the Purposes of the

testamentary or other Deed or Writing, and not solely for their own beneficial Interest, here add, desired by the Party, and not expressly precluded by the Terms of said Deed or Writing, and the Survivors or Survivor of them] as Executor or Executors] nominated by E. F. [insert Name of Grantor of Testamentary Deed or other Writing] his Will [or Trust Disposition and Settlement, or other Testamentary Deed or Writing], dated [insert Date], [or as Donee of the Moveable Estate of the said deceased E. F., or as Legatee of the Bond and Disposition in Security after mentioned and Sums thereby secured, or otherwise in Terms of the Deed or Writing, or as the Case may be, specifying the Deed as above, or as Heir of the said deceased E. F., specifying the Relationship of the Heir where the Writ is granted to an Heir], to be in right of a Bond and Disposition in Security [or Heritable Bond, or as the Case may be] dated [insert Date, and where recorded in Register of Sasines, add, and recorded as after mentioned], for the Sum of [insert Sum] granted by [insert Name and Designation of Debtor] in favour of [insert Name and Designation of the original Creditor, and in Cases where Executors are excluded insert the Destination at length or refer to the recorded Minute of Exclusion], and Sasine thereon [or where the Bond and Disposition itself is recorded in the Register of Sasines, omit the Words "Sasine thereon"] recorded in the [specify the Register of Sasines in which the Sasine or Bond is recorded] on the [specify Date of Registration], over all and whole [describe or refer as in Schedule (E.) or Schedule (G.) to the Lands], [if the Will or Settlement, &c. be granted in trust or for specific Purposes, add, but in trust always for the Uses and Purposes specified in said Deed or Writing, or as the Case may be. If the Person or Persons in whose Favour the Writ is granted is not the Executor, or are not the Executors, &c. of the original Creditor, here specify shortly the Title or Series of Titles by which the Deceased acquired Right]. In witness whereof [insert a Testing Clause in usual Form].
(Signed) A. B.

G. H., Witness.

I. K., Witness.

SCHEDULE (JJ.)

Form of Instrument in favour of an Executor or Heir of a Creditor who died intestate in right of an Heritable Security.

At there was by [or on behalf of] A. B. of Z., &c., [as in Schedule (HH.) down to and including the Description of the Lands and the Reference, if any, to Real Burdens]. As also there was presented to me Testament Dative

of the said deceased E. F., expedite before the Commissary of the County of on the [insert Date of Confirmation], whereby the said A. B. was ordained and confirmed Executor Dative of the said deceased E. F. (if there are more than One Executors Dative appointed the necessary Alterations to be made) [or a Decree of General (or Special) Service in favour of the said A. B. as (specify Character in which Heir was served) to the said E. F., dated (insert Date of Service) expedite before the Sheriff of and recorded in Chancery the Day of], whereby the said A. B. acquired Right to the said Bond and Disposition in Security [or as the Case may be, and if the Person in whose Favour the Instrument is taken is not the Executor or Heir of the original Creditor, but of one who has acquired Right to the Security, here specify shortly the Title or Series of Titles by which the Deceased acquired such Security]. Whereupon, &c., as in Schedule (J.) to the End].

SCHEDULE (KK.)

Form of Instrument in favour of the Executors or Executor nominate, or of the Donee or Legatee of a Creditor in right of an Heritable Security.

At there was by [or on behalf of] A. B. of, &c., [as in Schedule (HH.) down to and including Description of Lands and the Reference to Real Burdens]. As also there was presented to me a Testament [or General Disposition, or Trust Disposition and Settlement, or other Testamentary Deed or Writing, or Extract, or otherwise, as the Case may be], dated [insert Date], granted by the said deceased E. F., [if necessary, say, who died after (or before, as the Case may be) the Commencement of the Titles to Land Consolidation Act, 1868], by which the said E. F. nominated the said A. B. to be his Executor, [or assigned and disposed his whole Heritable and Moveable Estate, or otherwise, as the Case may be, or gave and bequeathed his whole Moveable Estate and Effects to the said deceased A. B.; or gave and bequeathed the said Bond and Disposition in Security, and Sums therein contained, to the said A. B.; and if the Deed be granted in trust, or for specific Purposes, add but in trust always, or for the Uses and Purposes specified in said Deed, or otherwise, as the Case may be, whereby the said A. B. is now in right of said Bond and Disposition in Security (or as the Case may be). If the Person in whose Favour the Instrument is taken is not the Executor, Donee, Assignee, or Legatee of the original Creditor, but of one who has acquired Right to the Security, here specify shortly the Title or Series of Titles

by which the Deceased acquired such Security]. Whereupon, &c., [as in Schedule (J.) to the End.]

SCHEDULE (LL.)

Form of Instrument in favour of a Trustee on a sequestrated Estate, or of Liquidators of a Joint Stock Company in right of an Heritable Security.

At _____ there was by [or on behalf of] A. B. (design him as in Schedule (O.)) presented to me, &c., [as in Schedule (HH.) down to and including Description of Lands and Reference to Real Burdens, if any]. As also there was presented to me Extract Act and Warrant of Confirmation in favour of the said A. B. [or here specify the Appointment of the Liquidator or Liquidators], dated [insert Date], whereby the said A. B., as Trustee [or Liquidator, or as the Case may be], has Right to the said Bond and Disposition in Security (or as the Case may be). If the Bankrupt or Company or Partner is not the original Creditor, here specify shortly the Title or Series of Titles by which the Bankrupt or Company or Partner acquired Right to the Debt]. Whereupon, &c. [as in Schedule (J.) to the End].

SCHEDULE (MM.)

Form of Instrument on an unrecorded Bond and Disposition in Security, or unrecorded Assignment in favour of the Executor or Donee, or Assignee or Legatee, or Heir of the Creditor.

At _____ there was by [or on behalf of] A. B. [insert Designation], presented to me, Notary Public subscribing, a Bond and Disposition in Security [or other Security, or an Assignment of the Bond and Disposition in Security after mentioned, or Extracts, as the Case may be], granted by C. D. [insert Designation] and dated [insert Date], by which Bond and Disposition in Security the said C. D. bound and obliged himself, [insert the personal Obligation and Disposition of the Lands in Security, with the Description of them, and also all Real Burdens, &c., if any, all as set forth at full length or by reference in the Bond and Disposition in Security, or other Security, or, in the Case of an Assignment, say, by which Assignment the said C. D. assigned to the said A. B. a Bond and Disposition in Security, or other Security, granted by (insert Name and Designation of Grantor of Bond) in favour of the said C. D., dated (insert Date), and recorded (insert Date of recording and specify Register, or in the Case of the Security having

been followed by Sasine, say,) and Sasine thereon, recorded (insert Date of recording and specify Register), for the Sum of (insert Sum), and also all and whole (insert the Description of the Lands and Real Burdens, &c., or Reference thereto, all as contained in the Assignment)]; As also there was presented to me [here specify the Title or Series of Titles by which the Party acquired Right to the Bond and Disposition in Security, or to the Assignment, in or as nearly as the Circumstances of the Case will admit in the Form of Schedule (KK.), or in the Case of a Bond and Disposition in Security or other Security to Heirs, excluding Executors, &c., or the Creditor in which died before the Commencement of this Act, say, as also there was presented to me Extract Decree of the General (or Special) Service of the said A. B. as Heir (specify Character in which served) of the said E. F. (here specify Date, and Date of recording in Chancery): Whereupon, &c. [as in Schedule (J.) to the End.]

SCHEDULE (NN.)

Form of Discharge of Bond and Disposition in Security, &c.

I, A. B., in consideration of the Sum of [specify Sum] now paid to me by C. D., do hereby discharge a Bond and Disposition in Security [or other Security], dated [insert Date], and recorded [insert Date of recording if recorded, and Register of Sasines], for the Sum of [insert Sum], granted by [insert Name and Designation of Debtor], in favour of [insert Name and Designation of Grantee], and all Interest due thereon; and I declare to be redeemed and disburdened thereof, and of the Infetment following thereon, all and whole [describe the Lands], all as specified and described in the said Bond and Disposition in Security, dated and recorded as aforesaid, [and if the same has been followed by Sasine, here omit the Words "and recorded," and add] and Instrument of Sasine thereon, as the same is recorded in the [specify the Register of Sasines in which the Sasine is recorded], on the [specify Date of Registration].* In witness whereof, &c. [here insert a Testing Clause in usual Form].

(Signed) A. B.

E. F., Witness.

G. H., Witness.

* If the Grantor of the Discharge is not the original Creditor, but one who has acquired Right to the Security, specify shortly here the Title or Series of Titles by which the Grantor acquired such Right.

SCHEDULE (OO.)

Form of Deed of Restriction of an Heritable Security.

I, A. B., in consideration of the Sum of [or if no Price is paid for the Restriction, considering that C. D. (the Debtor) has requested me to release the Lands herein-after described (or referred to) from the Security herein-after specified, but without any Consideration having been paid to me therefor], do hereby declare to be redeemed and disburdened of the Security constituted by a Bond and Disposition in Security [or other Security], dated [insert Date], and recorded [insert Date of recording if recorded, and Register of Sasines], for the Sum of [insert Sum] granted by [insert Name and Designation of Debtor], in favour of [specify Name and Designation of Grantee], [and if the Bond has been followed by Sasine add] and Instrument of Sasine thereon, dated (insert Date, if any) and recorded [specify the Register and Date of Registration], all and whole [here describe the Lands to be disburdened], and I restrict the Security thereby constituted to the Lands and others contained in the said Bond and Disposition in Security other than those hereby disburdened. [If the Grantor of the Deed is not the original Creditor, but one who has acquired Right to the Security, here specify shortly the Title or Series of Titles by which the Grantor acquired such Right.] In witness thereof, &c. [here insert a Testing Clause in usual Form.]
(Signed) A. B.

E. F., Witness.
G. H., Witness.

SCHEDULE (PP.)

Notice of Inhibition.

Notice of Letters of Inhibition [or of Summons containing Inhibition, as the Case may be.]

—A. B. [insert Designation of the Inhibitor] against C. D. [insert Designation of the Inhibited].—Signed [insert Date of signing].
E. F., W. S. [or S. S. C.] Agent.

SCHEDULE (QQ.)

Form of Letters of Inhibition.

Victoria, &c. To Messengers-at-Arms and others Our Sheriffs, greeting: Whereas it is humbly shown to Us by Our lovite A. B. [insert Designation], Complainer, against C. D. [insert Designation], that [set forth as concisely as possible the Document on which the Inhibitor proceeds]: Our Will is herefore, and We charge you, that ye lawfully inhibit the said C. D., personally or at his Dwelling Place if within Scotland, and if furth thereof at the Office of the Keeper of the Record of Edictal Citations at Edinburgh, from selling, disposing, conveying, burdening, or otherwise affecting his Lands or Heritages to the Prejudice of the Complainer; and that ye cause register these Our Letters and Execution hereof in the General Register of Inhibitions at Edinburgh for Publication to Our Lieges. Given under Our Signet at Edinburgh this _____ Day of _____ in the _____ Year

SCHEDULE (RR.)

Notice of Summons of Reduction, Adjudication, &c.

Notice of Summons of Reduction [or of Adjudication, or of Constitution and Adjudication, as the Case may be].—A. B. [insert Designation of Pursuer] against C. D. [insert Designation of Defender] Signed [insert Date of signing].
E. F., W. S. [or S. S. C.] Agent.

CAP. CII.

General Police and Improvement (Scotland) Act, 1862, Amendment Act.

ABSTRACT OF THE ENACTMENTS.

- 1. Short Title.
- 2. Recited Acts and this Act to be as One.
- 3. Meaning of "Householder" in recited Acts.
- 4. Amendment of Sect. 27 and 12. of recited Acts.
- 5. Conditions of voting.
- 6. Provision as to dividing Burghs into Wards.
- 7. Police Commissioners of Galashiels to remain in Office till Election of Town Council.
- 8. Certain Proceedings under first-recited Act to be valid

An Act to alter the Qualifications of the Electors in Places in Scotland under the "General Police and Improvement (Scotland) Act, 1862," or under the Act Thirteen and Fourteen Victoria, Chapter Thirty-three, and to amend the said Acts in certain other respects.
(31st July 1868.)

WHEREAS it is expedient to alter the Qualifications of the Electors in Scotland under the "General Police and Improvement (Scotland) Act, 1862," or under the Act Thirteen and Fourteen Victoria, Chapter Thirty-three, and to amend the said Acts in certain other respects:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as the "General Police and Improvement (Scotland) Act, 1862, Amendment Act."

2. The recited Acts and this Act shall be read and construed together.

3. The Word "Householder" in the recited Acts shall no longer have, for the Purposes of those Acts, the Meaning assigned to it in the Third Clause of the first-recited Act and the Second Section of the second-recited Act, but shall for the Purposes foreshaid mean "a Male Occupier of Lands or Premises of the yearly Value of Four Pounds and upwards as appearing on the Valuation Roll."

4. The Twenty-seventh Clause of the first-recited Act and the Twelfth Section of the second-recited Act shall be read and construed as if the following Provisions were inserted therein: "Provided farther, that not more than Six Partners of any Company or Copartnership shall be entitled to vote in respect of the Lands or Premises occupied by such Company or Copartnership."

5. No "Householder" shall be entitled to have or give more than One Vote at any Meeting or Election under the said recited Acts: Provided always, that no Householder shall be entitled to vote at any such Meeting or Election who shall have been exempted from Payment of the whole or any Part of his Rates or Assessment under the recited Acts on the Ground of Poverty or Inability to pay or who shall not have paid all Rates or Assessments due and payable by him under the recited Acts at the Time of so voting; and

any Vote given contrary to the Provisions of this Section shall be null and void.

6. The Commissioners of any Burgh having a Population exceeding Ten thousand according to the Census last taken at the Time, in which the Provisions of either of the recited Acts have already been adopted in whole or in part, not being a Royal or Parliamentary Burgh, and not being already divided into Wards for the Purposes of such Act, may from Time to Time apply to the Sheriff to divide such Burgh into Wards, for the Purposes of such Act, so far as adopted as aforesaid, and of this Act; and the Sheriff may, upon considering the Matter, divide such Burgh into such Number of Wards as he may find proper, and define the Boundaries thereof, and fix the Number of Commissioners to be elected for each Ward; and thereafter, and except as respects the Number of Commissioners, all the Provisions with respect to the Election and Rotation of Commissioners for Burghs originally divided into Wards, which are contained in the Act whose Provisions have been adopted as aforesaid in such Burgh, shall apply to the Election and Rotation of Commissioners for such Burgh when divided into Wards by the Sheriff under the Powers hereby conferred on him; provided always, that the Commissioners in Office at the Time of such Division shall remain in Office until the Expiration of the Year of Office then current, and no longer.

7. The Commissioners and Magistrates of Police of Galashiels elected under the first-recited Act, and holding Office at the passing of this Act, shall continue to hold and exercise their respective Offices, and to perform the whole Duties and Functions thereof, until the First Tuesday of December next One thousand eight hundred and sixty-eight, when the whole Duties and Functions foreshaid shall vest in and devolve upon the Magistrates and Town Council of said Burgh of Galashiels, and the said Magistrates and Council as Commissioners, and the said Magistrates as Magistrates of Police, shall thenceforth have all the Powers, Privileges, and Jurisdiction of Commissioners and Magistrates of Police respectively under the said first-recited Act.

8. Whereas Doubts have been entertained as to the Validity of the Proceedings at certain Meetings held with the view of adopting the Provisions, in whole or in part, of the first-recited Act, or of electing Commissioners of Police under the said Act: Be it enacted, That, except in so far as the Validity of any such Proceedings has at the passing hereof been submitted to the Consideration of any Court of Law, all Proceedings at any Meetings which have been held with the view of adopting the Provisions, in whole or in part, of the first-recited Act, or of electing Com-

missioners of Police under the said Act, and all Proceedings which have followed thereon, shall be held to be valid and effectual, and not subject

to Challenge on the Ground of Want of Compliance with the Provisions of the said first-recited Act.

CAP. CIII.

Burials (Ireland).

ABSTRACT OF THE ENACTMENTS.

1. *Where Burials of Persons not belonging to United Church of England and Ireland take place in Burial Grounds of such Church, Priest, &c. of other Denomination may perform Service.*
2. *Prohibition of Interference with Burial.*
3. *Notice to be given of the Time at which it is proposed that the Burial shall take place.*
4. *Lord Lieutenant in Council to have Power to exempt certain Churchyards.*
5. *Extent of Act.*

An Act to amend the Law which regulates the Burials of Persons in Ireland not belonging to the Established Church. (31st July 1868.)

WHEREAS it is expedient to amend the Law of Burial in Ireland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. That whenever after the passing of this Act any Person who at the Time of his or her Death shall not have been a Member of and in communion with the United Church of England and Ireland shall be buried, as of Right, within any Churchyard or Graveyard, the Soil or Freehold whereof shall be vested in any Rector, Vicar, or other Incumbent, it shall be lawful for the Priest or Minister of the Religious Denomination to which such Person shall have belonged at the Time of his or her Death, and he is hereby empowered, to attend such Burial, and to read such Prayers or perform such Burial Service at the Grave in such Churchyard or Graveyard as is usual and customary at Burials of Persons belonging to such Religious Denomination; and any Person wilfully obstructing such Prayers or Burial Service shall be deemed guilty of a Misdemeanor: Provided always, that such Prayers shall not be read nor such Burial Service performed either wholly or in part during the Time of the Celebration of Divine Service or any Rite or Ceremony of the said United Church, or during the catechising or other Instruction of Children or young Persons in the Church or

Chapel to which such Churchyard or Graveyard belongs, nor within Half an Hour before the Commencement or after the Conclusion of any such Celebration, catechising, or Instruction, nor during the Time at which the Incumbent or Minister of such Church or Chapel, or any other Minister or other Ecclesiastical Person, shall be performing the Burial Service in such Churchyard or Graveyard, nor during the Performance of any other Burial Service therein: Provided always, that nothing in this Act shall confer any Right of Burial where no such Right already exists, or shall affect the Rights or Privileges of any Ordinary, Rector, Vicar, or other Incumbent.

2. Nothing herein contained shall authorize or justify any Interference with or Interruption of the Celebration of Divine Service in the Church or Chapel to which such Churchyard or Graveyard may be attached or belong, or the Obstruction of Persons going thereto or returning therefrom.

3. Such Priest or Minister who may purpose to attend such Burial shall, Twenty-four Hours before the reading of such Prayers or the Performance of such Burial Service, serve or cause to be served upon the Person appointed by the Rector, Vicar, or other Incumbent of the Parish to receive such Notices a Notice in Writing, signed with his Name, stating the Name and late Residence of the Person about to be buried, and the Hour at which he purposes to read such Prayers or perform such Burial Service; and if there be no Celebration, catechising, or Instruction already appointed to take place, or other Burial Service appointed to be performed at the Time specified in the Notice, of which he is to be

then and there informed, he shall read such Prayers or perform such Service at the Time for which he has given Notice; but if any Celebration, catechising, Instruction, or other Burial Service shall have been already appointed, then he shall appoint some other convenient Time before or after such Celebration, catechising, Instruction, or other Burial Service.

4. And whereas many Parish Churches have of late Years been erected on a new Site, having attached to them small Churchyards given or purchased for the sole Use of Persons attending the Worship of the Church, and in Size proportioned to the Wants of the Congregation, leaving

the old Churchyard for the general Use of the Parishioners: And whereas many Perpetual Cures and District Parishes have been erected of late Years, and Churches built in them, with small Graveyards intended solely for the Use of the Congregations of such Churches: Be it therefore enacted, That it shall be lawful for the Lord Lieutenant in Council, on Application from the Incumbents of any such Church, to declare the same to be exempt, and which Exemption shall be published in the *Dublin Gazette*, and thereupon such Churchyards shall be exempted from the Operation of this Act.

5. This Act shall extend to Ireland only.

CAP. CIV.

The Bankruptcy Amendment Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. No Deed, &c. entered into between a Debtor and his Creditors relating to Debts, &c. shall be as valid, &c. as if they were Parties to the same, unless Conditions herein named shall be observed.
2. Notice to be given of leaving List, &c. in London Gazette, &c., and Inspection of List and Statements allowed.
3. Creditors assenting to Composition Deed to prove, &c.
4. Proof to be filed. Power of Inspection by Creditors.
5. Provisions for Examination of Debtor or Creditor.
6. Notice to Debtor and Trustees of Deed.
7. In change from Bankruptcy to Arrangement Creditors assenting to prove, &c.
8. Description of Court to have Jurisdiction under Deed.
9. Power to make General Orders.
10. Notices as to Deeds, &c.
11. Affidavits, Warrants, &c.
12. Penalty on Persons giving false Affidavit.
13. As to Payment, &c. of Fees.
14. Limit of Act.
15. Commencement of Act. Short Title.

An Act to amend the Bankruptcy Act, 1861. (31st July 1868.)

WHEREAS it is expedient to amend the Bankruptcy Act, 1861: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. No Deed or Instrument made or entered into between a Debtor and his Creditors, or any of them, or a Trustee on their Behalf, relating to the Debts or Liabilities of the Debtor and his Release therefrom, or the Distribution, Inspection,

Management, and Winding-up of his Estate, or any of such Matters, shall be as valid, effectual, and binding on all the Creditors of such Debtor as if they were Parties to and had duly executed the same, unless, in addition to the Conditions to be observed in accordance with the Provisions of the Bankruptcy Act, 1861, the following Conditions shall be observed; that is to say,

- (1.) Together with such Deed or Instrument there shall be delivered to the Chief Registrar a List showing, to the best of the Knowledge, Information, and Belief of the Debtor or other Person by whom the List is made, the Debts and Liabilities of every Kind of the Debtor, and the Times when such

Debts and Liabilities were contracted or incurred, and the Considerations for the same, the Names, Residences, and Occupations of his Creditors, and the respective Amounts due to them, and the Securities held by them, and the estimated Value of such Securities :

- (2.) A Statement showing, to the best of the Knowledge, Information, and Belief of the Debtor or other Person by whom the Statement is made, the Debtor's Property and Credits, and the estimated Value thereof.

The Debtor or other Person as aforesaid may from Time to Time, by Leave of the Court, add to or amend such List or Statement, and every such List, Statement, Addition, and Amendment shall be verified by his Affidavit, or by that of some other Person able to depose thereto ; and when any Addition or Amendment is made to any such List or Statement, the Affidavit shall contain the Reason why such Addition or Amendment has been rendered necessary, and why the Substance thereof was not contained in the original List or Statement.

2. Notice of the leaving of such List or Statement, and of any Amendments or Additions thereto, shall be given in the *London Gazette*, and in some One or more Daily Paper or Papers circulating in the Neighbourhood in which the Debtor resides or carries on his Business, within such Time after such List or Statement shall have been left as General Orders direct ; and any Person stating himself in Writing to be a Creditor of such Debtor may, personally or by Attorney or Agent, inspect the Lists or Statements, and any Additions or Amendment, and may, on Application in such Manner as General Orders direct, have a Copy thereof or Extracts therefrom.

3. No Creditor shall be reckoned in the Computation of the requisite Majority in Number representing Three Fourths in Value of the Creditors of the Debtor executing such Deed or Instrument unless he proves his Debt by Affidavit or Declaration in the Manner and subject and according to the Provisions to be prescribed by General Orders ; and in the Computation of the requisite Value of such Creditors, and for all other Purposes of the Deed, the Amount due to each Creditor, after deducting the Value of the Securities held by him on the Debtor's Property, shall alone be reckoned ; and notwithstanding anything in the Bankruptcy Act, 1861, the Time for the Production and leaving of any such Deed or Instrument at the Office of the Chief Registrar as therein provided shall be Twenty-eight Days from the Day of the

Execution thereof by the Debtor, or such further Time as the Court may allow.

4. Every Affidavit or Declaration of Proof by the Creditors of such Debtor shall be filed with the Chief Registrar within such Time as General Orders direct, and the filing of every such Affidavit shall be entered by the Chief Registrar in a Book to be kept by him as filed in the Matter of the Deed or Instrument executed by such Debtor ; and any Person stating himself in Writing to be a Creditor of such Debtor may, personally or by Attorney or Agent, inspect such Book, and also every Affidavit or Declaration filed in the Matter of the Deed or Instrument executed by the Debtor, and may, in such Manner as General Orders direct, have Copies thereof or Extracts therefrom.

5. Any Creditor of a Debtor executing any such Deed or Instrument whose Debt shall exceed Ten Pounds may, at any Time after the Registration of the Deed or Instrument, apply for and obtain from the Court a Summons requiring such Debtor, or any Creditor or Person stated to be a Creditor of such Debtor, or any Person whom the said Court shall believe to be capable of giving any Information concerning the Dealings and Transactions of the Debtor, to appear at the said Court upon a Day and Time to be named in such Summons, and then and there to be examined concerning the Dealings and Transactions of any such Debtor, or Dealings and Transactions of the Creditor so summoned with the Debtor, or the Debt due or stated to be due from the Debtor to such Creditor ; and such Debtor or Creditor or other Person, as the Case may be, shall be bound to attend at the Time and Place named in the Summons, and to submit himself to Examination ; and at the Conclusion of such Examination the Court shall determine by whom the whole or any Part of the Expense of procuring the Attendance and of the Attendance of the Person examined, and of his Examination, and of the Attendance of all other Parties properly attending such Examination, shall be borne, whether by the Creditor procuring the Summons, or by the Person examined, or by the Debtor, or by the Trustees or Inspectors of his Estate, either personally or out of the Estate of the Debtor, or by the Estate of the Debtor, or otherwise ; and an Order shall be drawn up by the Court in accordance with such Determination, and be enforced against the Parties bound by such Order in the same Manner that Orders of the Court of Bankruptcy are enforced ; but nothing in this Section shall take away or abridge any Jurisdiction or Authority belonging to the Court independently thereof.

6. The Creditor procuring such Summons shall give Notice to the Trustees or Inspectors (if any) acting under the Deed or Instrument, and (where the Summons is directed to a Creditor) to the Debtor, of the Time and Place appointed for the Examination. The Debtor, Trustees, or Inspectors shall be at liberty to attend such Examination, and to take part therein, subject to the Direction of the Court.

7. In case of a Deed of Arrangement under Section 187 of the Bankruptcy Act, 1861, no Creditor shall be reckoned in the Computation of the requisite Majority in Number and Value of the Creditors of the Bankrupt unless he proves his Debt by Affidavit or Declaration in the Manner and subject and according to the Provisions to be prescribed by General Orders; and in the Computation of the requisite Value of such Creditors, and for all other Purposes of the Deed, the Amount due to each Creditor, after deducting the Value of the Securities held by him on the Bankrupt's Property, shall alone be reckoned.

8. The Court which shall have and exercise all Jurisdiction given by the Bankruptcy Act, 1861, and this Act, under any Deed or Instrument made by an arranging Debtor, shall, if the Debtor is a Bankrupt, be the Court having Jurisdiction in the Bankruptcy, and if he is not a Bankrupt, the Court in which a Petition by him for Adjudication of Bankruptcy against himself would at the Time of the Execution or (in case of Registration) of the Registration of the Deed or Instrument be required to be filed; but the Court of Bankruptcy in London may order all or any of the Applications under any Deed or Instrument to be made and prosecuted in any Court, without regard to the District in which the Debtor resided or carried on Business or the Amount of his Debts; provided that any Proceeding *bonâ fide* taken in any Court shall not be impeachable by reason of its appearing that the Jurisdiction was in some other Court, but the Court in which such Proceeding is pending may transmit the Papers to the proper Court.

9. The Lord Chancellor shall, with the Assistance of Two Commissioners, and subject to the Provisions of the Bankruptcy Act, 1861, frame General Orders for the following Purposes:

For regulating the several Forms of the Lists, Statements, Affidavits, Declarations, Advertisements, Orders, and all other Proceedings to be used in all Matters under this Act;

For the Reception and Custody of all Documents required to be produced, left, or filed in accordance with this Act, and the Inspection of such Documents by any Creditors or

Person entitled to inspect the same, and for the Delivery of Copies thereof;

For regulating the Duties of the various Officers of the Court of Bankruptcy in accordance with this Act;

For regulating the Fees payable for Matters done under this Act;

And generally for carrying this Act into effect. And the Lord Chancellor, with such Assistance may from Time to Time amend, alter, vary, or annul any of such General Orders.

10. Section Two hundred and two of the Bankruptcy Act, 1861, shall extend and apply to Notices concerning Deeds or Instruments made by arranging Debtors.

11. In addition to the Officers and Persons enumerated in Section 207 of the Bankruptcy Act, 1861, Affidavits, Declarations, or Affirmations required to be sworn or made in relation to any Matter under that Act or this Act may be sworn, made, or taken before such of the Officers or Clerks in the Court of Bankruptcy as the Lord Chancellor by Order shall from Time to Time appoint for the Purpose; and every Order, Warrant, Certificate, or Proceeding in the Court of Bankruptcy required by Law to be signed by a Commissioner may, in lieu of being so signed, be under the Hand of a Registrar and the Seal of the Court.

12. Any Person who shall, upon any Examination upon Oath or Affirmation, or in any Affidavit, Deposition, or Declaration, or solemn Affirmation, authorized or directed by this Act, wilfully and corruptly give false Evidence, or wilfully and corruptly swear or affirm anything which shall be false, being convicted thereof, shall be liable to the Penalties of wilful and corrupt Perjury.

13. The Provisions with respect to the Payment and Appropriation of Fees contained in or incorporated with the Bankruptcy Act, 1861, shall be incorporated with this Act, and apply to the Fees to be taken and received under the Provisions of this Act.

14. This Act shall not extend to Scotland or Ireland.

15. This Act shall commence and take effect on the Eleventh Day of October One thousand eight hundred and sixty-eight, and shall be construed together with so much of the Bankruptcy Law Consolidation Act, 1849, the Bankruptcy Act, 1854, and the Bankruptcy Act, 1861, as is in force, as One Act, and may be cited for all Purposes as The Bankruptcy Amendment Act, 1868.

CAP. CV.

Rupert's Land Act, 1868.

ABSTRACT OF THE ENACTMENTS.

Recital of Charter of Hudson's Bay Company, 22 Car. 2. Recital of Agreement of Surrender.

1. *Short Title.*
2. *Definition of "Rupert's Land."*
3. *Power to Her Majesty to accept Surrender of Lands, &c. of the Company upon certain Terms.*
4. *Extinguishment of all Rights of the Company.*
5. *Power to Her Majesty by Order in Council to admit Rupert's Land into and form Part of the Dominion of Canada. Jurisdiction of present Courts and Officers continued.*

An Act for enabling Her Majesty to accept a Surrender upon Terms of the Lands, Privileges, and Rights of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and for admitting the same into the Dominion of Canada. (31st July 1868.)

WHEREAS by certain Letters Patent granted by His late Majesty King Charles the Second in the Twenty-second Year of His Reign certain Persons therein named were incorporated by the Name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and certain Lands and Territories, Rights of Government, and other Rights, Privileges, Liberties, Franchises, Powers, and Authorities, were hereby granted or purported to be granted to the said Governor and Company in His Majesty's Dominions in North America:

And whereas by the British North America Act, 1867, it was (amongst other things) enacted that it should be lawful for Her Majesty, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-western Territory, or either of them, into the Union on such Terms and Conditions as are in the Address expressed and as Her Majesty thinks fit to approve, subject to the Provisions of the said Act:

And whereas for the Purpose of carrying into effect the Provisions of the said British North America Act, 1867, and of admitting Rupert's Land into the said Dominion as aforesaid upon such Terms as Her Majesty thinks fit to approve, it is expedient that the said Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers, and Authorities, so far as the same have been lawfully granted to the said Company, should be surrendered to Her Majesty, Her Heirs and Successors, upon such Terms and Conditions as

may be agreed upon by and between Her Majesty and the said Governor and Company as herein-after mentioned:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited as "Rupert's Land Act, 1868."

2. For the Purposes of this Act the Term "Rupert's Land" shall include the whole of the Lands and Territories held or claimed to be held by the said Governor and Company.

3. It shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty by any Instrument under Her Sign Manual and Signet to accept a Surrender of all or any of the Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers, and Authorities whatsoever granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided, however, that such Surrender shall not be accepted by Her Majesty until the Terms and Conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada in pursuance of the One hundred and forty-sixth Section of the British North America Act, 1867; and that the said Surrender and Acceptance thereof shall be null and void unless within a Month from the Date of such Acceptance Her Majesty does by Order in Council under the Provisions of the said last-recited Act admit Rupert's Land into

the said Dominion; provided further, that no Charge shall be imposed by such Terms upon the Consolidated Fund of the United Kingdom.

4. Upon the Acceptance by Her Majesty of such Surrender all Rights of Government and Proprietary Rights, and all other Privileges, Liberties, Franchises, Powers, and Authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished; provided that nothing herein contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere Trade and Commerce.

5. It shall be competent to Her Majesty by any such Order or Orders in Council as aforesaid,

on Address from the Houses of the Parliament of Canada, to declare that Rupert's Land shall, from a Date to be therein mentioned, be admitted into and become Part of the Dominion of Canada: and thereupon it shall be lawful for the Parliament of Canada from the Date aforesaid to make, ordain, and establish within the Land and Territory so admitted as aforesaid all such Laws, Institutions, and Ordinances, and to constitute such Courts and Officers, as may be necessary for the Peace, Order, and good Government of Her Majesty's Subjects and others therein: Provided that, until otherwise enacted by the said Parliament of Canada, all the Powers, Authorities and Jurisdiction of the several Courts of Justice now established in Rupert's Land, and of the several Officers thereof, and of all Magistrates and Justices now acting within the said Limits shall continue in full Force and Effect therein.

CAP. CVI.

The Metropolitan Fairs Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Power to summon Owner and Occupier of Ground on which Fair is held.*
3. *Service of Summons.*
4. *Act cumulative.*
5. *Construction of Act*

An Act for the Prevention of the holding of unlawful Fairs within the Limits of the Metropolitan Police District. (31st July 1868.)

WHEREAS it is expedient to give further Powers for the Prevention of the holding unlawful Fairs within the Metropolitan Police District:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as "The Metropolitan Fairs Act, 1868."

2. Where any Fair is holden or Notice is given of any Fair proposed to be holden on any Ground within the Metropolitan Police District other than that on which a Fair has been holden during each of the Seven Years immediately preceding, it shall be competent for the Commissioner of

Police to direct One of the Superintendents of the Metropolitan Police Force to summon the Owner or Occupier of the Ground upon which such Fair is holden to appear before a Magistrate forthwith, or at a Time to be specified in the Summons, to show his Right and Title to hold such Fair; and if such Owner or Occupier do not attend in pursuance of such Summons, or does not show to the Magistrate who hears the Case sufficient Cause to believe that such Fair is lawfully holden, the Magistrate shall declare in Writing such Fair to be unlawful, and the Commissioner shall give Notice of such Declaration by causing Copies thereof to be affixed on and near the Ground where such Fair is holden or proposed to be holden; and after such Notice has been affixed for the Space of Six Hours the Commissioner of Police may direct any Constable to remove every Booth, Standing, and Tent, and every Carriage of whatsoever Kind, conveyed to or being upon the Ground for the Purpose of holding or continuing such Fair, and to take into Custody every Person erecting, pitching, or fixing, or assisting to erect, pitch, or fix, any such

Booth, Standing, or Tent; and every Person hiring, accompanying, or conveyed in every such Carriage, and every Person resorting to such Ground with any Show or Instrument of Gambling or Amusement, and every Person convicted before a Magistrate of any of the Offences aforesaid, shall be liable to a Penalty of not more than Ten Pounds.

3. A Summons under this Act may be served on the Owner or Occupier of any Ground personally or by leaving the same at his usual or last known Place of Abode, or, if the Name of such Owner or Occupier or his Place of Abode is not known to the Police, by putting up such Summons in a conspicuous Place on the Ground

where the Fair is holden or proposed to be holden, and it shall not be necessary to name the Owner or Occupier in the Summons, but he may be described as the Owner or Occupier of the Ground.

4. All Powers conferred by this Act shall be deemed to be in addition to and not in derogation of any other Powers conferred by any other Act of Parliament, and any such other Powers may be exercised as if this Act had not passed.

5. This Act, so far as is consistent with the Tenor thereof, shall be construed as one with the Acts relating to the Metropolitan Police.

CAP. CVII.

The Indictable Offences Act Amendment Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. 11 & 12 Vict. c. 42. to be cited as "*The Indictable Offences Act, 1848.*"
2. *Short Title.*
3. *Construction of Act.*
4. *Warrants issued in Scotland or Ireland how to be backed in the Channel Islands, and vice versâ.*
5. *Definition of Terms.*

An Act to amend the Law relating to the indorsing of Warrants in Scotland, Ireland, and the Channel Islands.

(31st July 1868.)

WHEREAS it is expedient to amend the Law relating to the indorsing of Warrants in Scotland, Ireland, and the Channel Islands:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. The Act of the Session holden in the Eleventh and Twelfth Years of the Reign of Her present Majesty, Chapter Forty-two, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with indictable Offences," is herein-after referred to and may be cited for all Purposes as "*The Indictable Offences Act, 1848.*"

2. This Act may be cited for all Purposes as "*The Indictable Offences Act Amendment Act, 1868.*"

3. This Act, so far as is consistent with the Tenor thereof, shall be construed as One with the said Indictable Offences Act, 1848, and any Act amending the same.

4. In the following Cases, that is to say,
Where a Warrant is issued against any Person by any competent Magistrate in Scotland or Ireland, and such Person goes or is supposed to have gone into any of the Channel Islands; or

Where a Warrant is issued against any Person by any competent Magistrate in any of the Channel Islands, and such Person goes or is supposed to have gone into Scotland or Ireland;

any competent Magistrate having Jurisdiction over the Place where such Person is or is supposed to be may indorse such Warrant in manner provided by "*The Indictable Offences Act, 1848,*" or as near thereto as Circumstances admit.

Any such Warrant when so indorsed shall be a sufficient Authority to the Person or Persons bringing the same, and to all Persons to whom the same was originally directed, and also to all Constables within the Limits of the Jurisdiction of the Magistrate who indorsed the same, to

execute such Warrant within such last-mentioned Limits, and to convey the Person when apprehended to any Place or Places within the Limits of the Jurisdiction of the Magistrate who issued the Warrant, and to bring him before that Magistrate or before any other Magistrate having Jurisdiction over such Place or Places as aforesaid; and any Magistrate before whom the Person so apprehended is brought may proceed in the same Manner as if such Person had been apprehended within his Jurisdiction.

5. For the Purpose of this Act "competent Magistrate" shall mean—

In Scotland,—

The Lord Justice General, the Lord Justice Clerk, any of the Lords Commissioners of Justiciary, any Sheriff or Steward Depute or Substitute, or any Justice of the Peace :

In Ireland,—

Any Justice of the Peace, or any Judge of Her Majesty's Court of Queen's Bench, or any Justice of Oyer and Terminer or of Gaol Delivery :

In the Channel Islands,—

In Jersey, the Bailiff or any Lieutenant Bailiff within his Bailiwick or Jurisdiction :

In Guernsey, the Bailiff or any Lieutenant Bailiff within his Bailiwick or Jurisdiction :

In Alderney, the Judge of Alderney, or in his Absence any Jurat of such Island :

In Sark, the Seneschal of Sark, or in his Absence his Deputy within such Island :

"Constable" shall include any Peace Officer or Person authorized to apprehend Persons charged with Offences :

"Warrant" shall include any Process in the Nature of a Warrant.

CAP. CVIII.

Municipal Elections Amendment (Scotland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Interpretation of Terms.*
3. *Qualification of Electors of Council in Royal Burghs returning Members to Parliament.*
4. *Qualification of Electors of Council in Royal Burghs not returning Members to Parliament.*
5. *Qualification of Electors of Council in Parliamentary Burghs.*
6. *Municipal Registers in Royal Burghs to be made up before 15th Nov. 1868.*
7. *Postponement of Municipal Elections for the Year 1868.*
8. *Registers to be conclusive.*
9. *Names of Candidates for Town Council to be intimated to Town Clerk.*
10. *Saving Rights of Deans of Guild and Deacons Convener.*
11. *Town Councils in Hawick and Galashiels.*
12. *Election of Provost and Magistrates for Dunfermline.*
13. *Election in Burghs having no legal Councils and being under the Administration of Managers.*
14. *Election of Magistrates, &c. in Cases where Burghs have been without Council and under Managers.*
15. *Amendment of Sect. 6. of 3 & 4 W. 4. c. 76.*
16. *Re-arrangement of Wards.*
17. *Burghs not now divided may be divided into Wards.*
18. *Repeal of Acts.*

Schedules.

An Act to amend the Laws for the Election of the Magistrates and Councils of Royal and Parliamentary Burghs in Scotland.
(31st July 1868.)

WHEREAS it is expedient to amend the Laws for the Election of the Magistrates and Councillors of Royal and Parliamentary Burghs in Scotland :

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons,

in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited for all Purposes as the Municipal Elections Amendment (Scotland) Act, 1868.

2. The following Expressions in this Act shall have the Meanings hereby assigned to them, unless there be something in the Subject or Context repugnant to such Construction ; that is to say,

The Expression "Parliamentary Burgh" shall mean any Burgh, not being a Royal Burgh, which returns or contributes to return a Member to serve in Parliament :

The Expression "the Registration Acts" shall mean the Act of the Nineteenth and Twentieth Victoria, Chapter Fifty-eight, and the Eighth Section of the Act Twentieth and Twenty-first Victoria, Chapter Seventy, and any other Acts or Parts of Acts relating to the Registration of Persons entitled to vote at the Election of Members to serve in Parliament for Burghs in Scotland.

3. In every Royal Burgh in Scotland now returning or contributing to return a Member or Members to Parliament (including those contained in Schedule F. annexed to the Act Third and Fourth William the Fourth, Chapter Seventy-Six, which Schedule, together with the Twelfth Section of the said Act, are hereby repealed,) the Right of electing the Town Council shall be in and belong to all such Persons as are or shall be qualified in respect of any Premises within the Royalty, whether original or extended, of such Burgh, to vote in the Election of a Member or Members of Parliament for such Burgh by virtue of the Acts Second and Third William the Fourth, Chapter Sixty-five, or Thirty-first and Thirty-second Victoria, Chapter Forty-eight, and as are duly registered as such Voters in the Registers then in force made up in Terms of the Registration Acts; and also in all Persons who are possessed of the Qualifications described in the said Acts Second and Third William the Fourth, Chapter Sixty-five, or Thirty-first and Thirty-second Victoria, Chapter Forty-eight, in respect of the Premises therein described within the Royalty of any such Royal Burgh where the Limits thereof at any Point or Points extend beyond the Parliamentary Boundaries of such Burgh, or within the Municipal Boundaries of any such Royal Burgh where the same have been extended under any General or Local Act beyond the Limits of the Royalty, original or extended, or the Parliamentary Boundaries of such Burgh: Provided always, that nothing herein contained shall be construed to confer the Right of voting for Town Councillors on any Persons in respect of Premises situated beyond the Municipal Boundaries of any Royal Burgh, as such Boundaries may be limited and defined by any Act of Parliament.

4. In every Royal Burgh not now entitled to send or to contribute to send a Member or Members to Parliament the Right of electing the Town Council shall be in and belong to all Persons who are possessed of the Qualifications for the Burgh Franchise described in the Acts Second and Third William the Fourth, Chapter Sixty-five, or Thirty-first and Thirty-second Victoria, Chapter Forty-

eight, in respect of the Premises therein described within the Royalty of any such Royal Burgh.

5. In every Parliamentary Burgh in Scotland the Right of electing the Town Councils shall be in and belong to all the Persons qualified to vote for a Member of Parliament for such Burgh whose Names shall be on the Register completed in Terms of the Registration Acts then in force, and also in all Persons who are possessed of the Qualifications described in the said Acts Second and Third William the Fourth, Chapter Sixty-five, or Thirty-first and Thirty-second Victoria, Chapter Forty-eight, in respect of the Premises therein described within the Municipal Boundaries of any such Burgh where the same have been extended under any General or Local Act beyond the Limits of the Parliamentary Boundaries of such Burgh; and such Register so completed from Time to Time shall be and be deemed to be the Register of Electors of Councillors for such Burgh.

6. The Town Clerk of every Royal Burgh in Scotland, including as aforesaid, (but excepting the Royal Burghs not now entitled to send or to contribute to send a Member or Members to Parliament, in which the List or Roll of Voters shall be and shall continue to be made up according to the existing Law and Practice,) shall immediately after the Completion of the Register of Voters for Members of Parliament made up in the Year One thousand eight hundred and sixty-eight in Terms of the Registration Acts, make up and complete in Terms of the Act Third and Fourth William the Fourth, Chapter Seventy-six, the List or Roll of Persons entitled to vote in the Election of the Town Council of such Burgh; and the said List or Roll shall be made up and completed on or before the Fifteenth Day of November in the said Year, and such List or Roll shall be the Register of Voters at the next ensuing Election of Town Councillors: Provided always, that in every subsequent Year such List or Roll of Persons shall be made up, as heretofore, on or before the Thirty-first Day of October in such Year: Provided also, that where the Parliamentary and Municipal Boundaries of any Royal Burgh are the same, the Town Clerk shall make up such List or Roll of Persons for such Burgh by certifying at the End of a Copy of the Parliamentary Register for such Burgh, that such Register is, in Terms of this Act, the List or Roll of Persons entitled to vote at the next ensuing Election of the Town Council of such Burgh.

7. The Election of Councillors which by the Acts Third and Fourth William the Fourth, Chapter Seventy-six, and Third and Fourth William the Fourth, Chapter Seventy-seven, is appointed to take place upon the First Tuesday

of November in each Year, shall in the present Year (One thousand eight hundred and sixty-eight) take place on the First Tuesday of December; and such of the Councillors, Magistrates, and Office Bearers of every Burgh as but for the Provisions of this Act would have gone out of Office upon the First Tuesday of November in the present Year (One thousand eight hundred and sixty-eight) shall in virtue hereof continue to hold and exercise their respective Offices, and to perform the whole Duties and Functions appertaining thereto, till the First Tuesday of December following: Provided always, that whenever by any Law or Practice any Trustees, Commissioners, or other Persons are appointed, or have been in use to be elected, along with the Councillors in any Burgh, such Trustees, Commissioners, or other Persons shall in the present Year be elected along with the said Councillors on the First Tuesday of December instead of on the First Tuesday of November: Provided also, that wherever the Town Council of any Royal or Parliamentary Burgh, or the qualified Electors thereof, is or are bound by Law to elect, or has or have been in the Practice of electing, any Person or Persons to be Members of any Commission, Board, or Trust, or to fill any Office or discharge any Duties whatsoever, and such Elections are or have been in use to be appointed to take place at fixed Periods after the annual Municipal Election in the Month of November in such Burgh, such Elections shall in the present Year One thousand eight hundred and sixty-eight be made at corresponding fixed Periods after the Municipal Elections in December next ensuing; and the several Trustees, Commissioners, or other Persons elected as aforesaid, and holding Office on the First Monday of November in the present Year (1868), shall continue to hold and exercise their respective Offices, and to perform the whole Duties and Functions thereof, till their Successors are elected in virtue hereof; and all those Acts and Notices which have hitherto been appointed to be done or to be given with reference to such Elections at certain Periods relatively to the said First Tuesday in the Month of November shall during the present Year be done or given at corresponding Periods relatively to the First Tuesday of December in said Year.

8. At every future Election of a Town Councillor for any Royal or Parliamentary Burgh the Register of Voters made up and completed as aforesaid shall be deemed and taken to be conclusive Evidence that the Persons therein named continue to have the Qualifications which are annexed to their Names respectively in the Register in force at such Election, and such Persons shall not be required to take any Oath or solemn Affirmation, but they may be required

to make a Declaration in the Form of the Schedule (A.) to this Act annexed.

9. It shall not be competent to elect any Person to the Office of Town Councillor in any Royal or Parliamentary Burgh in Scotland, unless the Name of such Person shall have been intimated to the Town Clerk of such Burgh, in the Manner herein-after provided, on or before Four of the Clock, Afternoon, on the Thursday immediately preceding the Day of Election; and the Town Clerk shall, on or before the Friday immediately preceding such Election; cause Public Notice to be given, as herein-after provided, of the Names of all Persons so intimated to him; and the Intimation to the Town Clerk shall be in the Form of Schedule (B.) hereunto annexed, or as near thereto as Circumstances admit; and the Notice by the Town Clerk shall be in the Form of Schedule (C.) hereunto annexed, or as near thereto as Circumstances admit; and such Notice shall be affixed to the Doors of the Town Hall or Council Chambers and of the Parish Churches in the Burgh, and, if the Town Clerk shall think expedient, the said Notice may be advertised in One or more Newspapers published or circulating within the Burgh; and in the event of the Town Clerk not receiving Intimation, as herein-before directed, of the Names of Persons proposed for Election sufficient to supply the Vacancies in any Burgh or Ward (where the Burgh is divided into Wards), or in the event of such Vacancies not being supplied by reason of the requisite Number of Councillors not being elected, from any Cause whatsoever, in any Burgh or Ward as aforesaid, then and in either of these Events the same Procedure shall be adopted as is appointed to be followed in the Case of a double Return, or of a Person elected declining to accept Office as a Councillor; provided that in such Cases the Intimation to the Town Clerk of the Name of the Persons proposed for Election shall be given on or before Four of the Clock, Afternoon, of the Second lawful Day immediately preceding that fixed for the Election, and the Town Clerk shall forthwith give Notice as is herein-before directed.

10. Nothing herein contained shall prejudice the Right of the Persons elected or to be elected to the Offices of Dean of Guild and Deacon Convener, or Convener of the Trades, by the Conventry and Guild Brethren respectively in the City of Edinburgh, and to the Offices of Dean of Guild and Deacon Convener by the Merchants House and Trades House respectively of the City of Glasgow, and the Persons elected or to be elected to the Office of Dean of Guild by the several Guildries of the City of Aberdeen and Towns of Dundee and Perth, to be constituent Members of the Town Councils of the said Cities

and Burghs respectively, as provided by the Statute Third and Fourth William Fourth, Chapter Seventy-six, Section Twenty-two.

11. On and after the First Tuesday in December One thousand eight hundred and sixty-eight, each of the Towns or Burghs of Hawick and Galashiels shall have Fifteen Councillors, whereof One shall be Provost, Four shall be Bailies, and One a Treasurer; and the said Councillors, Provost, Bailies, and Treasurer shall be elected, and the Affairs of the said Burghs or Towns shall be administered, in every respect, except as herein provided, as if they had been classed with Paisley, Greenock, Leith, and Kilmarnock in the Act Third and Fourth William the Fourth, Chapter Seventy-seven, and had been made expressly subject to the whole Provisions of the said Act, and the Acts amending the same, and of this Act, so far as such Provisions are applicable to the said Towns or Burghs of Hawick and Galashiels: Provided always, that nothing herein contained shall affect the Right of the Magistrates and Council of the Burgh of Hawick to elect the Town Clerk of said Burgh for a Term of Three Years; and provided also, that any Person entitled to vote for Town Councillors in the said Burgh of Hawick may be elected a Member of the Town Council of the Burgh.

12. The Town Council of the Royal Burgh of Dunfermline, instead of electing a Provost, Two Bailies, and a Treasurer, as heretofore, shall, on and after the First Tuesday of December One thousand eight hundred and sixty-eight, elect from among their own Number One to be Provost or Chief Magistrate, Four to be Bailies, and One to be Treasurer; and in all respects the Provost, Bailies, Treasurer, and Councillors elected under the Provisions of this Act, and the Office Bearers lawfully appointed by them, shall have the same Jurisdiction, Powers, Rights, and Privileges as their Predecessors have heretofore had and exercised in the Administration of the Affairs of the said Burgh.

13. Where any Burgh shall at the Time of the passing of this Act be without any legal Council, and be under the Administration of Managers lawfully appointed, the qualified Electors of such Burgh shall, on the First Tuesday of December next after the passing of this Act, proceed to choose the Number of Councillors provided to such Burgh by the Act Third and Fourth William the Fourth, Chapter Seventy-six, or the Act Fifteenth and Sixteenth Victoria, Chapter Thirty-two; and where any such Burgh shall, in consequence of the Decision of a Court of Law or otherwise, be without a legal Council at any future Time, and under the Administration of Managers, the qualified Electors of such Burgh

shall, on the First Tuesday of November next ensuing after the Date of the Appointment of such Managers, proceed to choose the Number of Councillors provided to such Burgh by the said last-mentioned Acts; and in all such Cases the Sheriff of the County within which such Burgh is situated shall, on Application made to him by any qualified Elector of such Burgh, appoint One of the Managers thereof to discharge the Duties and exercise the Powers directed in the said last-mentioned Acts to be performed by the retiring Provost or senior Magistrate of such Burgh; and every such Election shall proceed and be carried on in all other respects in the Manner provided by the said last-mentioned Acts and this Act until the Council of such Burgh shall be completed.

14. Immediately after the Election of Councillors in any such Burgh shall be completed in manner herein-before provided, the Councillors so elected shall proceed to elect from among their own Number a Provost or Chief or Senior Magistrate, and the other Magistrate or Magistrates of such Burgh, and shall also elect a Treasurer and the other usual and ordinary Office Bearers fixed by the Set or Usage of such Burgh, and shall elect Managers of any charitable Institution which may be connected with such Burgh, and the Appointment of Managers to which is vested in the Magistrates and Council of such Burgh, all in the Manner provided in the said Act Third and Fourth William the Fourth, Chapter Seventy-six, with regard to the Election of Magistrates and other Office Bearers; and the Councillor who had the greatest Number of Votes at the Election of Councillors shall preside at such Election, and have a casting or double Vote in case of Equality; and in the event of Two or more Councillors having an equal Number of Votes, One of the Managers of such Burgh, to be appointed as aforesaid, shall preside, and shall have a casting but no deliberative Vote; and immediately on the Completion of such Election of Magistrates the Managers of such Burgh shall cease to hold Office and to administer the Affairs of the Burgh; and all succeeding annual Elections of Councillors and Magistrates in any such Burgh shall take place at the Time and in the Manner provided in the said last-mentioned Acts and in this Act.

15. In lieu of the Court of Review provided by the Sixth Section of the Act Third and Fourth of William the Fourth, Chapter Seventy-six, all Appeals against the Decision of the Provost or Chief Magistrate and Assessor in Royal Burghs not now entitled to send or to contribute to send a Member or Members to Parliament, referred to in said Section, shall be taken to the Sheriff of the County within which such Burghs are situated respectively; and the said Sheriff shall

have all the Powers of such Court of Review, and his Decision shall be final, and not subject to Review.

16. As soon as conveniently may be after the passing of this Act, each Burgh now divided into Wards for the Purpose of electing Town Councillors shall be re-divided into the same Number of Wards arranged with the View of accommodating the enlarged Constituency created by virtue of the Act of Thirty-first and Thirty-second Victoria, Chapter Forty-eight, and for this Purpose the Chief Magistrate of each Burgh, the Sheriff of the County in which the Burgh is situated (excluding his Substitutes), and a Person to be appointed by One of Her Majesty's Principal Secretaries of State, or any Two of them, shall re-divide the Burgh into the same Number of Wards into which it is now divided, each Ward being numbered and having a distinctive Name or Number; and regard shall be had by them to the Number of Municipal Electors, and also to the Value of the Property in each Ward as appearing on the Valuation Roll; and the Parties aforesaid shall cause the proposed Division into Wards to be delineated upon a Plan which shall be open to the Inspection of all Persons concerned for the Space of Fourteen Days, and Notice shall be given previously to the first of the said Fourteen Days by Advertisement in One or more Newspapers published within the Burgh or the County in which the Burgh is situated where the said Plan is to be seen; and upon a Day after the Expiry of the said Fourteen Days to be specified in the said Advertisement the Parties aforesaid shall hear all concerned for their Interests, and thereupon the said proposed Division shall be finally adjusted by the Parties aforesaid, and they shall fix and determine the Order in which each of the re-arranged Wards shall be substituted for each of the existing Wards in returning Members to the Town Council in lieu of those who retire by Rotation; and the Parties aforesaid shall report the same to One of Her Majesty's Principal Secretaries of State, and on their Report being approved of by him the said Re-arrangement of Wards shall be published once at least in the *Edinburgh Gazette*, and in One of the Newspapers published within the Burgh or the County in which the Burgh is situated; and the said new Boundaries of Wards having been approved of and published as aforesaid shall take effect, and shall, after the Expiry of the present Year, be substituted for the existing Boundaries of Wards in making up the Rolls of Parliamentary and Municipal Electors for the Burgh: Provided always, that nothing herein contained shall limit the Powers of the Sheriff under the Act Fifth and Sixth William the Fourth, Chapter Seventy-eight, Section Three: Provided also, that if in any Burgh it shall appear

to the Town Clerk that more than One Polling Place or Compartment is required for Municipal Elections in any of the Wards he shall provide such additional Number as may be necessary, and publish the same in the Manner set forth in the Act Third and Fourth William the Fourth, Chapter Seventy-six.

17. It shall be lawful for the Town Council of any Royal or Parliamentary Burgh, having by the Census last taken a Population of above Ten thousand Persons, and not at the passing of this Act divided into Wards, to resolve, by a Majority of not less than Two Thirds of their Number, that the Burgh shall be divided into Wards for the Purpose of Parliamentary and Municipal Elections; and upon any such Resolution being adopted the Chief Magistrate of such Burgh, the Sheriff of the County in which the Burgh is situated (excluding his Substitutes), and a Person to be appointed by One of Her Majesty's Principal Secretaries of State, or any Two of them, shall divide the Burgh into Wards, each Ward being numbered, and having a distinctive Name or Number; and in fixing the Number of Wards, and in determining the Boundaries thereof, regard shall be had by them to the Number of Town Councillors in the Burgh and to the Number of Municipal Electors, and also to the Value of the Property as appearing on the Valuation Roll; and the Parties aforesaid shall cause the proposed Division into Wards to be delineated upon a Plan which shall be open to the Inspection of all Persons concerned for the Space of Fourteen Days, and Notice shall be given previous to the first of the said Fourteen Days by Advertisement in One or more Newspapers published or circulating within the Burgh or the County in which the Burgh is situated where the said Plan is to be seen; and upon a Day after the Expiry of the said Fourteen Days to be specified in the said Advertisement the Parties aforesaid shall hear all concerned for their Interests, and thereupon the said proposed Division shall be finally adjusted by the Parties aforesaid, and they shall fix and determine the Wards to which the existing Town Councillors shall be apportioned, and the Order in which they shall retire by Rotation; and the Parties aforesaid shall report the same to One of Her Majesty's Principal Secretaries of State, and on their Report being approved of by him the said Division into Wards shall be published once at least in the *Edinburgh Gazette*, and in One of the Newspapers published or circulating within the Burgh or the County in which the Burgh is situated; and the said Boundaries of Wards having been approved of and published as aforesaid shall take effect, and shall, after the Expiry of the present Year, be the Boundaries of Wards in making up the Rolls of Parliamentary and Municipal Elec-

tors for the Burgh : Provided always, that nothing herein contained shall limit the Powers of the Sheriff under the Act Fifth and Sixth William the Fourth, Chapter Seventy-eight, Section Three: Provided also, that if in any Burgh it shall appear to the Town Clerk that more than One Polling Place or Compartment is required for Municipal Elections in any of the Wards, he shall provide such additional Number as may be necessary, and publish the same in the Manner

set forth in the Act Third and Fourth William the Fourth, Chapter Seventy-six.

18. All Laws, Statutes, and Usages shall be and the same are hereby repealed, in so far only as they may be in any way inconsistent with the Provisions of this Act, but in all other respects they shall remain in full Force and Effect, and this Act shall be read and construed along with the Tenor thereof.

SCHEDULES.

SCHEDULE (A.)

I A. B. declare that I am the Individual described in the Register now in force for the Burgh of _____ as A. B. [*here insert Description in the same Words as in the Register*], and that I have not already voted at this Election.

cillor* at the next ensuing Municipal Election in the Burgh of [*specify Burgh*].
Given under our Hand this [*insert Date*].

A. B. _____
B. C. _____

To _____
Town Clerk.

SCHEDULE (B.)

We A. B. [*here insert Name and Place of Abode as in the Municipal Register for the Burgh*], and B. C. [*here insert Name and Place of Abode as aforesaid*], hereby propose C. D. [*here insert Name and Place of Abode as in the Municipal Register for the Burgh*] for Election as a Coun-

SCHEDULE (C.)

Burgh of [*specify Burgh*].

In Terms of the Municipal Elections Amendment (Scotland) Act, 1868, I hereby give Notice that I have received Intimation that the following Persons are proposed for Election as Councillors in this Burgh at the Municipal Election on Tuesday next :†

Name of Candidate.	Place of Abode of Candidate.	Names of Proposer and Seconder.	Places of Abode of Proposer and Seconder.

Given under my Hand at [*specify Place and Date*].

Town Clerk.

* When the Burgh is divided into Wards add here "for the Ward [*specifying such Ward*]."
† Where the Burgh is divided into Wards, the Names, &c. of Candidates, &c. for each Ward to be separately distinguished.

CAP. CIX.

The Compulsory Church Rate Abolition Act, 1869.

ABSTRACT OF THE ENACTMENTS.

1. *Compulsory Church Rates abolished.*
2. *Saving of Rates called Church Rates, but applicable to secular Purposes.*
3. *Provision where Money is due on Security of such Rates.*
4. *Provision as to Church Rates already made.*
5. *Not to affect Enactments in Local Acts, &c. where Rates are made for Purposes herein named.*
6. *Act not to affect Vestries, &c.*
7. *Trustees and others under Incapacity may subscribe to voluntary Rate.*
8. *Regulations as to Persons refusing to pay Church Rates.*
9. *Power to appoint Church Trustees.*
10. *Definition of "Ecclesiastical Purposes," "Church Rate," and "Parish."*
11. *Short Title.*

An Act for the Abolition of compulsory
Church Rates. (31st July 1868.)

WHEREAS Church Rates have for some Years ceased to be made or collected in many Parishes by reason of the Opposition thereto, and in many other Parishes where Church Rates have been made the levying thereof has given rise to Litigation and Ill-feeling :

And whereas it is expedient that the Power to compel Payment of Church Rates by any legal Process should be abolished :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. From and after the passing of this Act, no Suit shall be instituted or Proceeding taken in any Ecclesiastical or other Court, or before any Justice or Magistrate, to enforce or compel the Payment of any Church Rate made in any Parish or Place in England or Wales.

2. Where in pursuance of any General or Local Act any Rate may be made and levied which is applicable partly to Ecclesiastical Purposes and partly to other Purposes, such Rate shall be made, levied, and applied for such last-mentioned Purposes only, and so far as it is applicable to such Purposes shall be deemed to be a separate Rate, and not a Church Rate, and shall not be affected by this Act.

Where in pursuance of any Act of Parliament a mixed Fund, arising partly from Rates affected by this Act and partly from other Sources, is directed to be applied to Purposes some of which are Ecclesiastical Purposes, the Portion of such Fund which is derived from such other Sources

shall be henceforth primarily applicable to such of the said Purposes as are Ecclesiastical.

3. In any Parish where a Sum of Money is at the Time of the passing of this Act due on the Security of Church Rates, or of Rates in the Nature of Church Rates, to be made or levied in such Parish under the Provisions of any Act of Parliament, or where any Money in the Name of Church Rate is ordered to be raised under any such Provisions, such Rates may still be made and levied, and the Payment thereof enforced by Process of Law, pursuant to such Provisions, for the Purpose of paying off the Money so due, or paying the Money so ordered to be raised, and the Costs incidental thereto, but not otherwise, until the same shall have been liquidated : Provided that the Accounts of the Churchwardens of such Parish in reference to the Receipt and Expenditure of the Monies levied under such Acts shall be audited annually by the Auditor of the Poor Law Union within whose District such Parish shall be situate, unless another Mode of Audit is provided by Act of Parliament.

4. Any Church Rate, or Rate in the Nature of Church Rate, made at any Time before the passing of this Act, may be collected and recovered in the same Way as if this Act had not been passed.

5. This Act shall not affect any Enactment in any Private or Local Act of Parliament under the Authority of which Church Rates may be made or levied in lieu of, or in consideration of the Extinguishment or of the Appropriation to any other Purpose of, any Tithes, customary Payments, or other Property or Charge upon Property, which Tithes, Payments, Property or Charge, previously to the passing of such Act, had been appropriated by Law to Ecclesiastical

Purposes as defined by this Act, or in consideration of the Abolition of Tithes in any Place, or upon any Contract made, or for good or valuable Consideration given, and every such Enactment shall continue in force in the same Manner as if this Act had not passed.

6. This Act shall not affect Vestries, or the making, assessing, receiving, or otherwise dealing with any Church Rate, save in so far as relates to the Recovery thereof; but, subject to the Provisions herein-before contained, whensoever any Ecclesiastical District having within its Limits a consecrated Church in use for the Purposes of Divine Worship shall have been legally constituted out of any Parish or Parishes, and whether such District shall or shall not be a separate and distinct Parish, the Inhabitants of such District shall not be entitled to vote for or in reference to a Church Rate or the Expenditure thereof at any Vestry Meeting of the Parish or Parishes out of which the said District is formed, nor shall they be assessed to any Rate made in relation to the Parish Church of the said Parish or Parishes, but such Inhabitants may assemble in Vestry, and, subject to the Provisions of this Act, may make and assess a Rate in relation to the Church of their own District in like Manner as if such Church were the Church of an ancient Parish: Provided that nothing in this Act contained shall affect any Right of Burial to which the Inhabitants of the District may be entitled in the Churchyard of the Mother Church.

7. It shall be lawful for all Bodies Corporate, Trustees, Guardians, and Committees who or whose Custusque Trust are in the Occupation of any Lands, Houses, or Tenements, to pay, if they think fit, any Church Rate made in respect of such Property, although the Payment of the same may not be enforceable after the passing of this Act, and the same shall be allowed to them in any Accounts to be rendered by them respectively.

8. No Person who makes default in paying the Amount of a Church Rate for which he is rated shall be entitled to inquire into or object to or vote in respect of the Expenditure of the Monies arising from such Church Rate; and if the Occupier of any Premises shall make default for One Month after Demand in Payment of any Church Rate for which he is rated, the Owner shall be entitled to pay the same, and shall thereupon be entitled, until the next succeeding Church Rate is made, to stand for all Purposes relating to Church Rates (including the attending at Vestries and voting thereat) in the Place in which such Occupier would have stood.

9. A Body of Trustees may be appointed in any Parish for the Purpose of accepting, by Bequest, Donation, Contract, or otherwise, and

of holding, any Contributions which may be given to them for Ecclesiastical Purposes in the Parish.

The Trustees shall consist of the Incumbent and of Two Householdors or Owners or Occupiers of Land in the Parish, to be chosen in the first instance, and also from Time to Time on any Vacancy in the Office by Death, Incapacity, or Resignation, one by the Patron, and the other by the Bishop of the Diocese in which the Parish is situate.

The Trustees shall be a Body Corporate by the Name of the Church Trustees of the Parish to which they belong, having a perpetual Succession and a Common Seal, with Power to sue and be sued in their Corporate Name.

The Trustees may from Time to Time, as Circumstances may require, pay over to the Churchwardens, to be applied by them either to the general Ecclesiastical Purposes of the Parish, or to any specific Ecclesiastical Purposes of the Parish, any Funds in their Hands, and the Funds so paid over may be applied to such Purposes, and shall not be applied to any other Purpose: Provided always, that no Power shall be thereby conferred on the Churchwardens to take order with regard to the Ecclesiastical Purposes of the Parish further or otherwise than they are now by Law entitled to do: Provided also, that due Regard shall be had to the Directions of the Donors of Funds contributed for any special Ecclesiastical Purposes; and, subject as aforesaid,

The Trustees may invest in Government or Real Securities any Funds in their Hands, and accumulate the Income thereof, or otherwise deal with such Funds as they think expedient, subject to the Provisions of this Act.

The Incumbent shall be the Chairman of the Trustees.

The Trustees shall once at the least in every Year lay before the Vestry an Account of their Receipts and Expenditure during the preceding Year, and of the Mode in which such Receipts have been derived and Expenditure incurred, together with a Statement of the Amount, if any, of Funds remaining in their Hands at the Date of such Account.

10. In this Act "Ecclesiastical Purposes" shall mean the building, rebuilding, Enlargement, and Repair of any Church or Chapel, and any Purpose to which by Common or Ecclesiastical Law a Church Rate is applicable, or any of such Purposes:

"Church Rate" shall mean any Rate for Ecclesiastical Purposes as herein-before defined:

"Parish" shall mean any Parish, Ecclesiastical District, Chapelry, or Place within the Limits of which any Person has the exclusive Cure of Souls.

11. This Act may be cited as "The Compulsory Church Rate Abolition Act, 1868."

CAP. CX.

The Telegraph Act, 1868.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short Title.*
2. *Provisions of 26 & 27 Vict. c. 112. incorporated.*
3. *Interpretation of Terms.*

Purchase.

4. *Power to Postmaster General to purchase Undertakings of Telegraph Companies.*

Sale.

5. *Power to Telegraph Companies to sell their Undertakings to the Postmaster General.*
6. *Acts, &c. of Companies selling their Undertakings to remain in force, and the Powers thereof to be exercised by the Postmaster General.*
7. *Companies may require Postmaster General to purchase their Undertaking under certain Circumstances.*
8. *Provision as to Purchase of certain Undertakings herein named.*
9. *Postmaster General to enter into Contracts with certain Railway Companies.*
10. *Application of Sums received by Reuter's Telegraph Company by virtue of Agreement with Postmaster General.*

Canal Companies.

11. *Postmaster General may acquire a Right of Way over the Bridgewater Canal.*
12. *Postmaster General may acquire a Right of Way over the Grand Junction Canal.*
13. *Agreements confirmed.*
14. *Power to Postmaster General to lease Property.*
15. *Postmaster General to make Regulations for Conduct of Business, and to fix Charges.*
16. *Power to Postmaster General to enter into special Agreements with Proprietors of Newspapers.*
17. *Messages having Priority to be specially marked.*
18. *Payments to be made by means of Stamps.*
19. *Power to appoint Offices for depositing Messages.*
20. *Punishment for disclosing or intercepting Messages.*
21. *Property in Telegraphic Messages to be laid in Postmaster General.*
22. *Postmaster General to pay Rates, &c.*
23. *Copies of Regulations to be laid before Parliament.*
24. *Provision as to Payment of Costs to Railway and Telegraph Companies if Objects of Act not carried out.*

Schedule.

An Act to enable Her Majesty's Postmaster General to acquire, work, and maintain Electric Telegraphs.

(31st July 1868.)

WHEREAS the Means of Communication by Electric Telegraphs within the United Kingdom of Great Britain and Ireland are insufficient, and many important Districts are without any such Means of Communication :

And whereas it would be attended with great Advantage to the State, as well as to Merchants and Traders, and to the Public generally, if a cheaper, more widely extended, and more expeditious System of Telegraphy were established in the United Kingdom of Great Britain and Ireland, and to that End it is expedient that Her

Majesty's Postmaster General be empowered to work Telegraphs in connexion with the Administration of the Post Office :

May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

Preliminary.

1. This Act may be cited as "The Telegraph Act, 1868."

2. The Telegraph Act, 1863, shall be incorporated with this Act, except so far as the same,

or any Part thereof, may be expressly varied, altered, or be inconsistent with this Act; and the Term "the Company," in the Telegraph Act, 1863, shall, in addition to the Meaning assigned to it in that Act, mean the Postmaster General.

3. Terms to which Meanings are assigned by the Telegraph Act, 1863, have in this Act the same respective Meanings; and the Word "Land" in such last-mentioned Act shall, in addition to the Meaning thereby assigned to it, include any Term, Estate, Easement, Interest, Right, or Privilege, in, over, or affecting Land, and shall include the Works, Tubes, Wires, Posts, and other Property purchased or acquired by the Postmaster General.

In this Act:—

The Term "the Undertaking" shall mean the whole or any Part of the Electric and other Telegraphs, Wires, Posts, Pipes, Tubes, and other Works, Instruments, Materials, Lands, Tenements, Hereditaments, and Buildings, Parliamentary, prescriptive, and other Rights, Powers, Privileges, Patents, and all other Property whatsoever of any Company, Corporation, or Persons engaged in the United Kingdom of Great Britain and Ireland in transmitting Messages for Money or other Consideration by means of Electric or other Telegraphs:

The Term "any Company" shall mean any Company, Corporation, or Persons now engaged in the United Kingdom of Great Britain and Ireland in transmitting, or authorized to transmit, Messages for Money or other Consideration, by means of Electric or other Telegraphs, or mechanical Agencies, and each and every of those Companies.

Purchase.

4. It shall be lawful for Her Majesty's Postmaster General and he is hereby authorized, with the Consent of the Lords Commissioners of Her Majesty's Treasury, from Time to Time, out of any Monies which may be from Time to Time appropriated by Act of Parliament and put at his Disposal for that Purpose, to purchase for the Purposes of this Act the whole, or such Parts as he shall think fit, of the Undertaking of any Company, and any Undertaking, and all other Property purchased under the Powers of this Act, shall be vested in and held by Her Majesty's Postmaster General, in his corporate Capacity, and his Successors: Provided always, that no such Purchase be made, and that no Agreement other than the Agreements confirmed by this Act for any such Purchase be binding, unless the said Agreement, accompanied by a Minute from the Commissioners of Her Majesty's Treasury, in

which the Grounds of the Agreement shall be set forth, shall have lain for One Month on the Table of both Houses of Parliament without Disapproval.

Sale.

5. Any Company, with the Authority of Two Thirds of the Votes of their Shareholders present in person or by proxy at a General Meeting of the Company specially convened for the Purpose, may sell all or any Portion of their Undertaking to the Postmaster General for such Sum of Money as may be mutually agreed upon between the Postmaster General and the Company; and the Execution by any Company under their Common Seal of a Conveyance to the Postmaster General, duly stamped, of their Undertaking, shall be sufficient to vest the same in the Postmaster General for all the Estate, Right, Title, and Interest of the Company therein, with all incidental Rights, Privileges, and Easements, and the same may be used, exercised, and enjoyed by the Postmaster General in the same Manner and to the same Extent as the same respectively are, or if this Act had not been passed might be held, used, exercised, and enjoyed by any Company, and the Receipt of Two of the Directors of any Company for the Purchase Money, endorsed upon the Deed of Conveyance, shall be a sufficient Discharge for the same to the Postmaster General, who shall not be bound to see to the Distribution thereof.

6. All Acts, Charters, and Grants, and all valid Deeds and Agreements made to, from, by, or with any Company whose Undertaking shall be sold and conveyed to the Postmaster General under the Powers of this Act shall (except as far as they are by this Act expressed to be varied or repealed, or are inconsistent with the Provisions of this Act,) remain in full Force, and all Matters to be done, continued, or completed, or which, but for the passing of this Act, would, might, or could be done, continued, or completed by or against the Company so selling their Undertaking, their Officers or Servants, shall or may (as the Case requires) be done, continued, or completed by or against the Postmaster General, his Officers and Servants, and those Acts, Charters, Grants, Deeds, and Agreements shall be construed as if the Postmaster General had been named therein instead of the Company so selling their Undertaking; and it shall be lawful for any Person to enforce any such Act, Charter, Grant, Deed, or Agreement by Action, Suit, or other legal Proceeding against the Postmaster General in the same Court, and in the same Manner, and with the same Rights and Liabilities to pay Costs and otherwise, as if this Act had not been passed.

7. If the Postmaster General shall acquire any One Undertaking under the Powers of this Act he shall, upon the Request, in Writing, of any Company possessing an Undertaking established by Special Act of Parliament or Royal Charter at the Time of the passing of this Act, purchase the Undertaking of such Company, upon Terms to be settled (failing Agreement) by Arbitration, provided such Request be made within Twelve Calendar Months after the Postmaster General shall have so acquired any One Undertaking; and any Railway Company possessed of a Telegraph open to the Use of the Public on the First of January One thousand eight hundred and sixty-eight for transmitting Messages for Money, or possessing any beneficial Interest in such Telegraph, shall be included in this Provision, and any such Railway Company shall be entitled upon a like Request, in Writing, to require the Postmaster General to purchase the Right of such Railway Company to transmit such Messages or other beneficial Interest.

Provided always, that nothing in this Act shall enable the Postmaster General to purchase the Undertakings of the Atlantic Telegraph Company or of the Anglo-American Telegraph Company (Limited), or any Part of such Undertakings.

8. With respect to the Purchase of the Undertakings of the Electric and International Telegraph Company, the British and Irish Magnetic Telegraph Company, and the United Kingdom Electric Telegraph Company (Limited), be it enacted as follows:

- (1.) Each of the Three Companies may, with the Authority of Two Thirds of the Votes of its Shareholders, present in person or by proxy at a General Meeting of the Company specially convened for the Purpose, sell and convey, and the Postmaster General shall upon Demand of the Company under its Common Seal purchase, the whole Undertaking of the said Company;
- (2.) The Price to be paid by the Postmaster General to each Company for its Undertaking shall be Twenty Years Purchase of the net Profits during the Year ending on the Thirtieth Day of June One thousand eight hundred and sixty-eight from the Undertaking so conveyed; and in the Case of the United Kingdom Company there shall be paid in addition to the Amount aforesaid—

First, the Price paid by the Company for the Patent of "Hughes's Type-printing Telegraph," such Price not to exceed Twelve thousand Pounds;

Secondly, a Sum equal to the estimated aggregate Value of the quoted Ordinary

Share Capital of the Company reckoned on the highest Quotation shown in the Official Lists of the London Stock Exchange on any Day between the First and the Twenty-fifth Days of June One thousand eight hundred and sixty-eight; and

Thirdly, Compensation for the Loss of the prospective Profits of the Company on the Ordinary Shares, and any Sum that may be determined upon in consideration of the Efforts made by the Company to establish a uniform Shilling Rate for the Conveyance of Telegraphic Messages:

- (3.) If any Difference arises between the Postmaster General and any of the said Companies concerning the Amount of such net Profits as aforesaid, or in the Case of the United Kingdom Company as to the Price paid for "Hughes's Type-printing Telegraph," or as to the estimated aggregate Value of the Share Capital or the Compensation for the Loss of prospective Profits, or the Sum to be paid in consideration of the Efforts of the Company to establish a uniform Shilling Rate, every such Difference shall be settled by Arbitration in the Manner prescribed by "The Companies Clauses Consolidation Act, 1845," with respect to the Settlement of Disputes by Arbitration, and the Provisions of that Act with respect to Arbitration shall be deemed to be incorporated with this Act:
- (4.) The Purchase Money and Compensation to be paid by the Postmaster General under the Provisions aforesaid shall be paid to the Directors of each Company, and the Receipt under the Common Seal of the Company, countersigned by the Chairman or Deputy Chairman and by the Secretary thereof, shall be a sufficient Discharge to the Postmaster General for the Amount therein specified to be received; and the Postmaster General shall not be required to see to the Application of the Sums so paid or be responsible for Misapplication thereof:
- (5.) The Amounts so received by the Directors of each Company shall, together with all undivided Profits and any Monies in the Hands of or due to the Company up to the Date of Transfer, be applied by them in the first place in discharge of all the Debts of the same Company, and in Payment of any Sums that may be voted by the Shareholders for Payment for or in recognition of special Services rendered to the Company, and after such Discharge the Residue shall be distributed among the Shareholders of that Company in such Proportion and in such Manner in all respects as the Arbitrator herein-after

named shall award and determine, after due Consideration of the Circumstances under which each Class of Shares was created, and after hearing such of the Parties interested as shall upon Notice of the Appointment for that Purpose advertised for Two successive Days in the *Times* Newspaper published at London at least Ten Days before the Day of such Hearing appear and desire to be heard. The Arbitrator before referred to shall be the Most Honourable Robert Arthur Talbot Marquis of Salisbury, or him failing, John Hawkshaw, Esquire, or him failing, a single Arbitrator to be appointed by the Board of Trade at the Request of the Directors of each Company in Writing under its Common Seal; the Award of such Arbitrator shall be final and absolute, and the Directors shall distribute among the Shareholders the Residue of the said Purchase Money and Compensation in strict and absolute Conformity with such Award; and all the Costs, Charges, and Expenses of and incident to any and every such Arbitration shall be paid by the Company requiring the same:

- (6.) In the Case of the United Kingdom Company, with regard to their Six per Cent. Debenture Debt, the Arbitrator shall before Distribution of the Residue among the Shareholders consider and determine whether the Holders of such Stock ought or not to receive any and what Amount beyond the naked Debt and Interest in respect of the Conditions attaching to such Stock, and he shall award accordingly:
- (7.) Every Officer and Clerk of any Company, the Undertaking of which may be so purchased, who has been not less than Five Years in the Service of Telegraph Companies, and in the Receipt of a yearly Salary, or who has been not less than Seven Years in the Service of Telegraph Companies, and is in Receipt of Remuneration at a Rate of not less than Fifty Pounds a Year, shall, if he receives no Offer of an Appointment by the Postmaster General, in the Telegraphic Department, which shall be deemed by an Arbitrator appointed by Agreement, or, failing Agreement, appointed by the Recorder of London for the Time being, to be of equal Value to the Appointment held by him under any Company, receive during his Life from the Postmaster General, by way of Compensation for the Loss of his Office, from the Time at which the Government takes possession of the Company's Telegraph, an Annuity, payable

half-yearly, equal, if he shall have been in the Service of Telegraph Companies Twenty Years, to Two Thirds of the annual Emolument derived by him from his Office on the Twenty-fourth Day of June One thousand eight hundred and sixty-eight, and with respect to any such Person who has been in such Service less than Twenty Years the said Annuity shall be diminished at the Rate of One Twentieth for every Year less than Twenty Years during which he has been in such Service; such Officers and Clerks as enter into the Service of the Postmaster General shall be entitled to count their past Years of continuous Service with the Telegraph Companies as Years passed in the Civil Service of the Crown, and all such Officers and Clerks upon their Appointment be deemed to be, to all Intents and Purposes, Officers and Clerks in the permanent Civil Service of the Crown, and shall be entitled to the same but no other Privileges:

9. Whereas the Railway Companies in the United Kingdom are for the most part either themselves Owners of Telegraphs which are used for the Conveyance of public Messages, and which are also essential for the safe Conduct of the Traffic on their respective Undertakings, or they have Contracts for various Terms of Years with Telegraph Companies, whose Telegraphic Apparatus is placed in the Stations and along the Railways and Canals of the Railway Companies, by which Contracts Provision is made with respect to the Matters aforesaid: And whereas with certain Railway Companies Agreements have been entered into by the Postmaster General (subject to the Approbation of Parliament), which Agreements are referred to in Schedules to this Act, and it is expedient that with respect to certain other Railway Companies, namely, the London and North-western, the Midland, the Lancashire and Yorkshire, the Great Northern, the Manchester, Sheffield, and Lincolnshire, the North Staffordshire, the Great Eastern, the London, Brighton, and South Coast, the Metropolitan, the Metropolitan District, the Metropolitan and St. John's Wood, the Highland, the Sutherland, the Leven and East of Fife, the Glasgow and South-western, and the Great North of Scotland, the Provisions herein-after contained be made as to the Undertakings belonging separately to the said Companies or held by them jointly with any other Company, or held by them respectively on Lease: Be it therefore enacted as follows:—

- (1.) The Postmaster General shall give to each Railway Company Three Months Notice before he acquires the Undertakings of any of the Telegraph Companies with which the Railway Company has Agreements;

and on the Expiration of such Notice such Agreements shall cease and determine :

- (2.) On such Acquisition as aforesaid all the Posts, Wires, Instruments, and other Telegraphic Apparatus belonging to the Railway Company, and also all Posts, Wires, Instruments, and other Telegraphic Apparatus belonging to the Telegraph Companies on the Railway Company's Lines and Canals which are necessary for establishing a complete System of Telegraphy in connexion with the working of Trains and the Traffic of the Lines and Canals, shall become the absolute Property of the Railway Company, and shall be handed over to them by the Postmaster General free of Charge in efficient working Order, so that the Railway Company may be in a Position at once to take up and carry on their own Telegraph Work on their own System, and thereafter the said Posts, Wires, Instruments, and other Telegraphic Apparatus shall be maintained and worked by the Railway Company :
- (3.) On such Acquisition as aforesaid the Postmaster General shall be entitled to use from Telegraph Stations not on the Lines of Railway all the Wires belonging to the respective Telegraph Companies on the Line, and employed exclusively in the Transmission of the public Telegraph Business, which are erected on the Poles to be handed over to the Railway Company under Paragraph (2) ; and he, at his Cost, shall also be entitled to call upon the Railway Company to erect and maintain additional Wires on the said Poles, provided they are sufficiently strong and high for the Purpose ; and also to erect new Poles at Places to be agreed upon with Wires over any of the Lines and Canals of the Company, but so that such new Poles shall not interfere in any way with the Convenience or working of the Railway or Canals of the Company, or obstruct the working of the Traffic thereon. The Railway Company shall maintain all the Posts and Wires used for public Messages, the Postmaster General paying for the same as may be agreed or settled by Arbitration :
- (4.) The Postmaster General may require the Railway Company to affix Wires to existing Posts (if they can bear them), and the Company may have a like Power to affix Wires to the Posts belonging from Time to Time to the Postmaster General, if sufficient for the Purpose, and the Cost of Maintenance of such Posts shall be divided between the Postmaster General and the Company, in proportion to the

Number of Wires belonging to each on each Post :

- (5.) The Railway Company may shift the Poles, Wires, and Apparatus belonging to the Postmaster General when necessary for the Purposes of their Works or Traffic ; but in all such Cases the Postmaster General shall pay to the Railway Company the actual Costs incurred in shifting such Poles and Apparatus, but if such Poles support the Wires of the Railway Company and of the Postmaster General, the Cost of shifting the same shall be apportioned according to the Number of Wires belonging to or respectively used by the Railway Company and the Postmaster General :
- (6.) The Postmaster General shall pay the Railway Company the following Sums by way of Compensation :
 - a. Twenty Years Purchase of the Amount of the net annual Receipts (if any) of Public Telegraph Messages received and forwarded by the Railway Company on their own Account, reckoned on the Basis of the Receipts derived therefrom over a continuous Period of Twelve Months prior to the Thirtieth Day of June One thousand eight hundred and sixty-eight :
 - b. Twenty Times the Amount of the estimated annual Increase, calculated upon the average Increase of the preceding Three Years of the said Receipts from Telegraphic Messages, or where the Business has been commenced within Three Years calculated upon the Increase during such shorter Period, such annual Amount in case of Difference to be settled by Arbitration :
 - c. All Rents and annual or other Payments payable to the Railway Company by public Telegraph Companies during the still unexpired Periods embraced in their respective Agreements, and at the Terms mentioned in said Agreements respectively :
 - d. Such Sums as shall be agreed upon, or in default of Agreement as shall be settled by Arbitration, in respect of the Loss by the Railway Company of the Privilege of granting other Wayleaves and making future Arrangements with Telegraph or other Companies, and in respect of granting a Monopoly to the Postmaster General for the Conveyance of Telegraphs over their Railways as herein provided for :
 - e. Such Sums as shall be agreed upon, or in default of Agreement as shall be

settled by Arbitration, as the Value of the Railway Company's Reversionary Interest (if any) in the Telegraph Receipts from Public Messages on the Expiration of the Agreements with the respective Telegraph Companies :

f. Such Sums as shall be agreed upon, or in default of Agreement as shall be settled by Arbitration, for the Loss occasioned by Removal of any Clerks now provided by the Telegraph Company, and for any extra Cost which the Railway Company may incur in working their Telegraph for Railway Purposes as a separate System :

g. The Postmaster General shall transmit to their respective Destinations all Messages of the Railway Company in any way relating to the Business of the Company to and from any "Foreign Stations" in the United Kingdom free of Charge :

h. On such Acquisition as aforesaid the Postmaster General shall, as herein provided, have a perpetual Right of Way for his Poles and Wires over the whole of the Railway Company's System, and in consideration thereof he shall pay to the Railway Company such Sum per Mile per Wire over the whole of the said System, by way of yearly Rent, as shall be determined by Agreement between the Parties, or failing Agreement, as shall be fixed by Arbitration :

The Arbitrator, in determining the Amounts to be paid to the Railway Company under this Act, shall have regard to the Agreements which subsist between the Railway Company and any Telegraph Company, and also to a compulsory Sale being required from the Railway Company; and in estimating the Amount to be paid under any One Part of this Section shall have regard to the Advantages to be obtained and the Disadvantages to be sustained by the Railway Company under any other Part of this Section :

(7.) The Railway Company shall, if required by the Postmaster General so to do, from Time to Time, at such Times and under such Regulations as shall be agreed upon, receive Messages for Transmission by the public or private Telegraph Wires (but if the latter, the Railway Messages to have Priority), and shall at the Postmaster General's sole Risk and Expense transmit the same either to their Place of Desti-

nation, if upon the Company's Lines, or to some convenient Post Office as shall be arranged, and in respect of such Receipt and Transmission the Company shall act as Agents of the Postmaster General, and shall receive in respect thereof such Remuneration as shall be agreed upon, or in case of Difference as shall be from Time to Time settled by Arbitration. The Postmaster General to provide the necessary Instruments at the Railway Company's Stations for the public Wires, such Instruments to be maintained by the Railway Company at the Expense of the Postmaster General :

- (8.) The Railway Company may, notwithstanding anything in this Act contained, and without Payment to the Postmaster General, from Time to Time make Arrangements with Coalmasters, Ironmasters, and Traders generally upon the Company's System for the Erection and working of private Telegraphs between Coalpits, Ironworks, Factories, Warehouses, and Offices in connexion with the Stations of the Company, or over their Line; but such Telegraphs shall be used for the Transaction of private Business only, and no Money Payments shall be made or received in respect thereof except by way of annual Rent or Payment for Wayleave and other Accommodation :
- (9.) Except as aforesaid, the Railway Company shall not transmit or permit the Transmission of any Telegraphic Message through their Wires :
- (10.) All Matters of Difference between the Postmaster General and Railway Companies arising under this Act shall be settled by Arbitration, in conformity with the Enactments of "The Railway Companies Arbitration Act, 1869," with respect to the Settlement of Disputes by Arbitration; and the Provisions of that Act with respect to Arbitration shall for these Purposes be incorporated with this Act :
- (11.) Notwithstanding anything specified in this Act or in any Agreement by this Act confirmed, the Umpire to be appointed in any Arbitration between the Postmaster General and any Railway Company shall, in default of Appointment by the Arbitrators, be nominated by the Chief Justice of Her Majesty's Court of Common Pleas at Westminster for the Time being.

10. The Sums to be received by the Directors of Reuter's Telegram Company (Limited) by virtue of the Agreement between the Postmaster General and the Company shall be applied in the first instance in the Payment of the Debts and

Liabilities of the Company (if any) other than their current Debts, then in Payment of any Sums which may be voted by a General Meeting of the Shareholders in recognition of the Services conferred upon the Company by any Individuals attached thereto, or which may, with the Authority of a General Meeting, be deducted and retained for the Purposes of the general Business of the Company, and the Residue shall be distributed by the Directors among the Shareholders according to their several Interests in the Company.

Canal Companies.

11. On such Acquisition of any Undertaking the existing Agreements between the late Duke of Bridgewater's Trustees, the late George Granville Francois Egerton late Earl of Ellesmere, and the United Kingdom Telegraph Company (Limited), shall determine, and the Postmaster General shall have such Right of Way for his Poles, Wires, and Telegraphic Apparatus over the whole of the Canal System, and the Property of the said Trustees, in perpetuity, as is granted for a Term or Terms of Years by the Provisions of such Agreements, and in consideration thereof he shall pay to the said Trustees such Sum by way of yearly Rent as shall be determined by Agreement, or failing Agreement as shall be fixed by Arbitration as in this Act is provided; and the Arbitrator in determining the Amount to be paid to the said Trustees during the Period of such existing Agreements shall have regard to the said Agreements and to a compulsory Sale of such Right of Way; and the said Trustees shall, as in the said Agreements or either of them mentioned, continue to have in perpetuity the exclusive Use of such isolated and additional and other Telegraphic Wires and Connexions as provided in the said Agreements, or some or One of them; and the Postmaster General shall also transmit to their respective Destinations all Messages of the said Trustees and the Earl of Ellesmere respectively, and their respective Agents and Clerks, *bonâ fide* relating to the Business of the said Trust or Undertaking, between any Places in the United Kingdom, free of Charge.

12. On such Acquisition as aforesaid the existing Agreements between the Company of Proprietors of the Grand Junction Canal and the United Kingdom Telegraph Company (Limited) shall determine, and the Postmaster General shall have a perpetual Right of Way for his Poles, Wires, and Telegraphic Apparatus over the whole of the Canal Company's System of Navigation as it now exists, or may hereafter be altered or converted, but so that such Poles, Wires, and Apparatus shall not interfere in any way with the Convenience and working of the Canal or its

Alteration from Time to Time, or Conversion in whole or in part into a Railway, or obstruct the working of the Traffic thereon, and in consideration thereof he shall pay to the Canal Company such Sum by way of yearly Rent as shall be determined by Agreement, or failing Agreement as shall be fixed by Arbitration in the Manner in this Act provided with respect to Arbitrations with Railway Companies (for which Purpose the Canal Company shall be held to be a Railway Company); and the Arbitrator in determining the Amount to be paid to the Canal Company shall have regard to the Agreements which subsist between the Canal Company and the said Telegraph Company and also to a compulsory Sale being required of such Right of Way; and the Postmaster General shall also transmit to their respective Destinations all Messages of the said Canal Company *bonâ fide* relating to the Business of that Company between any Places in the United Kingdom free of Charge.

13. Subject to the Provisions of this Act, the several Agreements referred to in the Schedule to this Act are hereby confirmed.

14. It shall be lawful for Her Majesty's Postmaster General, with the Consent of the Lords Commissioners of Her Majesty's Treasury, from Time to Time to lease any Part or Parts of the Undertaking or Property purchased or acquired by him under the Powers of this Act.

15. The Postmaster General, with the Consent of the Commissioners of Her Majesty's Treasury, may from Time to Time make Regulations for determining the Hours during which the Offices appointed by him to be Places for the Receipt and Despatch of Messages shall be open for the Transaction of Telegraphic Business, and for fixing the Sums to be from Time to Time paid for the Transmission of Messages, and for Services rendered in connexion therewith, and for the general Conduct of Telegraphic Business: Provided always,

- (1.) That the Charges for the Transmission of Messages throughout the United Kingdom shall uniformly and without regard to Distance be at a Rate not exceeding One Shilling for the first Twenty Words of each Message, or Part of Twenty Words, and not exceeding Threepence for each additional Five Words or Part of Five Words:
- (2.) That the Names and Addresses of the Senders and Receivers of Messages shall not be counted as Part of the Words for which Payment shall be required:
- (3.) That the Sums charged for the Transmission of Messages shall be held to cover the Costs of Delivery by special Foot

Messenger, within the Limit of One Mile of the Terminal Telegraphic Office, or within the Limit of the Town Postal Delivery of that Office, when it is a Head Post Office, and the Town Postal Delivery extends for more than a Mile from it :

- (4.) That when the Addressee does not reside within the above-described Limits, and the Sender desires to have his Message delivered by special Foot Messenger, the Charge to him for Portage by such special Messenger shall not exceed Sixpence per double Mile, or any Part thereof, beyond such Limits :
- (5.) That when the Addressee does not reside within the above-described Limits, and the Sender does not desire to incur the Cost of special Delivery, his Message shall be delivered free of extra Charge by the ordinary Postal Delivery next following on the Arrival of his Message at the Terminal Telegraphic Office.

16. Notwithstanding anything in this Act, it shall be lawful for the Postmaster General, with the Consent of the Commissioners of Her Majesty's Treasury, from Time to Time to make Contracts, Agreements, and Arrangements with the Proprietor or Publisher of any public registered Newspaper, or the Proprietor or Occupier of any News Room, Club, or Exchange Room, for the Transmission and Delivery, or the Transmission or Delivery of Telegraphic Communications at Rates not exceeding One Shilling for every Hundred Words transmitted between the Hours of Six p.m. and Nine a.m., and at Rates not exceeding One Shilling for every Seventy-five Words transmitted between the Hours of Nine a.m. and Six p.m. to a single Address, with an additional Charge of Twopence for every Hundred Words, or Twopence for every Seventy-five Words, as the Case may be, of the same Telegraphic Communication so transmitted to every additional Address : Provided always, that the Postmaster General may from Time to Time, with the like Consent, let to any such Proprietor, Publisher, or Occupier the special Use of a Wire (during such Period of Twelve Hours per Diem as may be agreed on) for the Purposes of such Newspaper, News Room, Club, or Exchange Room, at a Rate not exceeding Five hundred Pounds per Annum : Provided also, that no such Proprietor, Publisher, or Occupier shall have any undue Priority or Preference in respect of such Rates over any other such Proprietor, Publisher, or Occupier.

17. Every Telegraph Message which, by virtue of the Provisions of "The Telegraph Act, 1863," or any other Act, shall have Priority in order of Transmission over any other Message intrusted

to the Postmaster General for Transmission, shall have the Word "Priority" specially stamped or marked thereon by the Secretary of State, the Board of Trade, or other Department of Her Majesty's Government sending the same; and every Message so stamped or marked shall be retained by the Postmaster General for a Period of not less than Twelve Calendar Months from the Date thereof.

18. The Payments to the Postmaster General for the Transmission of Telegraphic Messages from one Place to another within the United Kingdom shall (except for Portage) be made in all Cases by means of Stamps, and the Postmaster General shall cause a proper Supply of Stamps and stamped Paper to be prepared for that Purpose, and kept for Sale to the Public at such of the Offices under his Control as he may think fit to appoint for that Purpose.

19. Besides appointing Offices to be Places for the Transmission of Messages by means of the Electric Telegraph, the Postmaster General may, if he think fit, appoint Offices or Pillar Letter Boxes to be Places of Deposit for Messages, and the Messages deposited therein shall, provided they be written on stamped Paper of the proper Value, or on Paper having Stamps of the proper Value affixed thereto, be conveyed to the Offices of Transmission without extra Charge, at such Times as the ordinary Collections of Post Letters are made from the aforesaid Places of Deposit, and shall forthwith be despatched by Telegraph from the Offices of Transmission.

20. Any Person having official Duties connected with the Post Office, or acting on behalf of the Postmaster General, who shall, contrary to his Duty, disclose or in any way make known or intercept the Contents or any Part of the Contents of any Telegraphic Messages or any Message intrusted to the Postmaster General for the Purpose of Transmission, shall, in England and in Ireland, be guilty of a Misdemeanor, and in Scotland of a Crime and Offence, and shall upon Conviction be subject to Imprisonment for a Term not exceeding Twelve Calendar Months; and the Postmaster General shall make Regulations to carry out the Intentions of this Section, and to prevent the improper Use by any Person in his Employment or acting on his Behalf of any Knowledge he may acquire of the Contents of any Telegraphic Message.

21. In every Case where an Offence shall be committed in respect of a Telegraphic Message sent by or intrusted to the Postmaster General, it shall be lawful and sufficient, in the Indictment or Criminal Letters to be preferred against the Offender, to lay the Property of such Tele-

graphic Message in Her Majesty's Postmaster General, without specifying any further or other Name, Addition, or Description whatsoever, and it shall not be necessary in the Indictment or Criminal Letters to allege or to prove upon the Trial or otherwise that the Telegraphic Message was of any Value; and in any Indictment or in any Criminal Letters to be preferred against any Person employed under the Post Office for any Offence committed under this Act it shall be lawful and sufficient to state and allege that such Offender was employed under the Post Office at the Time of the committing of such Offence, without stating further the Nature or Particulars of his Employment.

22. All Land, Property, and Undertakings purchased or acquired by the Postmaster General under this Act shall be assessable and rateable in respect to Local, Municipal, and Parochial Rates, Assessments, and Charges at Sums not exceeding the rateable Value at which such Land, Property, and Undertakings were properly assessed or assessable at the Time of such Purchase or Acquisition.

23. Copies of all Contracts, Agreements, and Arrangements from Time to Time made under the Authority of this Act shall be laid before both

Houses of Parliament within Fourteen Days of the Commencement of the Session next succeeding the making of every such Contract, Agreement, and Arrangement; and Copies of all Regulations from Time to Time made under the Authority of this Act shall be laid before both Houses of Parliament within Fourteen Days from the Date thereof if Parliament be then sitting, and if not sitting then within Fourteen Days from the next re-assembling of Parliament, and all Regulations so made shall be binding on the Parties interested in the Subject Matter thereof to the same Extent as if such Regulations formed Part of this Act.

24. In case no Act shall be passed during this or the next Session of Parliament, putting at the Disposal of the Postmaster General such Monies as shall be requisite for carrying into effect the Objects and Purposes of this Act, the Provisions contained in this Act or in the Agreements hereby confirmed relating to the Arrangements with Railway and Telegraph Companies, and all Proceedings thereunder, shall become void, and the Postmaster General shall thereupon pay to the several Companies mentioned in such Clauses or Agreements all reasonable Costs and Expenses (if any) properly incurred by them respectively in relation to any Proceedings taken under this Act.

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SCHEDULE to which the foregoing Act refers.

1. An Agreement between Her Majesty's Postmaster General and the Great Western Railway Company, dated the 9th Day of July 1868.

2. An Agreement between Her Majesty's Postmaster General and the London and South-western Railway Company, dated the 10th Day of July 1868.

3. An Agreement between Her Majesty's Postmaster General and the London, Chatham, and Dover Railway Company, dated the 9th Day of July 1868.

4. An Agreement between Her Majesty's Postmaster General and the South-eastern Railway Company, dated the 14th Day of July 1868.

5. An Agreement between Her Majesty's Postmaster General and the North-eastern Railway Company, dated the 8th Day of July 1868.

6. An Agreement between Her Majesty's Postmaster General and the Bristol and Exeter Railway Company, dated the 9th Day of July 1868.

7. An Agreement between Her Majesty's Postmaster General and the Submarine Telegraph Company between Great Britain and the Continent of Europe and the Submarine Telegraph

Company between France and England (*Société* and Carmichael and Company), dated the 11th Day of July 1868.

8. An Agreement between Her Majesty's Postmaster General and Reuter's Telegram Company (Limited), dated the 14th Day of July 1868.

9. Agreement between Her Majesty's Postmaster General and the Atlantic Telegraph Company and Anglo-American Telegraph Company (Limited), dated the 8th Day of July 1868.

10. An Agreement between Her Majesty's Postmaster General and the North British Railway Company, dated the 16th Day of July 1868.

11. An Agreement between Her Majesty's Postmaster General and the Caledonian Railway Company, dated the 16th Day of July 1868.

12. Articles of Agreement between Her Majesty's Postmaster General and the Universal Private Telegraph Company (Limited), dated the 14th Day of July 1868.

13. Heads of Agreement between Her Majesty's Postmaster General and the London and Provincial Telegraph Company (Limited), dated the 16th Day of July 1868.

CAP. CXI.

Expiring Laws Continuance Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Continuance of Acts in Schedule.*
3. *Not to revive Provisions in certain Acts, &c. Schedule.*

An Act to continue various expiring Laws.
(31st July 1868.)

WHEREAS the several Acts mentioned in the First Column of the Schedule hereto are wholly, or as to certain Provisions thereof, limited to expire at the Times specified in respect of such Acts in the Fourth Column of the said Schedule: And whereas it is expedient to continue such Acts, in so far as they are temporary in their Duration, for the Times mentioned in respect of such Acts respectively in the Fifth Column of the said Schedule:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons,

in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as the "Expiring Laws Continuance Act, 1868."

2. The Acts mentioned in Column One of the said Schedule, and the Acts, if any, amending the same, shall, in so far as such Acts or any Provisions thereof are temporary in their Duration, be continued until the Times respectively specified in respect of such Acts or Provisions in the Fifth Column of the said Schedule.

3. Nothing in this Act contained shall revive any Provisions of the Acts mentioned in the said Schedule which are not in force at the Time of the passing of this Act.

SCHEDULE.

1. Original Acts.	2. Amending Acts.	3. How far temporary.	4. Time of Expiration of temporary Provisions.	5. Continued until
(1) 2 & 3 Vict. c. 74. Oaths, unlawful (Ireland).	11 & 12 Vict. c. 89.	Whole Act -	7th July 1868, and End of then next Session. (30 & 31 Vict. c. 143.)	7th July 1869, and End of then next Session.
(2) 3 & 4 Vict. c. 89. Poor Rates, Stock in Trade Exemption.	- - -	Whole Act -	1st October 1868, and End of then next Session. (30 & 31 Vict. c. 143.)	1st October 1869, and End of then next Session.
(3) 5 & 6 Vict. c. 123. Lunatic Asylums (Ireland).	- - -	Whole Act -	1st August 1868, and End of then next Session. (30 & 31 Vict. c. 143.)	1st August 1869, and End of then next Session.
(4) 10 Vict. c. 32. Landed Property Improvement (Ireland).	13 & 14 Vict. c. 31.	As to Powers of Commissioners.	1st January 1868, and End of then next Session. (30 & 31 Vict. c. 143.)	1st January 1869, and End of then next Session.

1. Original Acts.	2. Amending Acts.	3. How far temporary.	4. Time of Expiration of temporary Provisions.	5. Continued until
(5) 10 & 11 Vict. c. 90. Poor Laws (Ireland).	14 & 15 Vict. c. 68.	As to Appointment of Commissioners.	23d July 1868, and End of then next Session. (30 & 31 Vict. c. 143.)	23d July 1869, and End of then next Session.
(6) 10 & 11 Vict. c. 98. Ecclesiastical Jurisdiction.	- - -	As to Provisions continued by 21 & 22 Vict. c. 50.	1st of August 1868, and End of then next Session. (30 & 31 Vict. c. 143.)	1st August 1869, and End of then next Session.
(7) 11 & 12 Vict. c. 32. County Cess (Ireland).	20 & 21 Vict. c. 7.	Whole Act -	1st August 1868, and End of then next Session. (30 & 31 Vict. c. 143.)	1st August 1869, and End of then next Session.
(8) 11 & 12 Vict. c. 107. Sheep and Cattle Diseases Act.	16 & 17 Vict. c. 62. 29 & 30 Vict. c. 4. (Ireland). 29 & 30 Vict. c. 15.	Whole Act -	20th August 1868, and End of then next Session. (30 & 31 Vict. c. 125.)	20th August 1869, and End of then next Session.
(9) 14 & 15 Vict. c. 104. Episcopal and Capitular Estates Management.	17 & 18 Vict. c. 116. 22 & 23 Vict. c. 46. 23 & 24 Vict. c. 124.	Whole Act -	1st January 1867, and End of then next Session. (30 & 31 Vict. c. 143.)	1st January 1869, and End of then next Session.
(10) 17 & 18 Vict. c. 102. Corrupt Practices Prevention.	26 & 27 Vict. c. 29.	Whole Act -	8th June 1868, and End of then next Session. (26 & 27 Vict. c. 29.)	8th June 1869, and End of then next Session.
(11) 17 & 18 Vict. c. 117. Incumbered Estates (West Indies).	21 & 22 Vict. c. 98. 25 & 26 Vict. c. 45. 27 & 28 Vict. c. 108.	As to Appointment of Commissioners.	2d August 1869. (30 & 31 Vict. c. 143.)	2d August 1870.
(12) 19 & 20 Vict. c. 36. Preservation of the Peace (Ireland).	23 & 24 Vict. c. 138. 28 & 29 Vict. c. 118.	Whole Act -	1st July 1868, and End of then next Session. (30 & 31 Vict. c. 143.)	1st July 1869, and End of then next Session.
(13) 24 & 25 Vict. c. 109. Salmon Fishery (England) Act.	- - - 28 & 29 Vict. c. 121.	As to Appointment of Inspectors, s. 31. As to Appointment of the Special Commissioners for English Fisheries.	1st October 1868, and End of then next Session. (30 & 31 Vict. c. 143.)	1st October 1869, and End of then next Session.

1. Original Acts.	2. Amending Acts.	3. How far temporary.	4. Time of Expiration of temporary Provisions.	5. Continued until
(14) 25 & 26 Vict. c. 97. Salmon Fisheries (Scotland).	26 & 27 Vict. c. 50. 27 & 28 Vict. c. 118.	As to the Powers of Commis- sioners, &c.	1st January 1868, and End of then next Ses- sion. (29 & 30 Vict. c. 102.)	1st January 1869, and End of then next Ses- sion.
(15) 26 & 27 Vict. c. 105. Promissory Notes.	- - -	Whole Act -	28th July 1868, and End of then next Ses- sion. (30 & 31 Vict. c. 143.)	28th July 1869, and End of then next Session.
(16) 26 & 27 Vict. c. 114. Salmon Fisheries (Ireland).	- - -	As to Duration of Office of the Special Com- missioners for Irish Fisheries, and all Powers, Rights, and Pri- vileges apper- taining thereto.	28th July 1868, and End of then next Ses- sion. (30 & 31 Vict. c. 143.)	1st August 1869.
(17) 27 & 28 Vict. c. 20. Promissory Notes and Bills of Ex- change (Ireland).	- - -	Whole Act -	13th May 1868, and End of then next Ses- sion. (30 & 31 Vict. c. 143.)	13th May 1869, and End of then next Session.
(18) 27 & 28 Vict. c. 92. Public Schools.	- - -	Whole Act -	1st August 1868, and End of then next Ses- sion. (30 & 31 Vict. c. 143.)	1st August 1869, and End of then next Ses- sion.
(19) 28 & 29 Vict. c. 46. Militia Ballots Sus- pension.	- - -	Whole Act -	1st October 1868, and End of then next Ses- sion. (30 & 31 Vict. c. 143.)	1st October 1869, and End of then next Ses- sion.
(20) 28 & 29 Vict. c. 83. Locomotives on Roads.	- - -	Whole Act -	1st September 1868, and End of then next Ses- sion. (30 & 31 Vict. c. 143.)	1st September 1869, and End of then next Ses- sion.
(21) 29 & 30 Vict. c. 2. "The Cattle Diseases Prevention Act."	29 & 30 Vict. c. 110. 30 & 31 Vict. c. 125.	The whole Act -	20th August 1868, and End of then next Ses- sion. (30 & 31 Vict. c. 125.)	20th August 1869, and End of then next Ses- sion.
(22) 29 & 30 Vict. c. 121. (Extradition Trea- ties Act Amend- ment).	- - -	Whole Act -	1st September 1868 - (30 & 31 Vict. c. 143.)	1st September 1869, and End of then next Ses- sion.
(23) 30 & 31 Vict. c. 141. Master and Servant.	- - -	Whole Act -	20th August 1868, and End of then next Ses- sion. (30 & 31 Vict. c. 141.)	20th August 1869, and End of then next Ses- sion.

CAP. CXII.

Registration Amendment (Ireland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Definition of "Principal Act."*
2. *Application of Act.*
3. *Short Title.*

PART I.

REGISTRATION OF PARLIAMENTARY VOTERS IN 1868.

In Counties.

4. *Precepts and Lists to be printed, and Clerk of Peace to send his Precept to Clerks of Unions, together with Copies of Forms.*
5. *Clerks of Union to make out and transmit Lists.*
6. *Clerk of the Peace in Year 1868 to publish Special List, and to make Objections.*
7. *Clerks of Peace to give Notice requiring Voters to claim.*
8. *Clerks of Peace to prepare Lists of Claimants, make Objections, &c.*
9. *Persons empowered to object. Notice of Objection.*
10. *Clerk of the Peace to make out and publish a List of Persons objected to.*

In Cities, Towns, and Boroughs.

11. *Precept, Forms, and printed Lists to be delivered by the Clerk of the Peace to Town Clerk.*
12. *Town Clerks empowered to inspect Rate Books, and obtain List of Defaulters. Poor Rate Collector to deliver to Town Clerk List of Defaulters, if required. Town Clerk to keep List, to be open to Inspection, without Fee.*
13. *Clerks of Unions to transmit to Town Clerk Lists of Persons rated as Occupiers of Premises of an annual Value less than 8*l.* and more than 4*l.**
14. *Town Clerk to make out Lists of Persons entitled to vote. Lists when signed to be published and sold.*
15. *Persons omitted from Lists of Voters may claim, and Lists of Claimants to be made and published, and sold.*
16. *Extension of Time for Claims by Lodgers and Publication.*
17. *Registered Voters and Claimants may inspect Rate Books.*
18. *Who may object. Notice of Objection shall be given.*
19. *Lists of Persons objected to shall be made and published, and sold.*
20. *Where Boundaries of Borough altered Voters to be included in Special Lists.*
21. *Town Clerk shall deliver Copies of Lists to the Clerk of the Peace.*

General Provisions.

22. *Abstracts of Lists to be transmitted to Assistant Barristers empowered to revise them.*
23. *Courts of Revision to be held between 8th September and 6th October.*
24. *Alteration as to Time for Delivery of Lists and Commencement of Register of Voters.*
25. *List of Voters for University of Dublin.*
26. *Expenses of Chairman or Revising Barrister.*
27. *Remuneration to Clerks of Peace, &c. for additional Duties.*
28. *Power to Lord Lieutenant to appoint Revising Barristers in certain Cases.*
29. *Power to Lord Lieutenant to appoint Deputy for Revising Barristers in City of Dublin.*
30. *"Last Rate;" "Town Clerk;" Service of Notice of Objection.*

PART II.

AMENDMENT OF LAW AS TO REGISTRATION.

31. *Lists to be made out in alphabetical Order.*
32. *Alteration as to Time for Delivery of Lists and Commencement of Register of Voters.*

33. *No Payment in future required for Registration of Electors in University of Dublin.*
34. *Registrar to make out alphabetical List of Electors. Copies of List to be printed.*
35. *Occupiers not to be registered as Lodgers.*
36. *Amendment of Law respecting Registration of Lodgers.*
37. *Evidence to support Claim.*

PART III.

MISCELLANEOUS.

38. *Amendment of 25 & 26 Vict. c. 92. as to Elections in Counties.*
 39. *Power to adjourn Courts of Revision.*
 40. *Words in this Act and Principal Act to have same Meanings. Schedules.*
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An Act to amend the Law of Registration in Ireland. (31st July 1868.)

WHEREAS it is expedient to make special Provision for the Completion of the Registration of Parliamentary Electors during the present Year, and to amend the Law relating to the Registration of Parliamentary Electors in Ireland:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Preliminary.

1. "Principal Act" in this Act means the Act passed in the Session of the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, Chapter Sixty-nine, intituled "An Act to amend the Laws which regulate the Qualification and Registration of Parliamentary Voters in Ireland, and to alter the Law for rating immediate Lessors of Premises to the Poor Rate in certain Boroughs," as amended by "The Representation of the People (Ireland) Act, 1868."

2. This Act shall apply to Ireland only.

3. This Act may be cited for all Purposes as the "Registration Amendment (Ireland) Act, 1868."

PART I.

REGISTRATION OF PARLIAMENTARY VOTERS IN 1868.

In Counties.

4. For the Purpose of forming a Register in the Year One thousand eight hundred and sixty-eight of all Persons entitled to vote in the Election of a Knight or Knights of the Shire to serve in Parliament for the several Counties in Ireland in respect of the Franchises conferred

by "The Representation of the People (Ireland) Act, 1868," the Clerk of the Peace for every County shall cause a sufficient Number of Forms of Precepts, Notices, and Lists to be printed as required, according to the respective Forms (numbered 1, 2, 4,) in the Schedule (A.) and of the Table in the Schedule (C.) to this Act annexed, and shall also, on or before the Fourth Day of August in the Year One thousand eight hundred and sixty-eight, make and cause to be delivered to the Clerk of every Poor Law Union situate wholly or in part within his County his Precept according to the Form (numbered 1.) in the said Schedule (A.) and One or more of the Forms (numbered 2.) in the said Schedule.

5. The Clerk of each Poor Law Union wholly or in part within the Limits of any County in Ireland shall, on or before the Eighth Day of August in the Year One thousand eight hundred and sixty-eight, make out and transmit to the Clerk of the Peace of each County into which any Part of such Union extends a List or Return for each Barony or Division of a Barony of such County situate within such Union of every Male Person of full Age who shall be rated in the last Rate made under the Acts for the more effectual Relief of the destitute Poor in Ireland jointly with any other Person or Persons as the Occupier of any Lands, Tenements, or Hereditaments situate in such Barony or Division of a Barony, and within such Union, of a net annual Value of such an Amount as when divided by the Number of Occupiers would give to each such Occupier a net annual Value of Twelve Pounds or upwards, and also a List or Return of every Male Person of full Age who shall have been rated in the said Rate as the Occupier of Lands, Tenements, or Hereditaments of a net annual Value of Twelve Pounds or upwards where the Premises in respect of which he shall have been so rated shall not have been the same Premises but different Premises occupied in immediate Succession, excluding nevertheless from such Return every Occupier who shall not, on or

before the First Day of July in the Year One thousand eight hundred and sixty-eight, have paid all Poor Rates (if any) which shall have become payable by him in respect of such Premises previously to the First Day of January then last, and such Return shall be in the Form and shall contain the Particulars mentioned in the Form (numbered 2.) in the Schedule (A.) to this Act annexed; and each such Clerk of a Union, after due Inquiry, which he is required to make, with the Assistance of the respective Collector or Collectors of Poor Rates for such respective Barony or Division of a Barony (and which Assistance such Collector or Collectors is and are hereby required to give for such Purpose), shall and is hereby required to add by a Stamp or in Writing in the Margin of such Return the Word "objected" to the Name of any Person inserted in such Return in case such Clerk of the Union shall have reasonable Cause to believe such Person not to be or to have ceased to be an Occupier as aforesaid of the Lands, Tenements, or Hereditaments in respect of which he shall have been so rated, or not to have been such Occupier as aforesaid during the whole Period of Twelve Calendar Months next previous to the Twentieth Day of July in the Year One thousand eight hundred and sixty-eight; and such Clerk of the Union shall also in like Manner add the Word "objected" or "dead" before the Name of any Person in such Return if such Clerk of the Union shall have reasonable Cause to believe that such Person is not entitled to have his Name on the Register of Voters then next to be made for such County, or is dead, as the Case may be; and such Return shall be signed by such respective Clerk of the Union, and shall be verified by him as true and correct, according to the best of his Belief, by an Oath or Declaration to be made or taken by him before some Justice of the Peace in and for the said County within which such Lands are situate, or the County in which the Union Workhouse is situate, and which Oath or Declaration any such Justice is hereby authorized and required to administer or take.

6. The Clerk of the Peace of every County in Ireland shall, on or before the Seventeenth Day of August in the Year One thousand eight hundred and sixty-eight, frame a Special List of rated Occupiers for every Barony of such County, according to the Form (numbered 3.) in the said Schedule (A.) to this Act annexed, of every such Male Person of full Age as shall appear on the Return or the Returns as aforesaid transmitted to him by the Clerk of the Union, or (in case of a Barony being situate in more than one Union) by the Clerks of such Unions, together with the marginal Objections added by the Clerk of the Union to the Names of any Persons in-

cluded in such Special List; and such Clerk of the Peace shall also add, by a Stamp or in Writing, the Word "objected" or "dead" in the Margin of the said List, if such Clerk of the Peace shall, after due Inquiry, (which he is hereby required to make by himself or a sufficient Deputy, and having regard also to and inserting any Objections to the Name of any such Person entered in the said Clerk of the Union's Return,) have reasonable Cause to believe that such Person is not entitled to have his Name on the Register next to be made, or is dead, as the Case may be; and the Clerk of the Peace shall cause a sufficient Number of Copies of such List, with all such marginal Additions as aforesaid, to be written or printed, and shall, on or before the said Seventeenth Day of August, sign and publish the same in such respective Barony, and shall likewise keep at some Police Station or other House within such respective Barony (giving due Notice of such Police Station or House at the Time last aforesaid) a Copy of such List, with all the marginal Additions as aforesaid signed by him, to be perused by any Person, without Payment of any Fee, at any Time between the Hours of Ten of the Clock in the Forenoon and Four of the Clock in the Afternoon of any Day, except Sundays, during the first Four Days after the same shall have been published, and shall deliver written or printed Copies of such List signed by him, to all Persons applying for the same, on Payment of a Price for each Copy after the Rate mentioned in the said Schedule (C.) to this Act annexed.

7. The Clerk of the Peace of every County in Ireland shall, on or before the Seventeenth Day of August in the Year One thousand eight hundred and sixty-eight, publish a Notice in each Barony according to the Form (numbered 4.) in the said Schedule (A.), having first signed the same, requiring all Persons entitled to be inserted in the Register and vote in the Election of a Knight or Knights of the Shire to serve in Parliament in respect of the Franchises conferred by "The Representation of the People (Ireland) Act, 1868," who shall not be upon the said Special List for such Barony of Voters under this Act, and who are respectively desirous to have their Names inserted in the Register about to be made under this Act, to deliver or send to him at his Office, on or before the Twentieth Day of August in the Year One thousand eight hundred and sixty-eight, a Notice in Writing, by them signed, of their Claim to vote as aforesaid.

8. The Clerk of the Peace of every County in Ireland shall, on or before the Twenty-fourth Day of August in the Year One thousand eight hundred and sixty-eight, make out, according to the Form (numbered 6.) in the said Schedule

(A.), a Special List in alphabetical Order for each Barony of all Persons who on or before the Twentieth Day of August in the said Year shall have claimed as aforesaid for such Barony; and in every such List the Christian Name and Surname of every such Claimant, with the Place of his Abode, the Nature of his Qualification, and the local or other Description of the Property, shall be written as the same are stated in the Claim; and the said Clerk of the Peace, if he shall have reasonable Cause to believe that any Person whose Name shall appear in such List of Claimants is not entitled to have his Name upon the Register for such Barony then next to be made, shall add, by a Stamp or in Writing, the Word "objected" before the Name of every such Person on the Margin of such List of Claimants; and the Clerk of the Peace shall cause a sufficient Number of Copies of such List of Claimants in each Barony, with all such marginal Additions as aforesaid, to be written or printed, and shall sign and publish the same in such Barony to which the same relates, and shall likewise keep at some Police Station or other House within such respective Barony (giving due Notice of such Police Station or House at the respective Times last aforesaid) a Copy of such List of Claimants, with the marginal Additions as aforesaid, signed by him, to be perused by any Person, without Payment of any Fee, at any Time between the Hours of Ten of the Clock in the Forenoon and Four of the Clock in the Afternoon of any Day, except Sunday, during the first Four Days after the same shall have been published, and shall deliver written or printed Copies thereof, signed by him, to all Persons applying for the same, on Payment of a Price for each Copy after the Rate mentioned in the said Schedule (C.) to this Act annexed.

9. Every Person whose Name shall have been inserted in any List of Voters for the Time being for any such County, or in such Special Lists, may object to any other Person upon any Special List of Voters or Special List of Claimants for such County under this Act as not having been entitled, under the Provisions of this Act, to have his Name inserted in such Special List of Voters or Claimants for such County under this Act; and every Person so objecting (save and except Clerks of the Peace and Clerks of the Union objecting in the Manner herein-before mentioned) shall, on or before the Twenty-eighth Day of August in the Year One thousand eight hundred and sixty-eight, give or cause to be given to the Clerk of the Peace of the County a Notice according to the Form (numbered 7.) in the said Schedule (A.), or to the like Effect; and the Person so objecting shall, on or before the said Twenty-eighth Day of August, give or cause to be given to the Person so objected

to, or leave or cause to be left at his Place of Abode as described in such List, a Notice according to the Form (numbered 8.) in the said Schedule (A.), or to the like Effect; and every such Notice of Objection shall be signed by the Party so objecting as aforesaid.

10. The Clerk of the Peace shall include the Names of all Persons against whom Notice of Objection shall have been so given to him as aforesaid in a Special List for each Barony, according to the Form (numbered 9.) in the said Schedule (A.), and shall publish such List in such Barony on or before the Thirty-first Day of August in the Year One thousand eight hundred and sixty-eight, and shall also keep at some Police Station or other House in such respective Barony (giving due Notice of such Police Station or House at the Time of Publication last aforesaid) a Copy of such List, to be perused by any Person, without Payment of any Fee, at any Time between the Hours of Ten of the Clock in the Forenoon and Four of the Clock in the Afternoon of any Day, except Sunday, during the first Four Days after such List shall have been so published, and shall deliver a Copy of such List to any Person requiring the same, on Payment of a Price for each Copy after the Rate mentioned in the Schedule (C.) to this Act annexed: Provided also, that the Clerk of the Peace shall in due Time for the Purposes aforesaid cause to be printed or provided a sufficient Number of Notices of Claim according to the Form (No. 5.) and of the Notices of Objection according to the Forms (No. 7. and 8.) in the said Schedule (A.) or to the like Effect, and shall give a Copy thereof, without Cost or Charge, to any Person applying for the same in order to make a Claim or Objection.

In Cities, Towns, and Boroughs.

11. For the Purpose of forming a Register in the Year One thousand eight hundred and sixty-eight of all Persons entitled under the Provisions of "The Representation of the People (Ireland) Act, 1868," to vote in the Election of a Member or Members to serve in Parliament for the several Cities, Towns, and Boroughs in Ireland in respect of the Occupation of any Lands, Tenements, or Hereditaments situate within such City, Town, or Borough of a net annual Value of less than Eight Pounds and more than Four Pounds, or in respect of the Occupation of Lodgings, the Clerk of the Peace of or acting in or for every such City, Town, or Borough shall cause a sufficient Number of Forms of Notices and Lists to be printed according to the respective Forms (numbered 2, 6, 7, 8, 9, and 10) in the Schedule (B.) and of the Table in the said Schedule (C.) to this Act annexed, and

shall also, on or before the Fourth Day of August in the Year One thousand eight hundred and sixty-eight, make and cause to be delivered to the Town Clerk of every such City, Town, or Borough his Precept in Writing according to the Form (numbered 1.) in the said Schedule (B.), and also a sufficient Number of the said printed Forms of Notices and Lists and of the said Table.

12. The Town Clerk of every such City, Town, or Borough, for his Assistance in making out the List of Voters as herein-after mentioned, upon Request made by him at any Time between the Hours of Ten of the Clock in the Forenoon and Four of the Clock in the Afternoon of any Day, except Sunday, between the Fourth Day of August and the Twentieth Day of August in the Year One thousand eight hundred and sixty-eight, to any Collector of Poor Rates, or to any other Officer having the Custody of any Book relating to the same, shall have free Liberty to inspect the same, and to extract such Particulars as may appear to such Town Clerk to be necessary; and every Collector of Poor Rates of Premises within such City, Town, or Borough, or Officer having the Custody of the Rate Books relating to the same, shall (if required by the Town Clerk), within Four Days after the Fourth Day of August in the Year One thousand eight hundred and sixty-eight, make out and deliver to the said Town Clerk a List containing the Name and Place of Abode of every Person who shall not have paid on or before the First Day of July in the Year One thousand eight hundred and sixty-eight all such Rates within the Collection of such Collector as aforesaid which shall have become payable by him (if any) in respect of the Occupation of any Lands, Tenements, or Hereditaments in such City, Town, or Borough, describing such Premises, previously to the First Day of January in the said Year; and the Town Clerk shall keep the said List, to be perused by any Person, without Payment of any Fee, at any Time between the Hours of Ten of the Clock of the Forenoon and Four of the Clock in the Afternoon of any Day, except Sunday, during the first Four Days after the List of Voters shall have been published as herein-after mentioned.

13. The Clerk of every Poor Law Union comprising the whole or any Part of any City, Town, or Borough in Ireland returning a Member or Members to serve in Parliament shall, on or before the Eighth Day of August in the Year One thousand eight hundred and sixty-eight, make out and transmit to the Town Clerk of each such City, Town, or Borough a Special List of every Male Person of full Age who shall be rated or whose Name shall appear in the last Rate made under the Acts for the more effectual Relief

of the destitute Poor in Ireland as the Occupier of any Lands, Tenements, or Hereditaments situate within such City, Town, or Borough of a net annual Value of less than Eight Pounds and more than Four Pounds, and of every such Person as last aforesaid who shall be rated in the last Rate made under the said Acts jointly with any other Person or Persons as the Occupier of any such Lands, Tenements, or Hereditaments, situated as aforesaid, of a net annual Value of such an Amount as when divided by the Number of Occupiers would give to each such Occupier a net annual Value of more than Four Pounds and less than Eight Pounds, excluding nevertheless from such List every such Occupier and every such joint Occupier in any such City, Town, or Borough who shall not on or before the First Day of July in the Year One thousand eight hundred and sixty-eight have paid all Poor Rates (if any) which shall have become payable by him in respect of such Premises previously to the First Day of January then last; and such Lists shall be in the Form and shall contain the Particulars mentioned in Form (numbered 2.) in the Schedule (B.) to this Act annexed; and such Lists shall be signed by such respective Clerk of the Union, and shall be verified by him as true and correct according to the best of his Belief by an Oath or Declaration to be taken or made by him before some Justice of the Peace acting in and for the said City, Town, or Borough, or the County in which the Union Workhouse is situate, and which Oath or Declaration any such Justice is hereby authorized and required to administer or take.

14. The Town Clerk of every such City, Town, or Borough shall, on or before the Seventeenth Day of August in the Year One thousand eight hundred and sixty-eight, make out or cause to be made out a Special List in alphabetical Order, according to the Form (numbered 3.) in the Schedule (B.) to this Act annexed, of all Male Persons of full Age whose Names shall appear on any Special Lists transmitted to him by the Clerk of any Union under the Provisions of this Act as the Occupier, or One of several joint Occupiers, of Lands, Tenements, or Hereditaments situate within such City, Town, or Borough of the net annual Value of less than Eight Pounds and more than Four Pounds, and (in the Case of joint Occupiers) of the net annual Value of more than Four Pounds and less than Eight Pounds for each of such joint Occupiers as aforesaid: Provided always, that such Town Clerk shall omit from the said List all such Persons as shall not have paid on or before the First Day of July in the Year One thousand eight hundred and sixty-eight all Poor Rates payable by them severally, if any, in respect of such Lands, Tenements, or Hereditaments, pre-

viciously to the First Day of January in the said Year, and shall add, by a Stamp or in Writing, the Word "objected" to the Name of any Person inserted in such List in case such Town Clerk shall have reasonable Cause to believe such Person not to be or to have ceased to be Occupier or joint Occupier as aforesaid of the Premises in respect of which he shall have been rated, or not to have been such Occupier or joint Occupier for the Space of Twelve Calendar Months next previous to the said last-mentioned Day in the said Year; and such Town Clerk shall also in like Manner add the Word "objected" or "dead" before the Name of any Person inserted in such List in case such Town Clerk shall have reasonable Cause to believe that such Person is not entitled to have his Name on the Register of Voters to be made for such City, Town, or Borough, or is dead, as the Case may be; and in the said List the Christian Name and Surname of every such Person shall be written at full Length, together with the Name of the Street, Lane, and the Number of the House (if any), or other Description of the Place, where the Lands, Tenements, or Hereditaments of which he is the Occupier or joint Occupier may be situate; and the said Town Clerk shall sign such List, and shall forthwith cause a sufficient Number of Copies of the same, with all such marginal Additions, to be written or printed, and shall publish Copies of the said Lists on or before the Nineteenth Day of August in the Year One thousand eight hundred and sixty-eight, and shall likewise keep a Copy of each of the said Lists, to be perused by any Person, without Payment of any Fee, at any Time between the Hours of Ten of the Clock in the Forenoon and Four of the Clock in the Afternoon of any Day, except Sunday, during the First Four Days after such Lists shall have been so published, and shall deliver Copies thereof to all Persons applying for the same, on Payment of a Price for each Copy after the Rate mentioned in the Schedule (C.) to this Act annexed.

15. Every Person whose Name shall have been omitted in any such Special List of Voters for any such City, Town, or Borough so to be made out as aforesaid, and who shall claim, under the Provisions of Section Twenty of the Representation of the People (Ireland) Act, 1868, or otherwise, as having been entitled to have his Name inserted therein under the Provisions of this Act, shall on or before the Twenty-second Day of August in the Year One thousand eight hundred and sixty-eight give or cause to be given to the Town Clerk of such City, Town, or Borough a Notice according to the Form (numbered 6.) in the said Schedule (B.), or to the like Effect, and the Town Clerk shall include the Names of all Persons so claiming as aforesaid in a Special List

according to the Form (numbered 4.) in the said Schedule (B.); and in every such List the Christian Name and Surname of every Claimant, with the Place of his Abode, the Nature of his Qualification, and the local or other Description of the Property, shall be inserted as the same are stated in the Claim; and the said Town Clerk, if he shall have reasonable Cause to believe that any Person whose Name shall appear in such List of Claimants is not entitled to have his Name upon the Register then next to be made, shall add as aforesaid the Word "objected" before the Name of every such Person on the Margin of such List of Claimants; and the Town Clerk shall cause a sufficient Number of Copies of such Lists of Claimants, with all such marginal Additions as aforesaid, to be written or printed, and shall on or before the Twenty-fifth Day of August in the Year One thousand eight hundred and sixty-eight sign and publish the same, and shall likewise keep Copies of such List of Claimants, with the marginal Additions as aforesaid, signed by him, to be perused by any Person, without Payment of any Fee, at any Time between the Hours of Ten of the Clock in the Forenoon and Four of the Clock in the Afternoon of any Day, except Sunday, during the first Four Days after the same shall have been published, and shall deliver written or printed Copies thereof, signed by him, to all Persons applying for the same, on Payment of a Price for each Copy after the Rate mentioned in the said Schedule (C.) to this Act annexed.

16. The Times limited by Section Five of the Representation of the People (Ireland) Act, 1868, for sending in Claims by Lodgers, and for the Publication of the Particulars of such Claims, shall in the Year One thousand eight hundred and sixty-eight be respectively extended to the Twenty-second Day of August and Twenty-fifth Day of August, instead of the Days in said Section respectively mentioned.

17. It shall be lawful for any Person whose Name shall have been inserted in any List of Voters, or who shall have claimed to have his Name inserted in any List under the Provisions of this Act, upon Request made by any such Person at any Time between the Hours of Ten of the Clock in the Forenoon and Four of the Clock in the Afternoon of any Day, except Sunday, between the Nineteenth Day of August and the First Day of September in the Year One thousand eight hundred and sixty-eight, to any Collector of Poor Rate or other Officer having the Custody of any Book relating to the same, to inspect the same, and make Extracts therefrom, for any Purpose relating to any Claim or Objection made or intended to be made by or against such Person; and every such Collector or other Officer as aforesaid is hereby required, upon such

Request as aforesaid, to permit such Inspection and the making such Extracts, without Payment of any Fee.

18. Every Person whose Name shall have been inserted in any List of Voters for any such City, Town, or Borough, or in such Special Lists, may object to any Person as not having been entitled to have his Name inserted in any Special List of Voters or Special List of Claimants for the same City, Town, or Borough under this Act; and every Person so objecting (save and except Town Clerks objecting in the Manner herein-before mentioned) shall on or before the First Day of September in the Year One thousand eight hundred and sixty-eight give or cause to be given a Notice according to the Form (numbered 7.) in the said Schedule (B.), or to the like Effect, to the Town Clerk of such City, Town, or Borough; and every Person so objecting shall also, on or before the said First Day of September in the Year One thousand eight hundred and sixty-eight, give or cause to be left at the Place of Abode of the Person objected to, as stated in the said List, a Notice according to the Form (numbered 8.) in the said Schedule (B.); and every Notice of Objection shall be signed by the Person objecting.

19. The said Town Clerk shall include the Names of all Persons so objected to in a Special List according to the Form (numbered 5.) in the said Schedule (B.), and shall sign the said List, and cause Copies thereof to be written or printed, and shall publish the said List of Persons objected to as aforesaid on or before the Fourth Day of September in the Year One thousand eight hundred and sixty-eight, and shall keep Copies of the said List, and shall allow the same, and also the Notices of Objection which they shall have received, to be perused by any Person, without Payment of any Fee, at any Time between the Hours of Ten of the Clock in the Forenoon and Four of the Clock in the Afternoon of any Day, except Sunday, during the first Four Days after such Lists shall have been published, and shall deliver Copies of each of such Lists to any Person requiring the same, on Payment of a Price for each Copy after the Rate mentioned in the Schedule (C.) to this Act annexed.

20. Where, under the Provisions of Section Nine of "The Representation of the People (Ireland) Act, 1868," the Boundaries of any Borough are altered, the Special Lists by this Act directed to be formed in the Year One thousand eight hundred and sixty-eight shall, as regards such Borough, include the Names of the Persons who, by reason of such Alteration, have become entitled to vote at any Election of a

Member or Members to serve in Parliament for such Borough; and all Precepts, Proceedings, Notices, Claims, Objections, and Special Lists relating to such Borough under the Provisions of this Act shall be framed in such Manner and Form as may be necessary for carrying the Provisions of this Section into effect.

21. The said Town Clerk shall, on or before the Fifth Day of September in the Year One thousand eight hundred and sixty-eight, deliver to the Clerk of the Peace of or acting in or for such City, Town, or Borough Copies of the said Special Lists of Voters, made out by him as aforesaid, with the marginal Additions as aforesaid, and a Copy of the said Special List of Persons who shall have claimed as aforesaid, and a Copy of the said Special List of Persons objected to as aforesaid, respectively signed by him.

General Provisions.

22. The Clerk of the Peace of every County in Ireland shall, as soon as possible after the Fifth and before the Eighth Day of September One thousand eight hundred and sixty-eight, transmit to the Chairman of such County, or any Riding thereof, an Abstract of the said several Special Lists published by him in pursuance of the Provisions of this Act; and the Clerk of the Peace of or acting in or for every City, Town, or Borough in Ireland shall, as soon as possible after the Fifth and before the Eighth Day of September in the Year One thousand eight hundred and sixty-eight, transmit an Abstract of the said several Special Lists published by him in pursuance of the Provisions of this Act to the Chairman or the Revising Barrister or Barristers having Jurisdiction for the Registry of Voters for such City, Town, or Borough, in order that the Revision of such Lists in Counties, Cities, Towns, and Boroughs respectively may take place within the Time by this Act prescribed.

23. The Forty-sixth and Forty-seventh Sections of the Principal Act relating to the holding of Courts for the Revision of the Lists of Voters for Counties and for Cities, Towns, and Boroughs shall, as regards the Courts to be held for the Purposes aforesaid in the Year One thousand eight hundred and sixty-eight, be read as if the Words "Sixth Day of October" were substituted in those Sections respectively for the Words "Twenty-fifth Day of October," and at such Courts the Special Lists by this Act directed to be made out shall be revised in addition to the other Lists prepared under the said Principal Act, and shall be deemed to be Part of the same; and all the Provisions of the said Principal Act shall apply thereto, save as is herein otherwise provided.

24. The Sixty-third and Sixty-fourth Sections of the Principal Act relating to the Transmission and Delivery of the Book or Books containing the Lists of Voters to the Sheriff and Returning Officer shall, as regards the Register to be formed in the Year One thousand eight hundred and sixty-eight, be read as if the Words "First Day of November" were substituted in those Sections for the Words "last Day of November," and the said Book or Books shall be the Register of Persons entitled to vote for the County, City, Town, or Borough to which such Register relates at any Election which takes place between the First Day of November One thousand eight hundred and sixty-eight and the First Day of January One thousand eight hundred and seventy.

25. In the Month of October in the Year One thousand eight hundred and sixty-eight the Registrar of the University of Dublin shall make out an alphabetical List of the Names of the Electors entitled to vote at any Election for Members to serve in Parliament for the said University; and the said Registrar shall cause Copies of such List to be printed on or before the First Day of November in the Year One thousand eight hundred and sixty-eight, and shall give a Copy of such List to any Elector applying for the same, upon being paid Two Shillings and Sixpence for each Copy.

26. There shall be paid to any Chairman or Revising Barrister, for any Expenses which he shall incur in the Year One thousand eight hundred and sixty-eight by reason of the Provisions of this Act, such Sum, not exceeding the Sum of Twenty-five Pounds, as the Lord Lieutenant or other Chief Governor or Governors of Ireland shall direct; and every such Sum shall be paid by the Commissioners of Her Majesty's Treasury out of Monies provided by Parliament.

27. By way of Remuneration for the additional Duties imposed by this Act in the Year One thousand eight hundred and sixty-eight, there shall be paid to the Clerks of the Peace, Town Clerks, and Clerks of Unions such Sums respectively as the Chairman, or Barrister or Barristers revising the Lists of Parliamentary Electors in respect of which such additional Duties shall have been performed, shall award and certify, and all such Sums shall be paid by the Commissioners of Her Majesty's Treasury out of Monies provided by Parliament.

28. In case it shall appear to the Lord Lieutenant or other Chief Governor or Governors of Ireland that from any Cause the Lists of Voters in the Year One thousand eight hundred and

sixty-eight for any County, City, Town, or Borough in Ireland cannot be revised by the Chairman or Revising Barrister or Barristers within the Period directed by this Act, he may appoint One or more Barrister or Barristers of not less than Ten Years standing to act together with such Chairman, Revising Barrister or Barristers, in such Revision; and such Barrister or Barristers so appointed shall have the same Powers and Authorities in every respect in regard to such Revision as such Chairman, Revising Barrister or Barristers; and every Barrister so appointed shall be paid such Sum in consideration of the Duties performed by him as the Lord Lieutenant or other Chief Governor or Governors of Ireland shall appoint and the Commissioners of Her Majesty's Treasury shall approve, and such Monies shall be paid by the said Commissioners out of Monies provided by Parliament.

29. In case it shall appear to the Lord Lieutenant or other Chief Governor or Governors of Ireland that either of the Revising Barristers for the City of Dublin cannot, from any reasonable Cause, conveniently discharge his Duties in the Revision of the Lists of Voters in the Year One thousand eight hundred and sixty-eight, he may appoint a Barrister of not less than Ten Years standing to act as Deputy for either of the said Revising Barristers; and such Barrister so appointed to do the Duty of either of such Revising Barristers shall have all and every the Powers and Authorities of such Revising Barrister so long as he shall act as his Deputy; and there shall be paid in the said Year One thousand eight hundred and sixty-eight to such Barrister acting as such Deputy as aforesaid, instead of to such Revising Barrister, the Salary prescribed by Section One of the Act of the Twenty-fourth and Twenty-fifth Years of Victoria, Chapter Fifty-six.

30. The Words "the last Rate" in Part I. of this Act shall be deemed to mean the Rate referred to in the Precepts of the Clerks of the Peace issued in the Year One thousand eight hundred and sixty-eight, under the Sixteenth and Twenty-ninth Sections respectively of the Principal Act, to the several Clerks of the Unions and the Town Clerks in Ireland respectively; the Term "Town Clerk" in the said Part I. shall be deemed to mean the Person to whom in the aforesaid Year the Precept issued under the Twenty-ninth Section of the Principal Act was addressed; and the Service of Notices of Objection and other Notices may be made in the Manner prescribed by the Principal Act in that Behalf.

PART II.

AMENDMENT OF LAW AS TO REGISTRATION.

31. In Counties, Cities, Towns, and Boroughs the Lists to be made out and transmitted by the Clerks of Poor Law Unions under the Provisions of the Principal Act, and in the County of the City of Dublin the List to be made out and transmitted by the Collector General of Rates under Section Twenty-one of "The Representation of the People (Ireland) Act, 1868," shall, in the Year One thousand eight hundred and sixty-nine, and in every succeeding Year, be respectively made out in alphabetical Order.

32. The Sixty-third and Sixty-fourth Sections of the Principal Act, relating to the Transmission and Delivery of the Book or Books containing the Lists of Voters to the Sheriff and Returning Officer, shall, as regards the Register to be formed in the Year One thousand eight hundred and sixty-nine, and in every succeeding Year, be read as if the Word "December" were substituted in those Sections for the Word "November," and the said Book or Books shall be the Register of Persons entitled to vote for the County, City, Town, or Borough to which such Register relates at any Election which takes place during the Year commencing on the First Day of January next after such Register is made.

33. Every Person who has heretofore obtained or who shall hereafter obtain a Fellowship or Scholarship, or the Degree of Master of Arts, or any higher Degree, not of a purely honorary Nature, in the University of Dublin, and who shall be desirous of having his Name placed or retained on the Books of the said University for the Purpose of voting at any Election of Members to serve in Parliament for the Borough of the University of Dublin, under the Provisions of Section Four of the Act of the Session of the Fifth and Sixth Years of the Reign of Her present Majesty, Chapter Seventy-four, may require the Registrar of the said University to place or retain his Name upon the Books of the said University without any Payment whatsoever, anything in the said Section to the contrary notwithstanding: Provided always, that no Person shall be entitled to vote at any Election of a Member or Members to serve in Parliament for the said Borough of the University of Dublin unless his Name shall have been upon the Books of the said University for a Period not less than Two Months previous to such Election.

34. In the Month of December in the Year One thousand eight hundred and sixty-nine, and in every succeeding Year, the Registrar of the said University of Dublin shall make out an alphabetical List of the Names of the Electors

entitled to vote at any Election for Members to serve in Parliament for the said University; and the said Registrar shall cause Copies of such List to be printed on or before the First Day of January in the Year One thousand eight hundred and seventy, and in every succeeding Year, and shall give a Copy of such List to any Elector applying for the same, upon being paid Two Shillings and Sixpence for each Copy; and the said Registrar shall each Year publish a Copy of such List in the University Calendar, when such Calendar shall be published, or in some One or more of the public Journals having general Circulation in Ireland.

35. No Person duly rated as Occupier of any House or Premises shall be registered as a Lodger therein.

36. Notwithstanding anything contained in the Fifth Section of "The Representation of the People (Ireland) Act, 1868," the Names of the Persons on whom a Right to vote for a Member or Members to serve in Parliament for any City, Town, or Borough in respect of the Occupation of Lodgings is conferred by the said Act shall, in the Lists and Register of Voters for such City, Town, or Borough made in accordance with the Provisions of the Principal Act, appear in a separate List.

37. From and after the passing of this Act, no Person claiming to be entitled to vote at any Election for a Member or Members to serve in Parliament for any County, City, Town, or Borough in Ireland shall be registered by any Chairman or Revising Barrister, unless Evidence be given to prove such Claim.

PART III.

MISCELLANEOUS.

38. Whereas by the Act of the Session of the Twenty-fifth and Twenty-sixth Years of the Reign of Her present Majesty, Chapter Ninety-two, Section One, it is enacted, that from and after the passing of that Act any such Special Court as is therein mentioned for the Purpose of the Election of a Member or Members to serve in Parliament for any County in Ireland shall be holden on any Day (Sunday, Good Friday, and Christmas Day excepted) not later from the Day of making such Proclamation than the Twelfth Day, nor sooner than the Sixth Day: Provided that that Section shall not apply to the Election for any County of a City or of a Town: Be it enacted, That the said Section shall be read as if the Words "Fourth Day" were substituted for "Sixth Day."

39. In case it shall so happen that the Chairman of the County, from any Cause, shall not be in attendance to open any Revision Court appointed to be held for any County, District, or Borough on the Day appointed for opening the same, or, after having opened the same, shall not continue his Attendance until the Business of such Revision Court shall be completed, it shall be lawful for the Clerk of the Peace of the County, or his Deputy, at the Expiration of Two Hours from the Time fixed for the opening of the said Revision Court, or from the Discontinuance of such Attendance as aforesaid, and not before, to open and adjourn or to adjourn such Revision Court, and from Time to Time to adjourn the same for such reasonable Time as shall be sufficient for the said Chairman to commence the Business of the said Revision Court, or to continue the Sittings of the same, or in

case of the Death, Illness, or continued Absence of the said Chairman, for such reasonable Time as shall be sufficient for the Chancellor for the Time being or Keeper or Commissioner of the Great Seal in Ireland to be informed of such Death, Illness, or Absence, and to appoint some other Person to do the Duty of the said Revision Court, and for such Person to repair to the Place where such Revision Court should be held, and to take upon himself the Execution of the said Duty.

40. The Words and Expressions to which by the Principal Act Meanings are assigned have in this Act the same respective Meanings, unless excluded by the Subject or Context; and in the Construction of the Representation of the People (Ireland) Act, 1868, and also of this Act, the Word "Borough" shall include City and Town.

SCHEDULES.

SCHEDULE (A.)

Forms.

No. 1.

SPECIAL PRECEPT OF THE CLERK OF THE PEACE TO THE CLERK OF THE UNION IN THE YEAR 1868.

County of Barony of .

To the Clerk of the Union of .

In pursuance of the Provisions of "The Registration Amendment (Ireland) Act, 1868," I require your Attention to the following Instructions; that is to say, On or before the Eighth Day of August next you are to make out, and transmit to me, a Special List of every Male Person of full Age who shall be rated in the last Rate, as the same is defined in Section Thirty of the said Act, made for the Relief of the Poor as the Occupier of any Lands, Tenements, or Hereditaments situate within your Union, and in the said Barony, or in your Division of the said Barony, (*as the Case may be*), jointly with any other Person or Persons, of a net annual Value of such an Amount as when divided by the Number of Occupiers would give to each such Occupier a net annual Value of Twelve Pounds or upwards; and you are also to insert in such List the Names of every Male Person of full Age who shall have been rated in the said last Rate made for the Relief of the Poor as the Occupier of Lands, Tenements, or Hereditaments of a net annual Value of Twelve Pounds or upwards where the said Premises shall not have been the

same Premises, but different Premises occupied in immediate Succession during the Twelve Calendar Months next previous to the Twentieth Day of July One thousand eight hundred and sixty-eight, but you are to exclude nevertheless from such Special List every such Occupier who shall not, on or before the First Day of July in this Year, have paid all Poor Rates (if any) which shall have become payable by him in respect of such Premises previously to the First Day of January last; and you are required, after due Inquiry, which you are required to make, with the Assistance of the respective Collectors of Poor Rates as aforesaid, to enter Objections, by adding in the Margin the Word "objected" or "dead" (*as the Case may be*) before the Names of Persons in such Special List contained, and not entitled to be on the Register next to be made, and such Special List shall be in the Form and shall contain the Particulars mentioned in the Form (Number 2.) herewith sent; and such List shall be signed by you, and shall be verified by you as true and correct, according to the best of your Belief, by an Oath or Declaration to be made or taken by you before some Justice of the Peace for the said County within which such Lands are situate, or the County in which your Union Workhouse is situate, and which Oath any such Justice is authorized and required to administer or take, and to certify at the Foot of such List the taking of such Oath or the making of such Declaration.

You are required to allow to any Person on the Lists of Voters of the County, or in this Special List, Inspection of the Rate Books, and to make

Extracts therefrom during the Periods prescribed by the said Act.

You, or a sufficient Deputy to be appointed by you, are or is to attend the Court to be holden by the Chairman of the Sessions for the County of _____ in which the said Barony lies (of the Time and Place of holding which Notice will be sent to you), and there to have for the Inspection of the Chairman holding such Court the Rate Books or Copies of the Parts thereof relating to Premises within the said Barony, or your Division thereof.

Herein if you fail you will be liable to the Penalties in that Case provided.

Given under my Hand, this
Day of _____

A.B.,
Clerk of the Peace for the
County of _____

No. 2.

[To be used in the Year 1868.]

County of _____, Barony of _____
Clerk of Union's Special Return, for the Year
1868, of Male Persons rated in the last Rate under

the Acts for the Relief of the destitute Poor, as the Occupiers, jointly with any other Person or Persons, of Lands, Tenements, or Hereditaments rated separately or together at a net annual Value of such an Amount as when divided by the Number of Occupiers would give to each such Occupier a net annual Value of Twelve Pounds or upwards, and of such Male Persons rated in the said Rate, under the said Acts, as Occupiers of Lands, Tenements, or Hereditaments of the net annual Value of Twelve Pounds or upwards where the said last-mentioned Premises shall not have been the same Premises, but different Premises occupied in immediate Succession during the Twelve Calendar Months previous to the Twentieth Day of July One thousand eight hundred and sixty-eight, situate in the Barony of _____, being Part of the Poor Law Union of _____, and all which Occupiers have on or before the First Day of July One thousand eight hundred and sixty-eight paid all Poor Rates (if any) which have become payable by them respectively out of such respective Lands, Tenements, or Hereditaments previously to the First Day of January One thousand eight hundred and sixty-eight.

Column for entering the Clerk of the Union's Objections.	Rated Occupier's Christian Name and Surname at full Length.	Place of Abode.	Townland or Denomi- nation, and Name or Description of Premises rated.	Rated Value of Premises.

I certify that this is a correct List. Dated this
Day of _____ 18 _____

(Signed) A.B.,
Clerk of the Union of _____

Verified on Oath or by Declaration by the said
A.B. before me, a Justice of the Peace for the
County of _____

(Signed) C.D., Justice.

No. 3.

County of _____, Barony of _____
Special List in the Year 1868.

Clerk of the Peace's Special List of Male Persons rated under the last Rate under the Acts for the Relief of the Destitute Poor as the Occupiers, jointly with any other Person or Persons, of Lands, Tenements, or Hereditaments rated separately or together at a net annual Value of such

an Amount as when divided by the Number of Occupiers would give to each such Occupier a net annual Value of Twelve Pounds or upwards, and of such Male Persons rated in the said Rate, under the said Acts, as Occupiers of Lands, Tenements, or Hereditaments of the net annual Value of Twelve Pounds or upwards where the said last-mentioned Premises shall not have been the same Premises, but different Premises occupied in immediate Succession during the Twelve Calendar Months previous to the Twentieth Day of July One thousand eight hundred and sixty-eight, and situate in the Barony of _____, being Part of the Poor Law Union of _____, and all which Occupiers have on or before the First Day of July One thousand eight hundred and sixty-eight paid all Poor Rates, if any, which have become payable by them respectively out of such respective Lands, Tenements, or Hereditaments previously to the First Day of January One thousand eight hundred and sixty-eight.



Column for entering Clerk of the Union's Objections.	Rated Occupier's Christian Name and Surname at full Length.	Place of Abode.	Townland or Denomination, and Name or Description of Premises rated.	Rated Value of Premises.

I certify that this is a correct List. Dated this
Day of 1868.
(Signed) A.B.,
Clerk of the Peace of the County of

No. 4.

NOTICE TO BE GIVEN BY THE CLERK OF THE
PEACE AS TO CLAIMS TO VOTE.

County of

I hereby give Notice, That all Persons entitled to vote in the Election of a Knight or Knights of the Shire for the County of in respect of Premises situate wholly or in part within any Barony of this County who shall not be on the Special List of Ratepayers for such Barony, and are not upon the Register of Voters now in force (relating to such Barony), and who are desirous to have their Names inserted in the Register of Voters about to be made for the said County under the Provisions of the Registration Amendment (Ireland) Act, 1868, are hereby required to give or send to me at my Office, on or before the Twentieth Day of August in this Year, a Notice in Writing, by them signed, in which their Name and Surname at full Length,

their Place of Abode, and the Particulars of their Qualification, must be legibly written, according to the Form (No. 5.) hereunder set forth.*

Dated this Day of
in the Year 1868.
(Signed) A.B.,

Clerk of the Peace of the County of

No. 5.

FORM OF NOTICE OF CLAIM TO BE INSERTED
ON SPECIAL LIST TO BE GIVEN TO THE
CLERK OF THE PEACE IN THE YEAR 1868.

Barony of

To the Clerk of the Peace of the County
of

I hereby give you Notice, That I claim to be inserted in the Special List for this Barony of Voters for the County of, and that the Particulars of my Place of Abode and Qualification are stated in the Columns below.

Dated the Day of
in the Year 1868.
(Signed) A.B.

Christian Name and Surname of the Claimant at full Length.	Place of Abode.	Nature and Amount of Qualification.	Townland or Denomination, Street, Lane, or other like Place in this Barony, and Number of House (if any), where the Property is situate, or Name of the Property.

* Note.—The Form (No. 5.) should be annexed to this Notice.

No. 6.

County of _____, Barony of _____,
to wit.

The Special List of Persons under the Provisions of "The Representation of the People

(Ireland) Act, 1868," in the Year One thousand eight hundred and sixty-eight, claiming to be entitled to vote in the Election of a Knight [or Knights] of the Shire for the County of _____ in respect of Property situate wholly or in part within the Barony of _____.

Margin for entering Clerk of the Peace's Objections.	Christian Name and Surname of each Voter at full Length.	Place of Abode.	Nature and Amount of Qualification.	Townland or Denomination, Street, Lane, or other like Place in this Barony, and Number of House (if any) where the Property is situate, or Name of the Property.

(Signed) A.B., Clerk of the Peace of the said County.

No. 7.

NOTICE OF OBJECTION TO BE GIVEN TO THE CLERK OF THE PEACE.

Barony of _____

To the Clerk of the Peace of the County of _____

I hereby give you Notice, That I object to the Name of the Person mentioned and described below being retained in the Special List for this Barony of Voters for the County of _____

Christian and Surname of the Person objected to as described in the Special List.	Place of Abode, as described.	Nature of Qualification as described.	Townland or Denomination, Street, Lane, or other like Place, where the qualifying Property is situate, &c., as described in the Special List.

Dated the _____ Day of _____ in the Year _____ (Signed) A.B. [Place of Abode.]

No. 8.

NOTICE OF OBJECTION TO BE GIVEN TO PARTIES OBJECTED TO BY ANY PERSON OTHER THAN THE CLERK OF THE PEACE OR CLERK OF THE UNION.

Barony of _____

To Mr. _____

of _____

Take notice, That I object to your Name being retained in the Special List for this Barony of Voters for the County of _____

Dated this _____ Day of _____ One thousand eight hundred and sixty-eight.

(Signed) A.B. of [Place of Abode,] being now registered [or on the Register of Voters, or List of Voters, or Special List of Voters, as the Case may be,] for the County of _____

No. 9.

LIST OF PERSONS OBJECTED TO IN THE YEAR 1868, TO BE PUBLISHED BY THE CLERK OF THE PEACE.

County of Barony of

The following Persons have been objected to, as not being entitled to have their Names retained in the Special List for this Barony of Voters for the County of

Christian Name and Surname of each Person objected to.	Place of Abode.	Nature of the supposed Qualification.	Townland or Denomination, Street, Lane, or other like Place in this Barony, and Number of House (if any), where the Property is situate, or Name of the Property.

(Signed) A.B., Clerk of the Peace of the County of

SCHEDULE (B.)
Forms.

No. 1.

SPECIAL PRECEPT OF THE CLERK OF THE PEACE TO THE TOWN CLERK.

City [or Town or Borough] of
in the County of , to wit.
To the Town Clerk &c.
of the City [or of or in the Town or Borough]
of

In pursuance of the Provisions of the Registration Amendment (Ireland) Act, 1868, I require your Attention to the following Instructions :
On or before the Seventeenth Day of August you are to make out a Special List in alphabetical Order, according to the Form (numbered 3.) herewith sent, of all such Male Persons of full Age as shall appear on the List transmitted to you by the Clerk of the Union in this Year as the Occupier, or One of several joint Occupiers, of Lands, Tenements, or Hereditaments situate within this City [Town or Borough] of the net annual Value of less than Eight Pounds and more than Four Pounds [or, in the Case of joint Occupiers, more than Four Pounds and less than Eight Pounds for each such joint Occupier].
You are to omit from the said List all such Persons as shall not have paid, on or before the First Day of July 1868, all Poor Rates payable by them severally, if any, in respect of such Premises previously to the First Day of January 1868.
You are to add, with a Stamp or in Writing,

the Word "objected" to the Name of any Person inserted in the said List (marked No. 2.) in case you shall have reasonable Cause to believe such Person not to be, or to have ceased to be, Occupier or joint Occupier of the Premises in respect of which he shall have been rated, or not to have been such Occupier or joint Occupier for the Space of Twelve Calendar Months next previous to such Twentieth Day of July; and in the said List to be made out by you the Christian Name and Surname of every such Person must be written at full Length, together with the Place of his Abode and the Nature of his Qualification; and the Name of the Street, Lane, and the Number of the House (if any), or other Description of the Place where such Property may be situate, shall be specified in the List; and you shall sign the said List, and shall forthwith cause a sufficient Number of Copies of the said List, with all such marginal Additions, to be written or printed.
You are to publish, in the Manner by the Principal Act directed with regard to Notices, Copies of the said List, signed by you, on or before the Nineteenth Day of August, and you are likewise to keep a Copy of each of the said Lists, signed by you, to be perused by any Person, without Payment of any Fee, at any Time between the Hours of Ten of the Clock in the Forenoon and Four of the Clock in the Afternoon of any Day, except Sunday, during the first Four Days after such Lists shall have been so published, and you are to deliver Copies thereof to all Persons applying for the same, on Payment of a Price for each Copy after the Rate contained in the Table herewith sent.

You are, on or before the Twenty-fifth Day of August, to make out and to publish in manner aforesaid a Special List, according to the Form numbered 4, containing the Name of every Person who shall have given or have caused to be given to you, on or before the Twenty-second Day of August, his Claim to have his Name inserted in the Special List; but if you have reasonable Cause to believe that any Person whose Name shall appear in such List of Claimants is not entitled to have his Name upon the Register then next to be made, you are to add in like Manner the Word "objected" before the Name of every such Person on the Margin of such List of Claimants; you are also to make out another Special List, according to the Form numbered 5, containing the Name of every Person against whom a Notice of Objection shall have been given to you, on or before the First Day of September, as not being entitled to have his Name retained in the Special List for your City [or Town or Borough]; and on or before the Fourth Day of September you are to sign each of such last-mentioned Special Lists, and publish the same on some public and conspicuous Situation on the Outside of the outer Door or on the outer Wall near the Door of the Town Hall, or if there be no Town Hall, then on such other Place as aforesaid in the same Manner as before mentioned with regard to the Notices.

You are to keep a Copy of these Special Lists, signed by you, and you are to allow the same, and also the Notices of Objection, to be perused by any Person, without Payment of any Fee, at any Time between the Hours of Ten of the Clock in the Forenoon and Four of the Clock in the Afternoon of any Day, except Sunday, during the first Four Days after the said Lists shall have been published, and you are to deliver a Copy of each of such Lists to any Person requiring the same, on the Payment of a Price for each Copy after the Rate contained in the Table herewith sent.

If you shall find that any such Notice, List, or other Document published by you as aforesaid has been destroyed, mutilated, effaced, or removed, you are forthwith to place another in its Room to the same Effect.

On or before the Fifth Day of September you are to deliver to me Copies of the said Special

List of Voters so made out by you, with the marginal Additions as aforesaid, Copies of the Special List of Claimants, and Copies of the Special List of Persons objected to, so respectively made out and signed as aforesaid.

You are to attend the Court to be holden for the Revision of the List of Voters for your City [or Town or Borough], of the Time of holding which due Notice will be given; and at the opening of such Court you are there to deliver to the Chairman of the Sessions for the County, or Revising Barrister, before whom the same shall be holden, the several Lists made out by you, with the marginal Additions as aforesaid, and signed by you, and the original Notices of Objection and the original Notices of Claims given to you, together with the List transmitted to you by the Clerk of the Union.

Herein if you fail you will liable to the Penalties in that Case provided. Given under my Hand this _____ Day of _____ One thousand eight hundred and _____

(Signed)

A.B.

{ Clerk of the Peace of or acting in or for the City [or Town or Borough] of

No. 2.

Clerk of Union's Special List, for the Year 1868, of Male Persons rated or whose Names shall appear in the last Rate under the Acts for the Relief of the destitute Poor as the Occupiers of Lands, Tenements, or Hereditaments rated separately or together at the net annual Value of less than Eight Pounds and more than Four Pounds, and situate in the City [or Town or Borough] of _____ being Part of the Poor Law Union of _____ (or, in the Case of joint Occupiers, rated at a net annual Value of such an Amount as, when divided by the Number of such Occupiers, would give to each a net annual Value of less than Eight Pounds and more than Four Pounds); excluding from this List all such Occupiers as have not on or before the First Day of July 1868 paid all Poor Rates, if any, which have become payable by them respectively out of such respective Premises previously to the First Day of January 1868.

Christian Name and Surname at full Length.	Place of Abode.	Name or Description of Premises rated.	Rated Value of Premises.

I certify that this is a correct List. Dated this _____ Day of _____ 1868.

(Signed) A. B.
Clerk of the Union of _____

Verified on Oath, or by Declaration, by the said A. B. before me, a Justice of the Peace for the _____ of _____
(Signed) C. D., Justice.

No. 3.

Special List of Male Persons entitled to vote in the Election of a Member [or Members] to serve in Parliament for the City [or Town or Borough] of _____ as being Persons rated or whose Names shall appear in the last Rate under the Acts for the Relief of the destitute Poor as the Occupiers of Lands, Tenements, and Hereditaments rated separately or together at the net annual Value of less than Eight Pounds and more than Four Pounds, and situate in the City

[or Town or Borough] of _____, being Part of the Poor Law Union of _____ (or, in the Case of joint Occupiers, rated at a net annual Value of such an Amount as, when divided by the Number of such Occupiers, would give to each a net annual Value of less than Eight Pounds and more than Four Pounds), all which Persons aforesaid have, on or before the First Day of July 1868, paid all Poor Rates, if any, which have become payable by them respectively out of such respective Premises previously to the First Day of January 1868.

Margin for entering Town Clerk's Objections.	Christian Name and Surname at full Length.	Place of Abode.	Nature of Qualification.	Name or Description of Premises rated. Street, Lane, or other like Place in this City [or Town or Borough], and Number of the House (if any), where the Property is situate.	Rated Value of Premises.

I certify that this is a correct List. Dated this _____ Day of _____ 18 .
(Signed) A. B. { Town Clerk for the City [or Town or Borough] of _____

No. 4.

SPECIAL LIST, FOR THE YEAR 1868, OF CLAIMANTS, TO BE PUBLISHED BY THE TOWN CLERK.

The following Persons claim to have their Names inserted in the Special List of Persons entitled to vote in the Election of a Member

[or Members] for the City [or Town or Borough] of _____ in respect of being Occupiers of Lands, Tenements, or Hereditaments rated separately or together at the net annual Value of less than Eight Pounds and more than Four Pounds within the said City [or Town or Borough].

Column for entering Town Clerk's Objections.	Christian Name and Surname of each Claimant at full Length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like Place in this City [or Borough] where the Property is situate, and Number of the House (if any).

(Signed) A. B. { Town Clerk of the City [or Town or Borough] of _____

No. 5.

SPECIAL LIST, FOR THE YEAR 1868, OF
PERSONS OBJECTED TO, TO BE PUBLISHED
BY THE TOWN CLERK.

The following Persons have been objected to
as not being entitled to have their Names retained in the Special List of Persons qualified
to vote in the Election of a Member [or

Members] for the City [or Town or Borough]
of in respect of being Occupiers
of Lands, Tenements, or Hereditaments rated
separately or together at a net annual Value
of less than Eight Pounds and more than Four
Pounds within the said City [or Town or
Borough], or in respect of the Occupation of
Lodgings.

Christian Name and Surname of each Person objected to.	Place of Abode.	Nature of the supposed Qualifi- cation.	Street, Lane, or other Place in the Parish where the Property is situate, and Number of the House (if any).

(Signed) A. B. { Town Clerk of the City [or Town or
Borough] of

No. 6.

NOTICE OF CLAIM.

To the Town Clerk of the City [or Town or
Borough] of

I hereby give you Notice, That I claim to have
my Name inserted in the Special List made by

you of Persons entitled to vote in the Election
of a Member [or Members] for the City [or
Town or Borough] of , and that
the Particulars of my Qualification and Place
of Abode are stated in the Columns below.

Dated the Day of
One thousand eight hundred and sixty-eight.

Christian Name and Surname of the Claimant at full Length.	Place of Abode.	Nature of Qualifi- cation.	Street, Lane, or other Place in the City [or Town or Borough] where the Property is situate, and Number of the House (if any).

(Signed) A. B.

No. 7.

NOTICE OF OBJECTION.

To the Town Clerk of the City [or Town or
Borough] of

I hereby give you Notice, That I object to the
Name of being retained on the
Special List or on the List of Lodgers as a

Person entitled to vote in the Election of a
Member [or Members] for the City [or Town or
Borough] of

Dated this Day of

(Signed) A. B. of [Place of Abode].
on the List of Voters for the City [or Town
or Borough] of

No. 8.

FORM OF NOTICE OF OBJECTION TO BE GIVEN
TO PARTIES OBJECTED TO.

To Mr.

I hereby give you Notice, That I object to
your Name being retained on the Special List

or on the List of Lodgers as a Person entitled
to vote in the Election of Members [or a
Member] for the City [or Town or Borough]
of

Dated this Day of

(Signed) A. B. of [Place of Abode],

on the List of Voters or Special List for the
City [or Town or Borough] of

FORM No. 9.

CLAIM OF LODGER.

City, Town, or Borough of

To the Town Clerk of the City, Town, or
Borough of

I hereby claim to be inserted in the List of
Voters in respect of the Occupation of the un-
der-mentioned Lodgings, and the Particulars of
my Qualification are stated in the Columns
below.

Christian Name and Surname at full Length.	Profession, Trade, or Calling.	Description of Lodgings.	Description of House in which Lodgings situate, with Number, if any, and Name of Street.	Name, Description, and Residence of Landlord or other Person to whom Rent paid.

I, the above-named hereby
declare that I have been during the Twelve
Months immediately preceding the Twentieth
Day of July in this Year the Occupier as sole
Tenant of the above-mentioned Lodgings, and
that I have resided therein during the Twelve
Months immediately preceding the said Twentieth
Day of July, and that such Lodgings are of a
clear yearly Value, if let unfurnished, of Ten
Pounds or upwards.

Dated the

Day of

Signature of Claimant

Witness to the Signature of the said

And I certify my Belief in the Accu-
racy of the above Claim.

Name of Witness - - -

Residence and Calling - - -

[This Claim must bear Date after the Twenty-
first Day of July, and must be delivered to the
Town Clerk on or before the Twenty-second Day
of August.]

FORM No. 10.

LIST OF CLAIMANTS IN RESPECT OF LODGINGS TO BE PUBLISHED BY THE TOWN CLERK.

The following Persons claim to have their Names inserted in the List of Persons entitled to
vote in the Election of a Member [or Members] for the City, Town, or Borough of

Christian Name and Surname of each Claimant at full Length.	Profession, Trade, or Calling.	Description of Lodgings.	Description of House in which Lodgings situate, with Number, if any, and Name of Street.	Name, Description, and Residence of Landlord or other Person to whom Rent paid.

(Signed) A. B., Town Clerk.

K K 2

SCHEDULE (C.)

TABLE OF RATES OF PAYMENT TO BE DEMANDED AND PAID FOR ANY LIST OR COPY OF A LIST (OTHER THAN A REGISTER), WHERE A PAYMENT IS REQUIRED AND AUTHORIZED BY THIS ACT.

For any List or Copy of a List containing any Number of Persons Names :

	s.	d.
Not exceeding 100 Names - - - - -	0	6
Exceeding 100 and not exceeding 200 - - - - -	1	0
Exceeding 200 and not exceeding 300 - - - - -	1	6
Exceeding 300 and not exceeding 400 - - - - -	2	0
Exceeding 400 - - - - -	2	6

CAP. CXIII.

Marriages Validity (Blakedown).

ABSTRACT OF THE ENACTMENTS.

1. *Marriages heretofore solemnized in Chapel of St. James-the-Greater to be as valid as those in Hagley Church.*
2. *Minister officiating not liable to Censure.*
3. *Registers of such Marriages to be Evidence.*

An Act to render valid Marriages heretofore solemnized in the Chapel of Ease called Saint James-the-Greater Chapel, Blakedown, in the Parish of Hagley in the County of Worcester.

(31st July 1868.)

WHEREAS the Church or Chapel known as Saint James-the-Greater in the Hamlet of Blake-down in the County and Diocese of Worcester is a Chapel of Ease to the Parish Church of Hagley aforesaid, and was on the Twenty-fifth Day of July One thousand eight hundred and sixty duly consecrated for the Performance of Divine Service, but no Authority hath ever been given by the Bishop of the said Diocese or otherwise for the Publication of Banns and Solemnization of Marriages therein: And whereas divers Marriages have nevertheless been solemnized in the said Church or Chapel under an erroneous Impression on the Part of the Minister thereof that, by virtue of the Consecration of the said Church or Chapel, or otherwise, Marriages might be lawfully solemnized therein, and Entries of the said Marriages so solemnized have from Time to Time been made in the Register Books kept either at the said Church or Chapel or at the Parish Church of Hagley aforesaid: And whereas it is expedient, under the Circumstances aforesaid, to remove all Doubts touching the Validity of the Marriages so solemnized in the said Church or

Chapel: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. All Marriages heretofore solemnized in the said Church or Chapel by the Officiating Minister thereof or by any other Clergyman respectively, being duly ordained Ministers of the Church of England, and the Publication of Banns in such Church or Chapel by such Minister or Clergyman previous to any such Marriages, shall be and be deemed to have been as good, valid, and effectual in the Law to all Intents and Purposes whatsoever as if such Marriages had been solemnized and such Publication of Banns had taken place in the Parish Church of Hagley aforesaid.

2. No Minister who has solemnized any of the said Marriages shall be liable to any Ecclesiastical Censures, or to any other Proceedings or Penalties whatsoever, by reason of his having so solemnized the same respectively.

3. The Registers of the Marriages so solemnized, or Copies of such Registers, shall be received in all Courts of Law and Equity as Evidence of such Marriages respectively, in the same Manner as Registers of Marriages in Parish Churches, or Copies thereof, are by Law receivable in Evidence.

CAP. CXIV.

The Ecclesiastical Commission Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Definition of Property.*
3. *Objects of Scheme.*
4. *Capital Sum for Fabric.*
5. *Order in Council confirming Scheme to be made, &c. under 3 & 4 Vict. c. 113. ss. 84 to 89.*
6. *Order to effect Transfer without Conveyance.*
7. *Saving of Trusts.*
8. *Application of transferred Property.*
9. *Leases by Dean or Chapter when re-endowed. See 23 & 24 Vict. c. 124. 5 & 6 Vict. c. 27.*
10. *Settlement of Treaty and its Terms may be referred to Arbitration.*
11. *This Act or 23 & 24 Vict. c. 124. not to affect Provisions as to Leases, &c. contained in 5 & 6 Vict. c. 108. and 21 & 22 Vict. c. 57.*
12. *Amendment of Law relating to Schemes for securing the better Performance of Clerical Duties in ill endowed Parishes.*
13. *Application of Act to Canonries, &c.*
14. *Exemption.*
15. *Section 5 of 29 & 30 Vict. c. 111. to apply to all Payments, &c. under 13 & 14 Vict. c. 41., 21 & 22 Vict. c. 58., 29 & 30 Vict. c. 86., and 30 & 31 Vict. c. xxvi.*

An Act to amend the Law relating to the Ecclesiastical Commissioners for England. (31st July 1868.)

WHEREAS it is expedient to amend the Acts relating to the Ecclesiastical Commissioners for England:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited as The Ecclesiastical Commission Act, 1868.

2. In this Act the Term "Property" includes all Property, Real, Personal, and Mixed, vested in the Person or Body Corporate with reference to whom the Word is used, or to which such Person or Body is entitled, whether such Property is in possession or in reversion or contingent, or a Thing in Action, or is held in trust for him or them, or is standing in the Name of the Accountant General of the Court of Chancery.

3. The Ecclesiastical Commissioners for England (in this Act referred to as the Commissioners) may, with the Consent in Writing of any Dean and Chapter in England under their Common Seal, and of the Visitor of such Dean and Chapter, from Time to Time lay before Her Majesty in Council Schemes for effecting with

respect to the consenting Dean and Chapter all or any of the following Things; namely,

- (1.) For transferring to the Commissioners the whole or some specified Part of the Property of the Dean and Chapter (except the Cathedral or Collegiate Church and the Buildings belonging thereto, and any ecclesiastical, educational, or other like Patronage,) for such Consideration, whether consisting of a Money Payment or other Property, or partly one and partly the other, and generally on such Terms, as the Commissioners think fair and reasonable, including the Extinguishment of any Right of the Commissioners to receive any Part of the Income or Property of the Dean and Chapter, or of any Member thereof:
- (2.) For transferring Lands to the Dean and Chapter in lieu of any annual Sum payable to them by the Commissioners either under this Act or otherwise:
- (3.) For making such incidental Provisions as may be necessary for carrying into effect any of the above-mentioned Objects.

4. The Commissioners on a Transfer under this Act may set apart as Part of the Consideration a Capital Sum to be expended to the Satisfaction of the Commissioners in substantial Repairs, Restoration, and Improvements of the Cathedral or Collegiate Church and the Buildings belonging thereto.

5. The following Sections of the Act of the Session of the Third and Fourth Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, "to carry into effect, with certain Modifications, the Fourth Report of the Commissioners of Ecclesiastical Duties and Revenues," namely, Sections Eighty-four to Eighty-nine (both inclusive), which relate to the making, publishing, and registering of an Order in Council for ratifying a Scheme, and to the laying the same before Parliament, shall apply to any Scheme made under this Act in the same Manner as if they were herein enacted.

6. After the Date of the Publication of an Order in Council ratifying any Scheme made in pursuance of this Act, and without any further Conveyance or Act in the Law, the Property expressed to be thereby transferred shall (so far as the same can be vested by this Act) vest in the Transferees and their Successors, and (so far as the same cannot be so vested) shall be deemed to be held in trust for the Transferees and their Successors; and the Transferees and their Successors shall, as far as may be, take the same for the same Estate and Interest and subject to the same Liabilities for and subject to which it was held at the said Date by the Dean and Chapter or the Commissioners, as the Case may be.

7. Nothing in this Act, or in any Order in Council made thereunder, shall affect the Liability of any Property to any Trust other than a Trust for the Benefit of a Dean and Chapter, or some Member thereof.

8. All Property transferred to the Commissioners by an Order in Council under this Act shall be held by them in the same Manner, and for the same Purposes, and subject to the same Provisions, as the Property of which the Rents and Profits are to be carried over to their Common Fund, and the Income thereof shall be applied accordingly; and all Property transferred to a Dean and Chapter by an Order in Council under this Act shall be held upon the Trusts and for the Purposes directed by the Order, and subject thereto shall form Part of the Endowment of such Dean and Chapter; and any annual Sum paid to a Dean and Chapter in pursuance of an Order in Council under this Act shall be applied in the Manner in which it would be applicable if it were the Income of Property transferred to the Dean and Chapter.

9. After the passing of this Act, none of the Dean and Chapters mentioned in the Schedule to an Act of the present Session, Chapter Nineteen, intituled "An Act for declaring valid certain Orders of Her Majesty in Council relating to the Ecclesiastical Commissioners for England,

"and to the Deans and Chapters of certain Churches," and no Dean and Chapter, shall the making of any Order in Council respecting them in pursuance of this Act, shall demise any Lands vested in them otherwise than from Year to Year, or for a Term of Years in possession, not exceeding Twenty-one, at the best annual Rent that can be reasonably got without Fine, and shall not make the Lessee dispensable for or exempt from Liability in respect of Waste; and in every such Lease such or the like Covenants, Conditions, and Reservations shall be entered into, reserved, or contained, with or for the Benefit of the Dean and Chapter, and their Successors, as under Section One of the Act of the Session of the Fifth and Sixth Years of the Reign of Her present Majesty, Chapter Twenty-seven, "for better enabling Incumbents of Ecclesiastical Benefices to demise the Lands belonging to their Benefices on Farming Leases" are to be entered into, reserved, or contained with or for the Benefit of the Lessor and his Successors in a Lease granted under that Section, as near thereto as the Circumstances admit.

10. In all Cases where an Agreement has been or shall be entered into, or a Treaty has been or shall be commenced, or is or shall be pending, between a Dean and Chapter and any of their Lessees, for any Sale and Purchase under the Acts of the Fourteenth and Fifteenth Victoria, Chapter One hundred and four, Seventeenth and Eighteenth Victoria, Chapter One hundred and sixteen, or Twenty-third and Twenty-fourth Victoria, Chapter One hundred and twenty-four, and the Caputal Estate is transferred to the Commissioners under the Provisions of this Act, it shall be competent to the Church Estates Commissioners to approve and confirm as heretofore such Agreement, and to continue and bring to a Conclusion and approve such Treaty: Provided always, that in the event of the Church Estates Commissioners declining to approve such Agreement or Treaty, the Ecclesiastical Commissioners shall be bound to purchase the Lessee's Interest, if required by the Lessee, with all the Benefits, as to Arbitration and otherwise, to which Lessees are entitled under the above-mentioned Acts or any of them; and in every Case the Costs of such Arbitration and Award shall be in the Discretion of the said Arbitrators or Umpire, as the Case may be.

11. The Provisions contained in this Act, or in the Act of the Session of the Twenty-third and Twenty-fourth Years of the Reign of Her present Majesty, Chapter One hundred and twenty-four, "further to amend the Acts relating to the Ecclesiastical Commissioners, and the Act concerning the Management of Episcopal and Caputal Estates in England," shall not affect

of the Provisions relating to Leases, Appropriations, Sales, or Exchanges contained in the Ecclesiastical Leasing Acts.

2. Where in pursuance of the Seventy-third section of the Act of the Session of the Third and Fourth Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, and any Act amending the same, any Scheme has, before or after the passing of this Act, been made, transferred or purporting to transfer any Ecclesiastical Corporation, whether aggregate or sole, or to any Person or Persons, any Vowson or other Estate or Interest in Real or Personal Property, such Scheme, if and when the same has been ratified by Order in Council, shall, without any Deed, Conveyance, or Act in that behalf made, be effectual for vesting in such Corporation, Person or Persons, any such Advowson or other Interest in Real or Personal Property, and for enabling such Corporation, Person or Persons, to hold the same upon the Trusts and according to the Tenor of such Scheme, any Law or Statute to the contrary notwithstanding.

13. The Provisions of this Act with respect to the Property of Deans and Chapters shall apply, in the Case of the Property of any Deanery, Monastery, Prebend, Archdeaconry, or Office in any Cathedral or Collegiate Church in England, in the like Manner, mutatis mutandis, as they apply to the Property of a Dean and Chapter.

or apply to the Cathedral or Collegiate Church of Manchester, or to "The Parish of Manchester Division Act, 1850;" and nothing in this Act contained, except Section Twelve, shall affect or apply to the Cathedral Church of Christ, Oxford.

15. Section Five of the Act of the Session of the Twenty-ninth and Thirtieth Years of the Reign of Her present Majesty, Chapter One hundred and eleven, intituled "An Act to further amend the Acts relating to the Ecclesiastical Commissioners for England," shall apply to all Payments, Conveyances, and Appropriations directed or made in pursuance of the Parish of Manchester Division Act, 1850, the Stanhope and Wolsingham Rectories Act, 1858, the Rochdale Vicarage Act, 1866, and the Bishopwearmouth Rectory Act, 1867, for providing for the Cure of Souls, or for Payments to or Endowments for Incumbents or Ministers, in the same Manner as if such Payments, Conveyances, and Appropriations were the Payments and Conveyances mentioned in the said Section Five, and every Instrument made as provided in that Section shall have Effect as if it were a Scheme ratified by an Order in Council. It shall not be necessary to publish in the *London Gazette* any Map or Plan which for the better Identification of any Property may be endorsed on or annexed to any Instrument or Grant made or passed in pursuance of the said Fifth Section or of this Section.

Nothing in this Act contained shall affect

CAP. CXV.

The Sanitary Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Application of Act.*
3. *Definition of "Sewer Authority."*
4. *Power to Sewer Authority in relation to Privies.*
5. *Power of Sewer Authorities to Sewerage.*
6. *Incorporation of Provisions of 11 & 12 Vict. c. 63. as to private Improvement Expenses.*
7. *Earth-closets may in certain Cases be constructed instead of Water-closets.*
8. *Provision for Recovery of Expenses by Secretary of State.*
9. *As to Recovery of Penalties.*
10. *Amendment of Sect. 37 of 29 & 30 Vict. c. 90.*
11. *Construction of First Part of the Sanitary Act, 1866.*

An Act to amend "The Sanitary Act,
1866."
(31st July 1868.)

WHEREAS it is expedient to make further Provision for the Removal of Refuse Matter from Dwelling Houses, and to amend the "Sanitary Act, 1866:"

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as "The Sanitary Act, 1868."

2. This Act shall not extend to Scotland or Ireland.

3. "Sewer Authority" in this Act shall have the same Meaning as it has in the Sewage Utilization Act, 1865.

4. The following Sections of the Public Health Act, 1848, as amended by any subsequent Act of Parliament, that is to say,

- (1.) The Fifty-first Section, requiring every new House and every House pulled down to or below the Ground Floor and rebuilt to have a sufficient Watercloset or Privy and Ashpit;
- (2.) And the Fifty-fourth Section, as amended by any subsequent Act of Parliament, providing that the Local Board of Health shall see that Drains, Waterclosets, Privies, and Ashpits within their District do not become a Nuisance,

shall extend to the District of every Sewer Authority in which there is no Enactment of any Public or Private Act of Parliament to the like Effect in force; and the said Sections when so extended shall be construed in reference to the District of any Sewer Authority as if the Expression "Sewer Authority" were inserted therein in the Place of the Expression "Local Board," and any Officer for the Time being appointed by the Sewer Authority to examine any Premises shall be deemed to be the Surveyor within the Meaning of the said Sections.

Where the Sewer Authority and the Nuisance Authority of a District are different Bodies of Men, the Jurisdiction of the Nuisance Authority shall cease within such District in relation to all Matters within the Purview of the said Sections of the Public Health Act, 1848; and any Sewer Authority to whose District the said Sections are extended making default in enforcing their Provisions shall be subject to Proceedings under the Sanitary Act, 1866, in the same Manner as if it had made default in providing its District with sufficient Sewers.

5. A Sewer Authority shall within their District have all the Powers vested in a Local Board by the Thirty-second Section of the Local Government Act, 1858, as amended by any subsequent Act of Parliament, so far as relates to—

- (1.) The Removal of House Refuse from Premises;
 - (2.) The cleansing of Privies, Ashpits, and Cesspools;
- and the Paragraphs numbered (1), (2), and (3) of the said Section shall be construed in reference to the District of any Sewer Authority as if the Expression "Sewer Authority" were inserted therein in the Place of the Expression "Local Board."

Where the Sewer Authority and the Nuisance Authority are different Bodies of Men, the Jurisdiction of the Nuisance Authority in such District shall cease in respect to all Matters over which the Sewer Authority acquires Powers by the said Section.

6. The Provisions of the Public Health Act, 1848, relating to private Improvement Expenses, as amended by any subsequent Act of Parliament, shall be deemed to be incorporated with this Act, so far as may be required for carrying into effect any Provision of this Act.

7. Any Enactment of any Act of Parliament in force in any Place requiring the Construction of a Watercloset shall, with the Approval of the Local Authority, be satisfied by the Construction of an Earth-closet, or other Place for the Reception and Deodorization of Fæcal Matter made and used in accordance with any Regulation from Time to Time issued by the Local Authority.

The Local Authority may, as respects any Houses in which such Earth-closets or other Places as aforesaid are in use with their Approval, dispense with the Supply of Water required by any Contract or Enactment to be furnished to the Waterclosets in such Houses, on such Terms as may be agreed upon between such Authority and the Persons or Body of Persons providing or required to provide such Supply of Water.

The Local Authority may themselves undertake or contract with any Person to undertake a Supply of dry Earth or other deodorizing Substance to any House or Houses within their District for the Purpose of any Earth-closet or other Places as aforesaid.

The Local Authority may themselves construct or require to be constructed Earth-closets or other such Places as aforesaid in all Cases where, under any Enactment in force, they might construct Waterclosets or Privies, or require the same to be constructed, with this Restriction, that no Person shall be required to construct an Earth-closet or other Place as aforesaid in any

House instead of a Watercloset if he prefer to comply with the Provisions of the Enactment in force requiring the Construction of a Watercloset, and a Supply of Water for other Purposes is furnished to such House, and that no Person shall be put to greater Expense in constructing an Earth-closet or other Place as aforesaid than he would be put to by Compliance with the Provisions of any Enactment as to Waterclosets or Privy Accommodation which he might have been compelled to comply with if this Section had not been passed.

Local Authority shall, for the Purposes of this Act, mean any Local Board and any Sewer Authority.

8. Whereas by the Forty-ninth Section of the Sanitary Act, 1866, Power is given to One of Her Majesty's Principal Secretaries of State, in case of any Sewer Authority, Local Board, or Nuisance Authority making default in performing the Sanitary Duties specified in the said Section, and imposed on them by Act of Parliament, to appoint a Person to perform the same, and to direct by Order that the Expenses of performing the same, together with a reasonable Remuneration to the Person appointed for superintending such Performance, and amounting to a Sum specified in the Order, together with the Costs of the Proceedings, shall be paid by the Authority in default, and that any Order made for the Payment of such Costs and Expenses may be removed into the Court of Queen's Bench, and be enforced in the same Manner as if the same were an Order of such Court: And whereas it is expedient to make further Provision for enforcing Payment of any Sum so specified as aforesaid in the Order of the Secretary of State, together with the Costs of the Proceedings occasioned by the Default made in Payment of such Sum:

Be it enacted, That the Sum so specified in the Order of the Secretary of State, together with the Costs of the Proceedings, shall be deemed to be Expenses properly incurred by the Authority in default, and to be a Debt due from such Authority, and payable out of any Monies in the Hands of such Authority or their Officers, or out of any Rate applicable to the Payment of any Expenses properly incurred by the defaulting Authority, and which Rate is in this Section referred to as the Local Rate; and in the event of any Authority refusing to pay any such Sum with Costs as aforesaid for a Period of Fourteen Days after Demand, the Secretary of State may by Precept empower any Person to levy by and out of the Local Rate such Sum (the Amount to be specified in the

Precept) as may, in the Opinion of the said Secretary of State, be sufficient to defray the Debt so due from the defaulting Authority, and all Expenses incurred in consequence of the Non-payment of such Debt; and any Person or Persons so empowered shall have the same Powers of levying the Local Rate, and requiring all Officers of the defaulting Authority to pay over any Monies in their Hands, as the defaulting Authority itself would have in the Case of Expenses legally payable out of a Local Rate to be raised by such Authority; and the said Person or Persons, after repaying all Sums of Money so due in respect of the Precept, shall pay the Overplus, if any, (the Amount to be ascertained by the Secretary of State,) to or to the Order of the defaulting Authority.

9. Penalties under any Section incorporated with this Act shall be recovered in manner directed by the Act passed in the Session holden in the Eleventh and Twelfth Years of the Reign of Her present Majesty, Chapter Forty-three.

All Powers conferred by this Act shall be deemed to be in addition to and not in derogation of any other Powers conferred by any other Act of Parliament, and any such other Powers may be exercised as if this Act had not passed.

Nothing in this Act contained shall be deemed to exempt any Person from any Penalty to which he would have been liable if this Act had not been passed.

Provided that no Person who has been adjudged to pay any Penalty in pursuance of this Act shall for the same Offence be liable to a Penalty under any other Act.

10. The Sewer Authority, or in the Metropolis the Nuisance Authority, shall have the like Power to make Provision for the temporary Supply of Medicine and Medical Assistance for the poorer Inhabitants as it now has to provide Hospitals or temporary Places for the Reception of the Sick under the Thirty-seventh Section of "The Sanitary Act, 1866," but such Power to make Provision for the temporary Supply of Medicine and Medical Assistance shall not be exercised without the Sanction of Her Majesty's Privy Council.

11. In the Construction of the First Part of the Sanitary Act, 1866, "Owner" shall have the same Meaning as it has in the Second Part of the said Act; and Notices may be served for the Purposes of the First Part of the said Act in the same Manner in which they are required to be served under the Second Part of the said Act.

CAP. CXVI.

Larceny and Embezzlement.

ABSTRACT OF THE ENACTMENTS.

1. *Member of Copartnership guilty of converting to his own Use, &c. Property of Copartnership liable to be tried as if not such Member.*
2. *Provisions of 18 & 19 Vict. c. 126. extended to Embezzlement by Clerks or Servants.*
3. *Extent of Act.*

An Act to amend the Law relating to
Larceny and Embezzlement.

(31st July 1868.)

WHEREAS it is expedient to provide for the better Security of the Property of Copartnerships and other joint beneficial Owners against Offences by Part Owners thereof, and further to amend the Law relating to Embezzlement: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. If any Person, being a Member of any Copartnership, or being One of Two or more beneficial Owners of any Money, Goods, or Effects, Bills, Notes, Securities, or other Property, shall steal or embezzle any such Money, Goods, or Effects, Bills, Notes, Securities, or other Property of or belonging to any such Co-

partnership or to such joint beneficial Owners, every such Person shall be liable to be dealt with, tried, convicted, and punished for the same as if such Person had not been or was not a Member of such Copartnership or One of such beneficial Owners.

2. All the Provisions of the Act passed in the Session of Parliament held in the Eighteenth and Nineteenth Years of Her present Majesty's Reign, intituled "An Act for diminishing Expense and "Delay in the Administration of Criminal Justice in certain Cases," shall extend and be applicable to the Offence of Embezzlement by Clerks or Servants, or Persons employed for the Purpose or in the Capacity of Clerks or Servants, and the said Act shall henceforth be read as if the said Offence of Embezzlement had been included therein.

3. This Act shall not extend to Scotland.

CAP. CXVII.

District Church Tithes Act Amendment.

ABSTRACT OF THE ENACTMENTS.

1. *Sect. 9 of 28 & 29 Vict. c. 42. repealed.*
2. *Incumbents of certain Parishes, &c. to be Vicars.*

An Act to amend the District Church
Tithes Act, 1865, and to secure
Uniformity of Designation amongst
Incumbents in certain Cases.

(31st July 1868.)

WHEREAS it is expedient to amend the Provisions of the District Church Tithes Act, 1865, in reference to the Style and Designation of certain of the beneficed Clergy of the United Church of England and Ireland:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. The Ninth Section of the said District Church Tithes Act, 1865, shall be and the same is hereby repealed.

2. The Incumbent of the Church of every Parish or new Parish for Ecclesiastical Purposes, not being a Rector, who is or shall be authorized

to publish Banns of Matrimony in such Church, and to solemnize therein Marriages, Churchings, and Baptisms, according to the Laws and Canons in force in this Realm, and who is or shall be entitled to take, receive, and hold for his own sole Use and Benefit the entire Fees arising from the Performance of such Offices, without any

Reservation thereof, shall, from and after the passing of this Act, for the Purpose of Style and Designation, but not for any other Purpose, be deemed and styled the Vicar of such Church and Parish or new Parish, as the Case may be, and his Benefice shall for the same Purpose be styled and designated a Vicarage.

CAP. CXVIII.

Public Schools Act, 1868.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short Title.*
2. *"School."*
3. *Definition of "existing Governing Body;" "new Governing Body."*
4. *Definition of "Boys on the Foundation."*

Statutes by Governing Bodies.

5. *Power to Governing Bodies of Schools to which this Act applies to alter their Constitutions.*
6. *Governing Bodies of Schools to which this Act applies to make Statutes with respect to Matters herein named.*
7. *Power to Governing Bodies to consolidate and amend existing Statutes and Regulations.*
8. *Restrictions on making Statutes as herein stated.*
9. *All Statutes to be laid before the Queen in Council.*
10. *Her Majesty in Council may approve or disapprove Statutes.*
11. *As to Repeal or Alteration of Statutes made in exercise of Powers of this Act.*

Regulations by Governing Bodies.

12. *General Power of Governing Body to make, alter, or annul Regulations.*

Masters.

13. *Appointment of Masters.*

Boys on the Foundation.

14. *Saving of Rights as to Harrow and Rugby Schools; and of Shrewsbury School.*

Special Commissioners.

15. *Appointment of Commissioners.*
16. *Duration of Powers of Commissioners.*
17. *Vacancy in Number of Commissioners.*
18. *Commissioners empowered to require Production of Documents, &c.*
19. *Powers of Special Commissioners.*

Miscellaneous.

20. *Provisions as to Westminster School.*
21. *Scheme for Buildings.*
22. *Living to which Shrewsbury School has a preferential Claim.*
23. *Scheme for constituting Parish of Eton a distinct Vicarage.*
24. *Power of Eton College to make a Scheme for running out their Leases.*
25. *General Provision as to Schemes.*
26. *Power to remove Shrewsbury School to another Site.*
27. *Not to affect certain Rights of Parties interested as herein stated.*
28. *Saving of existing Powers of Governing Bodies.*
29. *Saving of Act relating to Charterhouse.*
30. *Extension of Time for Governing Bodies to make Statutes.*
31. *Provision as to College Chapels.*
32. *Removal of Site of Westminster School.*

An Act to make further Provision for the good Government and Extension of certain Public Schools in England.
(31st July 1868.)

WHEREAS the Commissioners appointed under a Commission issued in the Year One thousand eight hundred and sixty-one have made their Report, and thereby recommended various Changes in the Government, Management, and Studies of the Schools herein-after mentioned, with a view to promote their greater Efficiency, and to carry into effect the main Objects of the Founders thereof; but such Changes cannot be carried into effect without the Authority of Parliament: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Preliminary.

1. This Act may be cited for all Purposes as the "Public Schools Act, 1868."

2. "School" includes, in the Case of Eton and Winchester, Eton College and Winchester College.

3. "Existing Governing Body" of a School shall for the Purposes of this Act mean—

- (1.) At Eton, the Provost and Fellows:
- (2.) At Winchester, the Warden and Fellows:
- (3.) At Westminster, the Dean and Chapter of Westminster, the Dean of Christ Church, Oxford, and the Master of Trinity College, Cambridge:
- (4.) At Charterhouse, the Governors:
- (5.) At Harrow, the Governors:
- (6.) At Rugby, the Trustees:
- (7.) At Shrewsbury, the Trustees.

"New Governing Body of a School" shall for the Purposes of this Act mean a Governing Body the Constitution of which has been altered in pursuance of this Act, or, if no such Alteration shall have been made, the Governing Body which shall be in existence at the End of the Time assigned by this Act for making such Alteration, or a Body which has been established under this Act as the new Governing Body of a School.

4. Boys on the Foundation shall for the Purposes of this Act mean—

- (1.) At Eton, the King's Scholars or Scholars belonging to the College of Eton:
- (2.) At Winchester, the Scholars belonging to the College of St. Mary, Winchester:
- (3.) At Westminster, the Queen's Scholars:
- (4.) At Charterhouse, the Foundation Scholars

or Boys nominated by the Governors, and entitled to receive gratuitous Education:

- (5.) At Harrow, the Boys entitled to Education wholly or partially gratuitous:
- (6.) At Rugby, the Boys entitled to Education wholly or partially gratuitous by reason of their being Sons of Residents in Rugby or within a certain Distance of Rugby:
- (7.) At Shrewsbury, the Boys entitled to Education wholly or partially gratuitous by reason of their being Sons of Burgesses.

Statutes by Governing Bodies.

5. The existing Governing Body of each of the Schools to which this Act applies may at any Time before the First Day of May One thousand eight hundred and sixty-nine, or within such further Time as may be determined by Her Majesty in Council as herein-after mentioned, make a Statute or Statutes for determining and establishing the Constitution of the Governing Body of each of such Schools in such Manner as may be deemed expedient; with Power in the Case of Westminster to establish a Governing Body for the School, including Boys whether on the Foundation or not, either wholly or partially distinct from the Dean and Chapter of Westminster; but from and after the said First Day of May One thousand eight hundred and sixty-nine, or such further Time as aforesaid, all Powers of making Statutes vested by this Section in the Governing Body of a School shall pass to the Special Commissioners herein-after mentioned. Any Governing Body established for Westminster School shall be a Body Corporate, with a perpetual Succession and a Common Seal (with Power to hold Lands for the Purposes of the School without Licence of Mortmain), and subject to the Provisions of this Act shall, as to leasing their Land, have the same Powers and be subject to the same Disabilities as may be possessed by or attached to the Dean and Chapter of Westminster in respect of Lands in their Possession.

6. Subject to the Restrictions herein-after mentioned, the new Governing Body of every School to which this Act applies may at any Time before the First Day of January One thousand eight hundred and seventy, or within such further Time as may be determined by Her Majesty in Council as herein-after mentioned, make Statutes with respect to all or any of the following Matters:

- (1.) With respect to the Boys on the Foundation, to remove, wholly or partially, local or other Restrictions on the Class of Boys entitled to become Boys on the Foundation, to make Admission on the Foundation wholly or partially dependent on Proficiency in a competitive or other Examination

tion, and to define the Age for the Admission of a Boy on the Foundation, and the Age at which he may be required to leave the School:

- (2.) With respect to the Privileges and Number of Boys on the Foundation, to abridge or extend such Number and Privileges whenever, from Change of Circumstances, it seems expedient to abridge or extend them:
- (3.) With respect to the Privileges and Number of Boys who under any Statute or Benefaction may be entitled to any Rights to Education or Maintenance:
- (4.) With respect to Scholarships, Exhibitions, or other Emoluments, either tenable at the School, or tenable after quitting the School by Boys educated thereat, to do all or any of the following Things; that is to say,
 - a. To consolidate any Two or more of such Emoluments; to divide any single Emolument into Two or more; to convert any Scholarship or Exhibition tenable at the School into a Prize or Prizes; to remove any Restrictions on the Election or Appointment to such Emoluments; to open to general or limited Competition within the School Emoluments now conferred otherwise than by competitive Examination; and to define or vary the Subjects of Examination for any Emolument; provided that the foregoing Powers shall not extend to any Emolument created within Fifty Years before the passing of this Act; and,
 - b. To convert Emoluments attached to any particular College at Oxford or Cambridge, but not payable out of Funds held by such College, into Emoluments tenable at any College or Hall at either University, or otherwise by any Member of such University:
- (5.) With respect to the Mode and Conditions of Appointment to any Ecclesiastical Benefice the Patronage of which is vested in the Governing Body as such, or to which Persons educated at or connected with the School have an exclusive or preferential Claim:
- (6.) With respect to the Number, Position, Rank in the School, and Salaries and Emoluments of Masters who may receive any Salary or Emolument out of Property belonging to or held in trust for the School, with Power to abolish any such Mastership other than the Head Mastership, and to remove any Conditions as to

Marriage, Education at a particular Place, or otherwise, attaching to any Candidates for such Mastership:

- (7.) With respect to the Disposal of the Income of the Property of the School, either for the Purpose of improving or enlarging the existing Establishment, or of founding Exhibitions or Scholarships tenable at the School or elsewhere, or of establishing any subordinate or other Schools in connexion therewith, with Power in the Case of Eton and Winchester Colleges to regulate the future Income and all other Emoluments of the future Provost and Fellows and the future Warden and Fellows respectively, and to determine the Number of such Fellows, and the Emoluments and Advantages to be hereafter enjoyed by all the Members of each of those Foundations, or by those now entitled to any Payment thereout:
- (8.) With respect to any Office not heretofore mentioned the Salary of which is payable out of Property belonging to or held in trust for the School.

7. The new Governing Body of any School to which this Act applies may, by Statute made in manner herein provided, consolidate and amend any existing Statutes or Regulations relating to such School, whether in force by Act of Parliament, Charter, Judicial Decree, Instrument of Endowment, or otherwise, with Power to repeal any Statute or Regulation that has in the Opinion of that Body become obsolete, or has become incapable of Observance by reason of Changes authorized to be made under this Act.

8. The following Restrictions shall be imposed on any Governing Body of a School making Statutes under this Act:

- (1.) Where Two or more Schools are interested in any Scholarship, Exhibition, or Emolument, a Statute made by the Governing Body of one School shall not affect the Interest of any other School, except with the Consent of a Majority of the Governors, Trustees, or other Governing Body of the last-mentioned School:
- (2.) Where any Statute proposed to be made by any Governing Body of a School affects any Scholarship, Exhibition, or Emolument attached to any College in either of the Universities of Oxford and Cambridge, Notice in Writing of such intended Statute shall be given to the Head of such College Two Months at least before such Statute is submitted to the Special Commissioners as herein-after mentioned:
- (3.) Where any Statute proposed to be made by any Governing Body of a School affects

the Interests of any Person or Class of Persons deriving Benefit under the Institutions in force with respect to the same, a Copy of such proposed Statute shall be deposited in some convenient Place for public Inspection in the Locality in which such School is situated; and Notice of such Copy having been so deposited shall be given in some Newspaper circulating in such Locality Two Months at the least before such Statute is submitted to the Special Commissioners; and the said Governing Body shall hear all Objections which such Person or Class of Persons may be desirous of urging against the same:

- (4.) No Statute made by any Governing Body of a School under this Act shall be of any Validity until the same has been approved by Her Majesty in Council as herein-after mentioned, but when so approved all the Requisitions of this Act in respect thereto shall be deemed to have been duly complied with, and the Statute shall be of the same Force as if it had been contained in this Act, subject nevertheless to the Power of Alteration or Repeal herein-after conferred.

9. All Statutes made by any Governing Body of a School under the Powers herein contained shall be submitted to the Special Commissioners herein-after appointed, and, if approved by them, be laid before Her Majesty in Council, and be forthwith published in the *London Gazette*; and it shall be lawful for the Trustees of any Scholarship, Exhibition, or Emolument to which such Statute may relate, or for any Person or Body Corporate directly affected thereby, within Two Months after such Publication in the *London Gazette*, to petition Her Majesty in Council, praying Her Majesty to withhold Her Approval from the whole or any Part of such Statute. The Petition shall be referred by Her Majesty by Order in Council for the Consideration and Advice of Five Members at the least of Her Privy Council, of whom Two, not including the Lord President, shall be Members of the Judicial Committee, and such Five Members may, if they think fit, admit any Petitioner or Petitioners to be heard by Counsel in support of his or their Petition.

Any Petition not proceeded with in accordance with the Regulations made with respect to Petitions presented to the Judicial Committee of the Privy Council shall be deemed to be withdrawn.

10. It shall be lawful for Her Majesty in Council to signify Her Approval or Disapproval of any Statute or Part of a Statute made by any Governing Body of a School in pursuance of this

Act at the Times following; that is to say, where a Petition has been presented against such Statute at any Time after the Hearing or Withdrawal of such Petition, and where no such Petition has been presented at any Time after the Expiration of the Time limited by this Act for the Presentation of a Petition. If Her Majesty signify Her Disapproval of any Statute or any Part thereof, the Governing Body of the School which framed the Statute may frame another Statute in that Behalf, subject to the same Conditions as to the Approval of the Special Commissioners and of Her Majesty in Council as are imposed by this Act in relation to the making of original Statutes by any Governing Body of a School, and so on from Time to Time as often as Occasion requires, so that such Statutes are made, in the Case of the existing Governing Body of a School, before the First Day of January One thousand eight hundred and sixty-nine, or within such further Time as Her Majesty may by Order in Council appoint in manner herein-after mentioned, and, in the Case of the new Governing Body of a School, before the said First Day of January One thousand eight hundred and seventy, or within such further Time as Her Majesty may by Order in Council appoint in manner herein-after mentioned.

11. Any Statute made in exercise of the Powers of this Act may, at any Time or Times after the Expiration of the Powers by this Act conferred on the Special Commissioners, be repealed or altered by the Governing Body for the Time being, in the same Manner and subject to the same Provisions, with the Exception of those requiring such Statutes to be submitted to and approved by the Special Commissioners, in and subject to which Statutes may be made by the Governing Body.

Regulations by Governing Bodies.

12. It shall be lawful for the new Governing Body of every School to which this Act applies, notwithstanding anything contained in any existing Act of Parliament, Charter, Statute, Decree, Instrument of Foundation, or Endowment or other Instrument, and notwithstanding any Custom, from Time to Time to make, alter, or annul such Regulations as they may deem it expedient to make, alter, or annul with respect to any of the following Matters:

- (1.) With respect to the Number of Boys, other than Boys on the Foundation, in the School, their Ages, and the Conditions of Admission to the School:
- (2.) With respect to the Mode in which the Boys, whether on the Foundation or not, are to be boarded and lodged, and the Conditions on which Leave to keep a Boarding House should be given:

- (3.) With respect to the Payments to be made for the Maintenance and Education of the Boys, other than Boys on the Foundation, including Fees and Charges of all Kinds, and to Payments by Boys on the Foundation in respect of anything which they are not entitled to receive gratuitously; and with respect to the Application of the Monies to be derived from those Sources, and of Monies paid out of the Income of the Foundation on account of the Instruction of Boys on the Foundation :
- (4.) With respect to Attendance at Divine Service, and where the School has a Chapel of its own, with respect to the Chapel Services and the Appointment of Preachers :
- (5.) With respect to the Times and Length of the ordinary Holidays :
- (6.) With respect to the sanitary Condition of the School and of the Premises connected therewith :
- (7.) With respect to the Introduction of new Branches of Study, and the Suppression of old ones, and the relative Importance to be assigned to each Branch of Study :
- (8.) With respect to the Number, Position, and Rank in the School, and Salaries and Emoluments of the Masters, in so far as such Masters are not affected by any Statute made in accordance with the Provisions herein-before contained :
- (9.) With respect to giving Facilities for the Education of Boys whose Parents or Guardians wish to withdraw them from the Religious Instruction given in the School :
- (10.) With respect to giving Facilities for Boys other than Boarders to attend at the School, and participate in the educational Advantages thereof :
- (11.) With respect to the Powers committed to the Head Master :

Provided that the Charges made for the Maintenance and Education of the Boys shall be kept distinct: Provided that the new Governing Body, in all Cases where the Head Master is not a Member of the Body making the Regulations, shall, before making any such Regulations, consult the Head Master in such a Manner as to give him full Opportunity for the Expression of his Views: Provided that it shall be lawful for the Head Master from Time to Time to submit Proposals for making, altering, or annulling any such Regulations, or any other Matter affecting the Condition of the School, to the Governing Body, who shall proceed to consider, and, if they think fit, adopt the same.

Masters.

13. The Head Master of every School to which this Act applies shall be appointed by and hold his Office at the Pleasure of the new Governing Body. All other Masters shall be appointed by and hold their Offices at the Pleasure of the Head Master. No Candidate for any Mastership shall be entitled to Preference by reason of his having been a Scholar of or educated at the School of which he desires to be Master.

Boys on the Foundation.

14. Nothing in this Act contained or done in pursuance thereof shall affect the Rights of Persons residing in the Parish of Harrow at the Time of the passing of this Act to send their Children to Harrow School, or the Rights of Persons residing at the Time of the passing of this Act in or within Five Miles of Rugby to send their Children to Rugby School.

Nothing in this Act contained or done in pursuance thereof shall affect the Rights of Persons being Burgesses of Shrewsbury at the Time of the passing of this Act to send their Children to Shrewsbury School.

Special Commissioners.

15. The several Persons herein-after named, (that is to say,) the Most Reverend Father in God William Lord Archbishop of York, the Most Noble Robert Arthur Talbot Gascoigne-Cecil Marquis of Salisbury, the Right Honourable Russell Gurney, Recorder of the City of London, Sir John Lubbock, Baronet, Sir John George Shaw Lefevre, Knight Commander of the Bath, John Duke Coleridge, Esquire, One of Her Majesty's Counsel, Charles Stuart Parker, Esquire, shall be Special Commissioners for the Purposes of this Act, and shall have a Common Seal, and Three of the said Commissioners shall be a Quorum.

16. The Powers conferred on the Special Commissioners by this Act shall be in force until the First Day of January One thousand eight hundred and seventy-one, and it shall be lawful for Her Majesty, if She think fit, by and with the Advice of Her Privy Council, to continue the same until the First Day of January One thousand eight hundred and seventy-two.

17. If any Vacancy occurs in the Number of the Special Commissioners by means of Death, Resignation, or Incapacity to act, Her Majesty may, by Instrument under Her Sign Manual, fill up such Vacancy.

18. In the Exercise of the Authorities vested by this Act in the Special Commissioners they shall have Power to require from any Officer of any School to which this Act applies the Pro-

duction of any Documents or Accounts relating to such School, and any Information relating to the Revenues, Statutes, Usages, or Practice thereof.

19. On and after the First Day of January One thousand eight hundred and seventy, or such further Time as may be determined by Her Majesty as herein-after mentioned, all such Powers of making Statutes, of making Regulations, and of making and proposing Schemes, as are by this Act vested in any Governing Body of any School to which this Act applies, shall pass to and vest in the Special Commissioners appointed under this Act (subject nevertheless, in the Case of a Statute affecting any Scholarship, Exhibition, or Emolument in any School other than that for which the Statute is made, to the Restrictions by this Act imposed on the Governing Body in making a like Statute); and the Special Commissioners may exercise such Powers in respect of all Matters in which any Governing Body may have failed to exercise the same in a Manner approved by the Special Commissioners.

The Commissioners shall, in the Case of a Regulation, Two Months at the least before finally making the same, and in the Case of a Statute or Scheme, Two Months at the least before laying the same before Her Majesty in Council, serve a Copy of such Regulation, Statute, or Scheme on the Governing Body of the School to which it relates, (and if it be a Statute affecting any Scholarship, Exhibition, or Emolument attached to any College in either of the Universities, on the Head of such College,) and hear all Objections that such Governing Body or College may be desirous of urging against the same.

Any Regulation made by the Special Commissioners, unless an express Power of altering the same is vested in the Governing Body, shall be deemed to be in the Nature of a Statute, and be alterable only in manner in which Statutes are capable of being altered in pursuance of this Act; but, except in so far as relates to Regulations made by the Commissioners, and except during such Time as the Powers of the Special Commissioners under this Section remain in force, the Power of the new Governing Body of the School to make, alter, or annul Regulations shall remain unaffected by the Power hereby given to the Commissioners of making the same:

Any Statute or Scheme made by the Special Commissioners in pursuance of this Act shall be subject to the Provisions herein-before contained as to the same being laid before Her Majesty in Council, and as to the Approval or Disapproval of Her Majesty, and as to its subsequent Repeal or Alteration, with the Consent of Her Majesty in Council, as if it were a Statute made by the Governing Body of the School which had been approved by the Special Commissioners, with

this Addition, that the Approval or Disapproval of Her Majesty to any such Statute or Scheme as last aforesaid shall not be signified until such Statute or Scheme has been laid before both Houses of Parliament for a Period of not less than Forty Days.

Miscellaneous.

20. The following Provisions shall be made with respect to Westminster School; that is to say,

- (1.) There shall be paid to the Governing Body of Westminster School for the Time being by the Ecclesiastical Commissioners for the Support of the School an annual Sum of not less than Three thousand five hundred Pounds, and a Capital Sum of Fifteen thousand Pounds:
- (2.) The annual Sum of Three thousand five hundred Pounds shall be paid by equal half-yearly Payments on the Twenty-fifth Day of March and the Twenty-ninth Day of September in every Year, the first half-yearly Payment to be made on the Twenty-fifth Day of March next after the passing of this Act, and the said Capital Sum of Fifteen thousand Pounds on the Twenty-ninth Day of September next:
- (3.) The Ecclesiastical Commissioners shall take Steps as soon as they can conveniently for transferring to and vesting in the Governing Body for the Time being of Westminster School, and their Successors in Fee Simple, for the Support of the School, such a Portion of the Estates then vested in the Commissioners as may be adequate to produce an annual Income of not less than Three thousand five hundred Pounds after deducting all Expenses of Management:
- (4.) Upon such Transfer as aforesaid being effected the Payment of the said annual Sum of Three thousand five hundred Pounds by the Ecclesiastical Commissioners shall cease:
- (5.) The said Capital Sum of Fifteen thousand Pounds shall be invested by the Governing Body of the School in Three Pound per Centum Bank Annuities, and shall be applied in manner herein-after mentioned:
- (6.) From and after the passing of this Act, there shall vest in the Governing Body for the Time being of Westminster School, for the Use of the School, the Playground in Vincent Square, with the Lodge on such Playground, the Dormitory with its Appurtenances, the School and Class Rooms, the Houses and Premises of the Head Master and Under Master, the Three

Boarding Houses, and the Gymnasium, excepting the Crypts :

- (7.) All the said Buildings shall be held by the said Governing Body for the Use of the School, and it shall be incumbent on the said Governing Body to keep as an open Space for the Recreation of the Boys, and for no other Purpose, the said Playground in Vincent Square :
- (8.) The Hall and the Playground in Dean's Yard shall continue to be used in the same Manner as heretofore by the Scholars of Westminster School :
- (9.) The Dean and Chapter of Westminster shall transfer to and vest in the Governing Body of Westminster School in Fee Simple the Houses following, on the Request of such Governing Body, at such Times and upon Payment of such Sums as are herein-after mentioned ; that is to say,

First. The House in Great Dean's Yard now occupied by the Rector Canon of Saint John the Evangelist on the next Avoidance of the said Canonry, and on Payment of the Sum of Four thousand Pounds to the Ecclesiastical Commissioners :

Second. The House now occupied by the Sub-Dean on the next Avoidance of the Canonry held by the said Sub-Dean, and on Payment to the said Commissioners of the like Sum of Four thousand Pounds :

Third. The House now occupied by Mr. Turle on the next Vacancy in the Office of Organist of the Collegiate Church, Westminster, and on Payment to the said Commissioners of the Sum of Two thousand Pounds :

- (10.) The Governing Body of the School shall be at liberty to make the foregoing Payments of Four thousand Pounds, Four thousand Pounds, and Two thousand Pounds, or such of them as may be required out of the said Sum of Fifteen thousand Pounds, and may apply the Residue of the said Sum in erecting new Buildings or improving old Buildings, or otherwise in making Improvements in or about the Property of the School, and they may apply the Income arising from any Securities on which the said Sum of Fifteen thousand Pounds may for the Time being be invested in the same Manner in which the Residue of their Income is applicable :
- (11.) The Monies paid to the Ecclesiastical Commissioners in respect of the said Canonry Houses, or either of them, shall be held by the said Commissioners on trust for the Dean and Chapter of West-

minster, to be expended in building on the College Gardens, according to Plans to be approved by the Dean of Westminster for the Time being, Houses or a House equivalent to the Houses or House in respect of which such Payments may be made ; and in the meantime the Ecclesiastical Commissioners shall allow and pay to the Canon or Canons who would have been entitled to the Occupation of such House or Houses if the same had not been so taken for the Purposes of Westminster School Interest after the Rate of Three Pounds per Centum per Annum on such Monies or the Balances thereof from Time to Time remaining in the Commissioners Hands :

- (12.) The Monies paid to the Ecclesiastical Commissioners in respect of the House now occupied by Mr. Turle, the Organist of the Collegiate Church of Westminster, shall be held by the Commissioners in trust for the Dean and Chapter of Westminster, who shall be entitled to Interest thereon after the like Rate of Three Pounds per Centum per Annum until such Capital Monies and all Balances thereof shall have been expended by the Dean and Chapter in providing another Residence for the Organist of their Church :
- (13.) If the Dean and Chapter of Westminster and the Governing Body for the Time being of Westminster School agree that it would be for the Benefit of the School that any Premises not herein-before mentioned, and being at the Time of such Agreement Part of the Property of the Dean and Chapter, should become the Property of the School, the Dean and Chapter may convey the same to the School at a Price to be agreed upon or to be settled by an Arbitrator to be appointed by the President for the Time being of Her Majesty's Most Honourable Privy Council :
- (14.) Any Transfers of Lands which in pursuance of this Act may be made by the Ecclesiastical Commissioners to the Governing Body of Westminster School may be effected under the Provisions of a Scheme prepared by the Ecclesiastical Commissioners, and approved and ratified by Order of Her Majesty in Council, and published in the *London Gazette*, and such Scheme shall be effectual for transferring to and vesting in the Governing Body of the School all Estates and Interests which it purports to transfer without any Conveyance, Assurance, or Act in the Law :
- (15.) In consideration of the above-mentioned Payments of Three thousand five hundred

Pounds per Annum and of Fifteen thousand Pounds all annual or other Sums of Money which if this Act had not been passed would have been paid to Westminster School by the said Dean and Chapter after the Twenty-ninth Day of September next shall belong and be paid to the Ecclesiastical Commissioners for England:

- (16.) In the event of Westminster School being removed beyond the City of Westminster, all the Property and Income derived by the School from the Ecclesiastical Commissioners, or the Dean and Chapter of Westminster, or their Estates, shall revert to and become vested in the Ecclesiastical Commissioners.

21. The new Governing Body of any of the Schools to which this Act applies may at any Time before the First Day of January One thousand eight hundred and seventy, or such further Time as may be determined by Her Majesty in Council as herein-after mentioned, submit to the Special Commissioners, and, if approved of by them, may lay a Scheme before Her Majesty in Council for making any Additions to or Alterations in the Buildings of the School, and for raising Monies for that Purpose by Mortgage of any Property belonging to or held in trust for the School, with Power to suspend any Scholarships or Exhibitions payable out of such Property; they may also in any such Scheme make Provisions for exchanging any Lands belonging to such School for other Lands, and for purchasing any Land that may be required for making such Additions or Alterations as aforesaid; and every such Scheme shall be subject to the same Provisions, and if approved shall take effect and be subject to Alteration, in the same Manner as Statutes made by a Governing Body.

22. Whereas the Right of Appointment to Vacancies in the Vicarage of Cherbury and the Perpetual Curacies of St. Mary's Astley and Clive is vested in Trustees appointed by the Lord Chancellor in pursuance of the Act passed in the Session holden in the Fifth and Sixth Years of the Reign of His late Majesty King William the Fourth, Chapter Seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales:" And whereas the Sons of certain Burgesses educated at Shrewsbury School, and the Head and Second Master of the said School, have a preferential Claim to be appointed to the said Vicarages and Curacies: Be it enacted, That the said Trustees may at any Time after the passing of this Act, upon the Requisition of the Governing Body of the said School, sell the Right of Presentation or Appointment to the said Vicarages and Curacies,

or any of them, and pay over the Monies arising from such Sale to the Governing Body of the School, to be applied by that Body for the Benefit of the School.

23. The Ecclesiastical Commissioners for England shall lay before Her Majesty in Council such Scheme as may appear to the said Commissioners to be best adapted for relieving the Provost of Eton from the Spiritual Charge of the Parish of Eton, and constituting the same a distinct Vicarage in the Gift of the Provost and Fellows of Eton, with an Endowment out of the Revenues of Eton College of an annual Sum to an Amount, as soon as such Revenues may be able to defray the Charge, of Six hundred Pounds, or, in case the Vicar is provided with a Residence at the Expense of the College, such less Sum as the said Commissioners shall judge sufficient; and any such Scheme, when approved of by Her Majesty in Council, shall be of the same Force as if it had been contained in this Act.

24. The new Governing Body of Eton may, at any Time before the First Day of January One thousand eight hundred and seventy, or such further Time as may be determined by Her Majesty in Council as in this Act mentioned, submit to the Special Commissioners, and, if approved of by them, lay a Scheme or Schemes before Her Majesty in Council for dealing with the Estates of Eton College in such Manner as to bring the whole of them, so soon as it may be thought expedient, into a System of being let at Rackrent instead of being let on Leases renewable on Payment of Fines; and the said Governing Body may in such Scheme or Schemes provide for raising by Mortgage of the College Estates, or any of them, such Sums as may be sufficient for securing to the existing Members of the College the estimated Amount of Income calculated on the Average of the preceding Seven Years that would have accrued to them if the Estates comprised in the Scheme had been let in the usual Way; and any such Scheme or Schemes may extend to the whole or to a Portion only of the said College Estates; and the Monies to be raised by Mortgage may include the Amount of all Expenses that may properly be incurred by the College in carrying such Scheme or Schemes into effect; and it may be provided in such Scheme or Schemes that the Amount of Monies to be raised by Mortgage, and the Amount of Expenses to be allowed, and generally that the working of any such Scheme in such Matters as cannot be specifically regulated by the Scheme, shall be subject to the Control of such Department of the Government, or of Persons appointed by a Department of the Government, as may seem good to the said Special Commissioners.

The new Governing Body of Winchester may

also in like Manner submit to the Special Commissioners and, if approved of by them, lay a Scheme or Schemes before Her Majesty in Council for running out the Leases on Property belonging to such College.

25. Any Scheme authorized to be made under this Act may contain all Powers and Provisions that may be thought expedient for carrying into effect its Objects; and where any Scheme authorizes the Purchase or Acquisition of any Lands, there shall be deemed to be incorporated with such Scheme "The Lands Clauses Consolidation Act, 1845," with the Exception of the Provisions relating to the Purchase of Lands otherwise than by Agreement, and of the Provisions relating to Entry upon Land, to intersected Lands, and to the Recovery of Forfeitures, Penalties, and Costs, and of the Provisions relating to Access to the Special Act.

26. The new Governing Body of Shrewsbury School may, if they deem it expedient, at any Time after the passing of this Act, lay a Scheme before Her Majesty in Council for the Removal of the School from its actual Site to some other Place, and may provide in such Scheme for the Sale or Mortgage of any Property belonging to or held in trust for such School, and for its Appropriation to Building or other Purposes, with Power to suspend any Scholarships or Exhibitions payable out of such Property, and for the Purchase of other Property, and for the Erection of new Buildings on the Property so purchased, and generally for all Matters (including the Sale of any surplus Property that may be purchased, and the Investment of the Money which may be produced by such Sale,) required to effect such Removal in a convenient Manner, to the same Extent as if such Governing Body were the absolute Owners of any Property they may be dealing with under this Section as Purchasers, Vendors, or otherwise; and any such Scheme shall be subject to the same Provisions, and, if approved, shall take effect, and be subject to Alteration in the same Manner as Statutes made by a Governing Body:

Provided, firstly, that any Scheme made under this Section before the Expiration of the Powers by this Act conferred on the Special Commissioners shall be approved of by them before being laid before Her Majesty in Council; secondly, that the Power of making a Scheme under this Section shall not pass to the Special Commissioners or cease after the First of January One thousand eight hundred and seventy, or such further Time as may be determined by Her Majesty as herein-after mentioned, but shall continue vested in the new Governing Body of the said School; thirdly, that the School shall not be removed to any Site exceeding in Distance

Three Miles measured in a straight Line from the Market Place in Shrewsbury.

27. Nothing contained in this Act, or done in pursuance of the Powers thereby conferred, shall, as respects any Schools to which this Act applies, affect—

- (1.) Any Boy being at the Time of the passing of this Act on the Foundation of any of the said Schools, so far as respects his Interest in such Foundation during his Continuance at School:
- (2.) The Tenure by any Person of any Scholarship Exhibition or other like Emolument held by him at the Time of the passing of this Act, and not forming Part of the Interest of a Boy on the Foundation herein-before mentioned:
- (3.) The vested Interests of any Master in any of the said Schools appointed to his Office before the passing of the Public Schools Act, 1864, unless a due Equivalent be made in respect thereof:
- (4.) The pecuniary Interest belonging to or capable of being enjoyed by any Member of the Governing Bodies of the said Schools who may have been appointed to his Office before the passing of the said Public Schools Act, 1864, unless a due Equivalent be made in respect thereof:
- (5.) The Status as a Member of any Person who may have been appointed a Member of the Collegiate Bodies of Eton or Winchester before the passing of the said Public Schools Act of 1864:

And nothing contained in this Act or done in pursuance of the Powers thereof shall affect the Dean and Chapter of Westminster or any Member of that Body, except in so far as relates to their Status as apart from the Governing Body of Westminster School, or is herein-before expressly provided with respect to the Property to be appropriated to or for the Use of the said School.

28. Subject to any Alterations made by this Act, or by any Scheme or Statute made in pursuance of this Act, all Powers vested by Act of Parliament, Charter, Instrument of Endowment, Custom, or otherwise, in the existing Governing Body of a School to which this Act applies, in relation to such School or the Government thereof, shall continue in force, and may be exercised by such Governing Body until a new Governing Body is appointed, and after the Appointment of a new Governing Body by the new Governing Body, in the same Manner in which they might have been exercised if this Act had not passed.

29. From and after the passing of this Act, the Corporation known by the Name of "The

"Governors of the Lands, Possessions, Revenues, and Goods of the Hospital of King James founded in Charterhouse within the County of Middlesex at the humble Petition and only Costs and Charges of Thomas Sutton, Esquire," shall bear the Corporate Name of "The Governors of Sutton's Hospital in Charterhouse," but such Change of Name shall not in any way affect the Position, Rights, or Obligations of the said Governors, or cause any Action, Suit, or other legal Proceeding carried on by or against them to abate; and, except so far as the above-mentioned Change of Name is concerned, nothing in this Act contained shall affect the Private Act passed in the Session of Thirtieth and Thirty-first Years of the Reign of Her present Majesty, Chapter Eight, intituled "An Act for enabling the Governors of the Lands, Possessions, Revenues, and Goods of the Hospital of King James founded in Charterhouse within the County of Middlesex at the humble Petition and only Costs and Charges of Thomas Sutton, Esquire, to sell the Site of the School of the said Hospital and other Lands, to acquire a new Site for the School, and to erect a new School thereon, and for other Purposes."

30. Her Majesty may, by Order in Council, as respects the existing Governing Body of any School to which this Act applies, at any Time before the First Day of May One thousand eight hundred and sixty-nine, extend for a Period not exceeding One Month the Time within which such Governing Body may make a Statute for the Alteration of the Constitution of such Governing Body, and, as respects the new Governing Body of any School to which this Act applies, at any Time before the First of January One thousand eight hundred and seventy, extend the Time within which such new Governing Body is by this Act empowered to make Statutes

to a Period not exceeding the First Day of January One thousand eight hundred and seventy-one.

31. The Chapel of every School to which this Act applies shall be deemed to be a Chapel dedicated and allowed by the Ecclesiastical Law of this Realm for the Performance of Public Worship and the Administration of the Sacraments according to the Liturgy of the Church of England, and to be free from the Jurisdiction or Control of the Incumbent of the Parish in which such Chapel is situate.

Any Scheme which may be made in pursuance of this Act constituting the Parish of Eton a separate Vicarage shall contain Provisions making the existing Chapel of Ease at Eton the Parish Church of Eton, and exempting the College Chapel from being dealt with as a Parish Church.

32. Subject to the Conditions in this Act contained with respect to the Forfeiture of Property, the Governing Body for the Time of Westminster School may lay a Scheme before Her Majesty in Council for the Removal of the School to some other Site; and any such Scheme shall be subject to the same Provisions, and, if approved, shall take effect, and be subject to Alterations, in the same Manner as Statutes made by a Governing Body:

Provided, firstly, that any Scheme made under this Section before the Expiration of the Powers by this Act conferred on the Special Commissioners shall be approved of by them before being laid before Her Majesty in Council; secondly, that the Power of making a Scheme under this Section shall not pass to the Special Commissioners, or cease after the Expiration of the Powers of the Special Commissioners, but shall continue vested in the Governing Body for the Time being of the said School.

CAP. CXIX.

The Regulation of Railways Act, 1868.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short Title.*
2. *Interpretation of Terms.*

I.—Accounts, Audit, &c.

3. *Uniform Accounts, &c. to be kept.*
4. *Accounts, &c. to be signed, and printed Copies distributed.*
5. *Penalty for falsifying Accounts, &c.*
6. *Examination of Affairs by Inspectors.*

7. *Application to be supported by Evidence.*
8. *Inspection of Company's Books and Property.*
9. *Result of Examination, how dealt with.*
10. *Power of Company to appoint Inspectors.*
11. *Auditor not necessarily a Shareholder.*
12. *Auditors of Company, and Appointment of Auditor by Board of Trade.*
13. *Issue of Preferred and Deferred Ordinary Stock.*

II.—Obligations and Liability of Companies as Carriers.

14. *Liability of Company during Sea Transit.*
15. *Fares to be posted in Stations.*
16. *Provision for securing Equality of Treatment where Railway Company works Steam Vessels.*
17. *Company bound to furnish Particulars of Charges for Goods.*
18. *Charge when Two Railways worked by One Company.*
19. *Proceedings in case of Non-consumption of Smoke.*
20. *Smoking Compartments for all Classes.*
21. *Railway Companies to be liable to Penalties in case they shall provide Trains for Prize Fights.*

III.—Provisions for Safety of Passengers.

22. *Communication between Passengers and the Company's Servants.*
23. *Penalty for Trespasses on Railways.*
24. *Trees dangerous to Railways may be removed.*

IV.—Compensation for Accidents.

25. *Arbitration of Damages.*
26. *Examination by Medical Man.*

V.—Light Railways.

27. *Order for Construction and working of Railway as a light Railway.*
28. *Conditions and Regulations for light Railway.*
29. *Publication of Regulations.*

VI.—Arbitrations by Board of Trade.

30. *Arbitrator appointed by Board of Trade.*
31. *Remuneration of Arbitrator.*
32. *Cost, &c. of Arbitrations.*
33. *Costs, Charges, &c. to be taxed and settled by Masters of the Court of Queen's Bench.*

VII.—Miscellaneous.

34. *Printed Copies of Shareholders Address Book.*
35. *Meeting preliminary to Application for Act or Certificate.*
36. *Special Trains exclusively for Post Office.*
37. *Service of Requisitions, &c. by Postmaster General.*
38. *Extension of Scope of Railway Companies Powers Act, 1864.*
39. *Service of Requisitions, &c.*
40. *Recovery, &c. of Penalties.*
41. *Company may apply to Common Law Judge at Westminster to hear Cases of Compensation under 8 & 9 Vict. c. 18.*
42. *Company may obtain Judge's Order instead of issuing Warrant.*
43. *Power of Verdict of Jury and Judgment of the Court.*
44. *Interpretation of certain Expressions.*
45. *Fees to Masters for determining Questions of disputed Compensation.*
46. *Extension of Time.*
47. *As to Repeal of Enactments in Second Schedule.*
Schedules.

An Act to amend the Law relating to
Railways. (31st July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Preliminary.

1. This Act may be cited as The Regulation of Railways Act, 1868.

2. In this Act—

The Term "Railway" means the whole or any Portion of a Railway or Tramway, whether worked by Steam or otherwise:

The Term "Company" means a Company incorporated, either before or after the passing of this Act, for the Purpose of constructing, maintaining, or working a Railway in the United Kingdom (either alone or in conjunction with any other Purpose), and includes, except when otherwise expressed, any Individual or Individuals not incorporated who are Owners or Lessees of a Railway in the United Kingdom, or Parties to an Agreement for working a Railway in the United Kingdom:

The Term "Person" includes a Body Corporate.

I.—Accounts, Audit, &c.

3. Every incorporated Company, Seven Days at least before each ordinary half-yearly Meeting held after the Thirty-first Day of December One thousand eight hundred and sixty-eight, shall prepare and print, according to the Forms contained in the First Schedule to this Act, a Statement of Accounts and Balance Sheet for the last preceding Half Year, and the other Statements and Certificates required by the same Schedule, and an Estimate of the proposed Expenditure out of Capital for the next ensuing Half Year, and such Statement of Accounts and Balance Sheet shall be the Statement of Accounts and Balance Sheet which are submitted to the Auditors of the Company. Every Company which makes default in complying with this Section shall be liable to a Penalty not exceeding Five Pounds for every Day during which such Default continues. The Board of Trade, with the Consent of a Company, may alter the said Forms as regards such Company for the Purpose of adapting them to the Circumstances of such Company, or of better carrying into effect the Objects of this Section.

4. Every Statement of Accounts, Balance Sheet, and Estimate of Expenditure, prepared as required by this Act, shall be signed by the

Chairman or Deputy Chairman of the Directors and by the Accountant or other Officer in charge of the Accounts of the Company, and shall be preserved at the Company's principal Office. A printed Copy thereof shall be forwarded to the Board of Trade, and at all Times after the Date at which it is required to be printed be given, on Application, to every Person who holds any Ordinary or Preference Share or Stock in the Company, or any Mortgage, Debenture, or Debenture Stock of the Company; and every such Person may at all reasonable Times, without Fee or Charge, peruse the Original in the Possession of the Company. Any Company which acts in contravention of this Section shall be liable for each Offence to a Penalty not exceeding Fifty Pounds.

5. If any Statement, Balance Sheet, Estimate, or Report which is required by this Act is false in any Particular to the Knowledge of any Person who signs the same, such Person shall be liable, on Conviction thereof on Indictment, to Fine and Imprisonment, or on summary Conviction thereof to a Penalty not exceeding Fifty Pounds.

6. The Board of Trade may appoint One or more competent Inspectors to examine into the Affairs of an incorporated Company and the Condition of its Undertaking or any Part thereof, and to report thereon, upon any One of the Applications following; that is to say,

1. Upon Application made in pursuance of a Resolution passed at a Meeting of Directors:
2. Upon Application by the Holders of not less than Two Fifths Part of the aggregate Amount of the ordinary Shares or Stock of the Company for the Time being issued:
3. Upon Application by the Holders of not less than One Half of the aggregate Amount of the Mortgages, Debentures, and Debenture Stock (if any) of the Company for the Time being issued:
4. Upon Application by the Holders of not less than Two Fifths of the aggregate Amount of the Guaranteed or Preference Shares or Stock of the Company for the Time being issued, provided that the Preference Capital issued amounts to not less than One Third of the whole Share Capital of the Company.

7. The Application shall be made in Writing, signed by the Applicants, and shall be supported by such Evidence as the Board of Trade may require, for the Purpose of showing that the Applicants have good Reason for requiring such Examination to be made; the Board of Trade may also, before appointing any Inspector or Inspectors, require the Applicants to give Security for Payment of the Costs of the Inquiry.

8. It shall be the Duty of the Directors, Officers, and Agents of the Company to produce, for the Examination of the Inspectors, all Books and Documents relating to the Affairs of the Company in their Custody or Power, and to afford to the Inspectors all reasonable Facilities for the Inspection of the Property and Undertaking of the Company. Any Inspector may examine upon Oath the Officers and Agents of the Company in relation to its Business, and may administer such Oath accordingly. Any Person who, when so examined on Oath, makes any false Statement, knowing the same to be false, shall be guilty of Perjury.

If any Director, Officer, or Agent refuses to produce any Book or Document hereby directed to be produced, or to afford the Facilities for Inspection hereby required to be afforded, or if any Officer or Agent refuses to answer any Question relating to the Affairs of the Company, he shall incur a Penalty of Five Pounds for every Day during which the Refusal continues.

9. Upon the Conclusion of the Examination the Inspectors shall report their Opinion to the Board of Trade and to the Company, and the Company shall print the same, and deliver a Copy thereof to the Board of Trade, and, on Application, to any Person who holds any Ordinary or Preference Share or Stock, or any Mortgage, Debenture, or Debenture Stock of the Company. All Expenses of and incidental to any such Examination as aforesaid shall be defrayed by the Persons upon whose Application the Inspectors were appointed, unless the Board of Trade shall direct the same or any Portion thereof to be paid by the Company, which they are hereby authorized to do.

10. Any Company may, by Resolution at an Extraordinary Meeting, appoint Inspectors for the Purpose of examining into the Affairs of the Company and the Condition of the Company's Undertaking. The Inspectors so appointed shall have the same Powers and perform the same Duties as Inspectors appointed by the Board of Trade, and shall make their Report in such Manner and to such Persons as the Company in General Meeting directs; and the Directors, Officers, and Agents of the Company shall incur the same Penalties, in case of any Refusal to produce any Book or Document by this Act required to be produced to such Inspectors, or to afford the Facilities for Inspection by this Act required to be afforded, or to answer any Question, as they would have incurred if such Inspectors had been appointed by the Board of Trade.

11. Whenever, after the passing of this Act, Section One hundred and two of the Companies

Clauses Consolidation Act, 1845, is incorporated in a Certificate or Special Act relating to a Railway Company, it shall be construed as if the Words, "where no Qualification shall be prescribed by the Special Act every Auditor shall have at least One Share in the Undertaking," were omitted therefrom; and so much of every Certificate and Special Act relating to a Railway Company, and in force at the passing of this Act, as incorporates that Portion of the said Section, and so much of any Special Act relating to a Railway Company, and so in force, as contains a like Provision, is hereby repealed.

12. With respect to the Auditors of the Company the following Provisions shall have Effect:

- (1.) The Board of Trade may, upon Application made in pursuance of a Resolution passed at a Meeting of the Directors or at a General Meeting of the Company, appoint an Auditor in addition to the Auditors of such Company, and it shall not be necessary for any such Auditor to be a Shareholder in the Company:
- (2.) The Company shall pay to such Auditor appointed by the Board of Trade such reasonable Remuneration as the Board of Trade may prescribe:
- (3.) The Auditor so appointed shall have the same Duties and Powers as the Auditors of the Company, and shall report to the Company:
- (4.) Where, in consequence of such Appointment of an Auditor or otherwise, there are Three or more Auditors, the Company may declare a Dividend if the Majority of such Auditors certify in manner required by Section Thirty of the Railway Companies Act, 1867, and the Railway Companies (Scotland) Act, 1867, respectively:
- (5.) Where there is a Difference of Opinion among such Auditors, the Auditor who so differs shall issue to the Shareholders, at the Cost of the Company, such Statement respecting the Grounds on which he differs from his Colleagues, and respecting the Financial Condition and Prospects of the Company, as he thinks material for the Information of the Shareholders.

13. Any Company which in the Year immediately preceding has paid a Dividend on their Ordinary Stock of not less than Three Pounds per Centum per Annum may, pursuant to the Resolution of an Extraordinary General Meeting, divide their paid-up Ordinary Stock into Two Classes, to be and to be called the one Preferred Ordinary Stock, and the other Deferred Ordinary Stock, and issue the same subject and according

to the following Provisions, and with the following Consequences; (that is to say),

- (1.) Preferred and Deferred Ordinary Stock shall be issued only in substitution for equal Amounts of paid-up Ordinary Stock, and by way of Division of Portions of Ordinary Stock into Two equal Parts:
- (2.) Such Division may be made at any Time, on the Request in Writing of the Holder of paid-up Ordinary Stock, but not otherwise; and such Request may apply to the whole of the Ordinary Stock of such Holder, or to any Portion thereof divisible into Twentieth Parts:
- (3.) Preferred Ordinary Stock and Deferred Ordinary Stock shall not be issued except in Sums of Ten Pounds or Multiples of Ten Pounds:
- (4.) The Certificates for any Ordinary Stock divided into Preferred and Deferred Ordinary Stock shall before such Division be delivered up to the Company, and shall be cancelled by them, and Certificates for Preferred Ordinary Stock and Deferred Ordinary Stock shall be issued gratis in exchange by the Company:
- (5.) If in any Case there is any Part of the Ordinary Stock held by a Stockholder comprised in One Certificate which he does not desire to be divided, or which is incapable of Division, under the Provisions of this Act, the Company shall issue to him gratis a Certificate for that Amount as Ordinary Stock:
- (6.) As between Preferred Ordinary Stock and Deferred Ordinary Stock, Preferred Ordinary Stock shall bear a fixed maximum Dividend at the Rate of Six per Centum per Annum:
- (7.) In respect of Dividend to the Extent of the Maximum aforesaid, Preferred Ordinary Stock shall at the Time of its Creation, and at all Times afterwards, have Priority over Deferred Ordinary Stock created or to be created, and shall rank *pari passu* with the undivided Ordinary Stock and the Ordinary Shares of the Company created or to be created; and in respect of Dividend, Preferred Ordinary Stock shall at all Times and to all Intents rank after all Preference and Guaranteed Stock and Shares of the Company created or to be created:
- (8.) In each Year after all Holders of Preferred Ordinary Stock for the Time being issued have received in full the maximum Dividend aforesaid, all Holders of Deferred Ordinary Stock for the Time being issued shall, in respect of all Dividend exceeding that Maximum paid by the Company in that Year on Ordinary Stock and Shares,

rank *pari passu* with the Holders of undivided Ordinary Stock and of Ordinary Shares of the Company for the Time being issued:

- (9.) If, nevertheless, in any Year ending on the Thirty-first Day of December there are not Profits available for Payment to all the Holders of Preferred Ordinary Stock of the maximum Dividend aforesaid, no Part of the Deficiency shall be made good out of the Profits of any subsequent Year, or out of any other Funds of the Company:
- (10.) Preferred Ordinary Stock and Deferred Ordinary Stock from Time to Time shall confer such Right of voting at Meetings of the Company, and shall confer and have all such other Rights, Qualifications, Privileges, Liabilities, and Incidents, as from Time to Time attach and are incident to undivided Ordinary Stock of the Company:
- (11.) The Terms and Conditions on which any Preferred Ordinary Stock or Deferred Ordinary Stock is issued shall be stated on the Certificate thereof:
- (12.) Preferred Ordinary Stock and Deferred Ordinary Stock shall respectively be held on the same Trusts, and subject to the same Charges and Liabilities, as those on and subject to which the Ordinary Stock in substitution for which the same are issued was held immediately before the Substitution, and so as to give Effect to any testamentary or other Disposition of or affecting such Ordinary Stock.

II.—*Obligations and Liability of Companies as Carriers.*

14. Where a Company by Through Booking contracts to carry any Animals, Luggage, or Goods from Place to Place partly by Railway and partly by Sea, or partly by Canal and partly by Sea, a Condition exempting the Company from Liability for any Loss or Damage which may arise during the Carriage of such Animals, Luggage, or Goods by Sea from the Act of God, the King's Enemies, Fire, Accidents from Machinery, Boilers, and Steam, and all and every other Dangers and Accidents of the Seas, Rivers, and Navigation, of whatever Nature and Kind soever, shall, if published in a conspicuous Manner in the Office where such Through Booking is effected, and if printed in a legible Manner on the Receipt or Freight Note which the Company gives for such Animals, Luggage, or Goods, be valid as Part of the Contract between the Consignor of such Animals, Luggage, or Goods, and the Company, in the same Manner as if the Company had signed and delivered to the Consignor a Bill of Lading containing such Condition. For

the Purposes of this Section the Word "Company" includes the Owners, Lessees, or Managers of any Canal or other Inland Navigation.

15. On and after the First Day of January One thousand eight hundred and sixty-nine, every Company shall cause to be exhibited in a conspicuous Place in the Booking Office of each Station on their Line a List or Lists painted, printed, or written in legible Characters, containing the Fares of Passengers by the Trains included in the Time Tables of the Company from that Station to every Place for which Passenger Tickets are there issued.

16. Where a Company is authorized to build, or buy, or hire, and to use, maintain, and work, or to enter into Arrangements for using, maintaining, or working, Steam Vessels for the Purpose of carrying on a Communication between any Towns or Ports, and to take Tolls in respect of such Steam Vessels, then and in every such Case Tolls shall be at all Times charged to all Persons equally and after the same Rate in respect of Passengers conveyed in a like Vessel passing between the same Places under like Circumstances; and no Reduction or Advance in the Tolls shall be made in favour of or against any Person using the Steam Vessels in consequence of his having travelled or being about to travel on the whole or any Part of the Company's Railway, or not having travelled or not being about to travel on any Part thereof, or in favour of or against any Person using the Railway in consequence of his having used or being about to use, or his not having used or not being about to use, the Steam Vessels; and where an aggregate Sum is charged by the Company for Conveyance of a Passenger by a Steam Vessel and on the Railway, the Ticket shall have the Amount of Toll charged for Conveyance by the Steam Vessel distinguished from the Amount charged for Conveyance on the Railway.

The Provisions of the Railway and Canal Traffic Act, 1854, so far as the same are applicable, shall extend to the Steam Vessels and to the Traffic carried on thereby.

17. Where any Charge shall have been made by a Company in respect of the Conveyance of Goods over their Railway, on Application in Writing within One Week after Payment of the said Charge made to the Secretary of the Company by the Person by whom or on whose Account the same has been paid, the Company shall within Fourteen Days render an Account to the Person so applying for the same, distinguishing how much of the said Charge is for the Conveyance of the said Goods on the Railway, including therein Tolls for the Use of the Railway, for the Use of Carriages, and for

locomotive Power, and how much of such Charge is for loading and unloading, covering, Collection, Delivery, and for other Expenses, but without particularizing the several Items of which the last-mentioned Portion of the Charge may consist.

18. Where Two Railways are worked by One Company, then in the Calculation of Tolls and Charges for any Distances in respect of Traffic (whether Passengers, Animals, Goods, Carriages, or Vehicles) conveyed on both Railways, the Distances traversed shall be reckoned continuously on such Railways as if they were One Railway.

19. Where Proceedings are taken against a Company using a Locomotive Steam Engine on a Railway on account of the same not consuming its own Smoke, then if it appears to the Justices before whom the Complaint is heard that the Engine is constructed on the Principle of consuming its own Smoke, but that it failed to consume its own Smoke, as far as practicable, at the Time charged in the Complaint through the Default of the Company, or of any Servant in the Employment of the Company, such Company shall be deemed guilty of an Offence under the Railways Clauses Consolidation Act, 1845, Section One hundred and fourteen.

20. All Railway Companies, except the Metropolitan Railway Company, shall, from and after the First Day of October next, in every Passenger Train where there are more Carriages than One of each Class, provide Smoking Compartments for each Class of Passengers, unless exempted by the Board of Trade.

21. Any Railway Company that shall knowingly let for Hire or otherwise provide any Special Train for the Purpose of conveying Parties to or to be present at any Prize Fight, or who shall stop any ordinary Train to convenience or accommodate any Parties attending a Prize Fight at any Place not an ordinary Station on their Line, shall be liable to a Penalty, to be recovered in a summary Way before Two Justices of the County in which such Prize Fight shall be held or shall be attempted to be held, of such Sum not exceeding Five hundred Pounds, and not less than Two hundred Pounds, as such Justices shall determine, One Half of such Penalty to be paid to the Party at whose Suit the Summons shall be issued, and the other Half to be paid to the Treasurer of the County in which such Prize Fight shall be held or shall be attempted to be held, in aid of the County Rate; and Service of the Summons under which the Penalty is sought to be enforced on the Secretary of the Company at his Office Ten Days before the Day of Hearing shall be sufficient to give the Justices before

whom the Case shall come Jurisdiction to hear and determine the Case.

III.—*Provisions for Safety of Passengers.*

22. After the First Day of April One thousand eight hundred and sixty-nine, every Company shall provide, and maintain in good Working Order, in every Train worked by it which carries Passengers, and travels more than Twenty Miles without stopping, such efficient Means of Communication between the Passengers and the Servants of the Company in charge of the Train as the Board of Trade may approve. If any Company makes default in complying with this Section it shall be liable to a Penalty not exceeding Ten Pounds for each Case of Default. Any Passenger who makes use of the said Means of Communication without reasonable and sufficient Cause shall be liable for each Offence to a Penalty not exceeding Five Pounds.

23. If any Person shall be or pass upon any Railway, except for the Purpose of crossing the same at any authorized Crossing, after having received Warning by the Company which works such Railway, or by any of their Agents or Servants, not to go or pass thereon, every Person so offending shall forfeit and pay any Sum not exceeding Forty Shillings for every such Offence.

24. If any Tree standing near to a Railway shall be in Danger of falling on the Railway so as to obstruct the Traffic, it shall be lawful for any Two Justices, on the Complaint of the Company which works such Railway, to cause such Tree to be removed or otherwise dealt with as such Justices may order, and the Justices making such Order may award Compensation to be paid by the Company making such Complaint to the Owner of the Tree so ordered to be removed or otherwise dealt with as such Justices shall think proper, and the Amount of such Compensation shall be recoverable in like Manner as Compensation recoverable before Justices under "The Railways Clauses Consolidation Act, 1845."

IV.—*Compensation for Accidents.*

25. Where a Person has been injured or killed by an Accident on a Railway, the Board of Trade, upon Application in Writing made jointly by the Company from whom Compensation is claimed and the Person if he is injured, or his Representatives if he is killed, may, if they think fit, appoint an Arbitrator, who shall determine the Compensation (if any) to be paid by the Company.

26. Whenever any Person injured by an Accident on a Railway claims Compensation on account of the Injury, any Judge of the Court in which Proceedings to recover such Compensation are taken, or any Person who by the Consent of

the Parties or otherwise has Power to fix the Amount of Compensation, may order that the Person injured be examined by some duly qualified Medical Practitioner named in the Order, and not being a Witness on either Side, and may make such Order with respect to the Costs of such Examination as he may think fit.

V.—*Light Railways.*

27. The Board of Trade may by Licence authorize a Company applying for it to construct and work or to work as a light Railway the whole or any Part of a Railway which the Company has Power to construct or work.

Before granting the Licence the Board of Trade shall cause due Notice of the Application to be given, and shall consider all Objections and Representations received by them, and shall make such Inquiry as they think necessary.

28. A light Railway shall be constructed and worked subject to such Conditions and Regulations as the Board of Trade may from Time to Time impose or make: Provided, that (1.) the Regulations respecting the Weight of Locomotive Engines, Carriages, and Vehicles to be used on such Railway shall not authorize a greater Weight than Eight Tons to be brought upon the Rails by any One Pair of Wheels; (2.) the Regulations respecting the Speed of Trains shall not authorize a Rate of Speed exceeding at any Time Twenty-five Miles an Hour.

If the Company or any Person fails to comply with or acts in contravention of such Conditions and Regulations, or directs any one so to fail or act, such Company and Person shall respectively be liable to a Penalty for each Offence not exceeding Twenty Pounds, and to a like Penalty for every Day during which the Offence continues; and every such Person on Conviction or Indictment for any Offence relating to the Weight of Engines, Carriages, or Vehicles, or the Speed of Trains, shall be also liable to Imprisonment, with or without Hard Labour, for any Term not exceeding Two Years.

29. The Conditions and Regulations of the Board of Trade relating to light Railways shall be published and kept published by the Company in manner directed with respect to Byelaws by Section One hundred and ten of "The Railways Clauses Consolidation Act, 1845," and the Company shall be liable to a Penalty not exceeding Five Pounds for every Day during which such Conditions and Regulations are not so published.

VI.—*Arbitrations by Board of Trade.*

30. Whenever the Board of Trade are required to make any Award or to decide any Difference in any Case in which a Company is one of the Parties, they may appoint an Arbitrator to act

for them, and his Award or Decision shall be deemed to be the Award or Decision of the Board of Trade.

If the Arbitrator dies, or in the Judgment of the Board of Trade becomes incapable or unfit, the Board of Trade may appoint another Arbitrator.

31. The Board of Trade may fix the Remuneration of any Arbitrator or Umpire appointed by them in pursuance of this or any other Act in any Case where a Company is one of the Parties, and may, if they think fit, frame a Scale of Remuneration for Arbitrators or Umpires so appointed by them, and no Arbitrator or Umpire so appointed by them shall be entitled to any larger Remuneration than the Amount fixed by the Board of Trade.

32. The Provisions of Sections Eighteen to Twenty-nine, both inclusive, of the Railway Companies Arbitration Act, 1859, shall, so far as is consistent with the Tenor thereof, apply to an Arbitrator appointed by the Board of Trade, and to his Arbitration and Award, notwithstanding that one of the Parties between whom he is appointed to arbitrate may not be a Railway Company; and in construing those Sections for the Purpose of this Act the Word "Companies" shall be construed to mean the Parties to the Arbitration.

33. All disputed Questions as to any Costs, Charges, and Expenses of and incident to any Arbitration or Award made under the Provisions of "The Lands Clauses Consolidation Act, 1845," or of any Special Act of Parliament incorporating the same, whether the Question in dispute arise as to Compensation to be made for Lands required to be purchased and actually taken by any Railway Company, or in respect of the injurious affecting of other Lands not taken, or otherwise in relation thereto, shall, if either Party so requires, be taxed and settled as between the Parties by One of the Masters of the Court of Queen's Bench; and it shall be lawful for such Master to receive and take in respect of each Folio in Length of every Bill of Costs so settled a Fee of One Shilling and no more, and such Fee shall be taken in Money and not in Stamps, and may be retained by the said Master for his own Use and Benefit.

VII.—Miscellaneous.

34. Every incorporated Company shall print correct Copies of the Shareholders Address Book of the Company corrected up to the First Day of December in every Year, and affix an Asterisk against the Names of those qualified to act as Directors.

After the Expiration of One Fortnight from the aforesaid Date the Company shall, on Appli-

cation, supply such printed Copies at a Price not exceeding Five Shillings for each Copy to every Person who holds any Ordinary or Preference Shares or Stock in the Company, or any Mortgage Debenture or Debenture Stock of the Company.

Any Company which acts in contravention of this Section shall be liable for each Offence to a Penalty not exceeding Twenty Pounds.

35. When a Bill is introduced into either House of Parliament conferring on an incorporated Company additional Powers, or when an incorporated Company applies to the Board of Trade for a Certificate conferring on it additional Powers, the following Provisions shall have Effect; namely,

1st. Before the Bill is read a Second Time in the House of Parliament into which it is first introduced, or before the Application is made to the Board of Trade (as the Case may be), the Bill or Draft Certificate (as the Case may be) shall be submitted to a Meeting of the Proprietors of such Company at a Meeting held specially for that Purpose:

2d. Such Meeting shall be called by Advertisement inserted once in each of Two consecutive Weeks in a Morning Newspaper published in London, Edinburgh, or Dublin, as the Case may be, and in a Newspaper of the County or Counties in which the principal Office or Offices of the Company is or are situate, and also by a Circular addressed to each Proprietor at his registered or last known or usual Address, and sent by Post or delivered at such Address not less than Ten Days before the holding of such Meeting, enclosing a Blank Form of Proxy, with proper Instructions for the Use of the same; and the same Form of Proxy and the same Instructions shall be sent to every such Proprietor, and shall be addressed to each Proprietor on the Back of the Form of Proxy; but no such Form of Proxy shall be stamped before it is sent out, nor shall the Funds of the Company be used for the stamping of any Proxies, nor shall any Intimation be sent as to any Person to whom the Proxy may be given or addressed; and no other Circular or Form of Proxy relating to such Meeting shall be sent to any Proprietor from the Office of the Company, or by any Director or Officer of the Company so describing himself:

3d. Such Meeting shall be held on a Day not earlier than Seven Days after the last Insertion of such Advertisement, and may

be held on the same Day as an ordinary General Meeting of the Company :

- 4th. At such Meeting the Bill or Draft Certificate shall be submitted to the Proprietors, and shall not be proceeded with unless approved of by Proprietors present in person or by proxy, holding at least Three Fourths of the paid-up Capital of the Company represented at such Meeting, such Proprietors being qualified to vote at all ordinary Meetings of the Company in right of such Capital; the Votes of Proprietors of any paid-up Shares or Stock, other than Debenture Stock, not qualified to vote at ordinary Meetings, whose Interests may be affected by the proposed Act or Certificate, if tendered at the Meeting, shall be recorded separately :
- 5th. There shall be laid before Parliament or the Board of Trade (as the Case may require) a Statement of the Number of Votes if a Poll was taken, and the Number of Votes recorded separately.

36. Whenever in pursuance of any Notice under the Act of the Session of the First and Second Years of the Reign of Her present Majesty, Chapter Ninety-eight, "to provide for the Conveyance of Mails by Railways," or otherwise, the Mails or Post Letter Bags are conveyed and forwarded by a Company on their Railway by a Special Train, the Postmaster General may by the same or any other Notice in Writing require that the whole of such Special Train shall be appropriated to the Service of the Post Office exclusively of all other Traffic except such as he may sanction, and the Remuneration to be paid for such Service shall be settled as prescribed by the Sixth Section of that Act.

37. All Requisitions, Notices, and Documents which relate to a Company, if purporting to be signed by the Postmaster General or some Secretary or Assistant Secretary to the Post Office, or by some Officer appointed for the Purpose by the Postmaster General, shall, until the contrary is proved, be deemed to have been so signed, and to have been given or made by the Postmaster General, and the Provisions of the Act of the Session of the First and Second Years of the Reign of Her present Majesty, Chapter Ninety-eight, "to provide for the Conveyance of Mails "by Railways," requiring any Notice, Requisition, or Document to be under the Hand of the Postmaster General, are hereby repealed.

38. The Railway Companies Powers Act, 1864, shall take effect and apply in the following Cases in the same Manner as if they were specified in Section Three of that Act; (that is to say.)

Where a Company desire to make new Pro-

visions, or to alter any of the Provisions of their Special Act, or of the "Companies "Clauses Consolidation Act, 1845," so far as it is incorporated therewith, with respect to all or any of the Matters following; namely.

- (a.) The General Meetings of the Company, and the Exercise of the Right of voting by the Shareholders :
- (b.) The Appointment, Number, and Rotation of Directors :
- (c.) The Powers of Directors :
- (d.) The Proceedings and Liabilities of Directors :
- (e.) The Appointment and Duties of Auditors.

39. All Requisitions, Orders, Regulations, Appointments, Certificates, Licences, Notices, and Documents which relate to a Company, if purporting to be signed by some Secretary or Assistant Secretary of or by some Officer appointed for the Purpose by the Board of Trade, shall, until the contrary is proved, be deemed to have been so signed, and to have been given or made by the Board of Trade. They may be served by the Board of Trade on any Company in the Manner in which Notices may be served under the Companies Clauses Consolidation Act, 1845; and all Notices, Returns, and other Documents required to be made, delivered, or sent by a Company to the Board of Trade shall be left at the Office of, or transmitted through the Post addressed to, the Board of Trade.

40. Every Penalty imposed by this Act shall be recovered and applied in the same Manner as Penalties imposed by the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845, (as the Case may require,) are for the Time being recoverable and applicable.

41. Whenever, in the Case of any Lands purchased or taken otherwise than by Agreement for the Purposes of any public Railway, any Question of Compensation in respect thereof, or any Question of Compensation in respect of Lands injuriously affected by the Execution of the Works of any public Railway, is, under the Provisions of "The Lands Clauses Consolidation Act, 1845," to be settled by the Verdict of a Jury empanelled and summoned as in that Act mentioned, the Company or the Party entitled to the Compensation may, at any Time before the issuing by the Company to the Sheriff as by that Act directed, apply to a Judge of any One of the Superior Courts of Common Law at Westminster, who shall, if he think fit, make an Order for Trial of the Question in One of the Superior Courts upon such Terms and in such Manner as to him shall seem fit; and the Que-

tion between the Parties shall be stated in an Issue to be settled in case of Difference by the Judge, or as he shall direct, and such Issue may be entered for Trial and tried accordingly in the same Manner as any Issue joined in an ordinary Action at such Place as the Judge shall direct; and the Proceedings in respect of such Issue shall be under and subject to the Control and Jurisdiction of the Court as in ordinary Actions therein, but so nevertheless that the Jury shall, where the Issue relates to the Value of Lands to be purchased, and also to Compensation claimed for Injury done or to be done to Lands held therewith, deliver their Verdict separately in manner provided by the Fortyninth Section of "The Lands Clauses Consolidation Act, 1845."

42. Whenever a Company is called upon or liable under the Provisions of "The Lands Clauses Consolidation Act, 1845," to issue their Warrant to the Sheriff in the Case of any disputed Compensation, and the Company shall obtain a Judge's Order as in the last preceding Section mentioned, the obtaining of such an Order and Notice thereof to the opposite Party shall be a Satisfaction of the Company's Duty in respect of the Issue of the Warrant.

43. The Verdict of the Jury and Judgment of the Court upon any Issue authorized by this Act shall, as regards Costs and every other Matter incident to or consequent thereon, have the same Operation and be entitled to the same Effect as if that Verdict and Judgment had been the Verdict of a Jury and Judgment of a Sheriff upon an Inquiry conducted upon a Warrant to the Sheriff issued by the Company under "The Lands Clauses Consolidation Act, 1845."

44. In so far as any Expression used in any of the Three preceding Sections of this Act has any special Meaning assigned to it by "The

Lands Clauses Consolidation Act, 1845," each such Expression shall in this Act have the Meaning so assigned to it.

45. Wherever under the Provisions of The Lands Clauses Consolidation Act, 1845, or of any Act incorporating, altering, or amending The same, the Costs of any Proceedings for determining a Question of disputed Compensation are settled by One of the Masters of the Court of Queen's Bench in England or Ireland, it shall be lawful for such Masters to receive and take in respect of each Folio in Length of every Bill of Costs so settled a Fee of One Shilling and no more; and such Fee shall be taken in Money and not in Stamps, and may be retained by the said Masters for their own Use and Benefit.

46. Where Notice in Writing of a proposed Application under "The Railways (Extension of Time) Act, 1868" for Extension of the Time limited for any of the Purposes mentioned in that Act, is received by the Board of Trade before the Expiration of such Time, or if the Time has expired during the present Session of Parliament before the First Day of September One thousand eight hundred and sixty-eight, and the Application is duly made within the Period prescribed by the said Act, then a Warrant of the Board of Trade extending the Time, although issued after the Expiration thereof, shall have Effect from the Date of such Expiration as if it had been previously issued.

47. The Enactments described in the Second Schedule to this Act are hereby repealed.

But this Repeal shall not affect—

- (1.) The Validity or Invalidity of anything duly done or suffered under any Enactment repealed by this Section :
- (2.) Any Right acquired or accrued or Liability incurred, or any Remedy in respect thereof.



SCHEDULES.

FIRST SCHEDULE.

FORMS OF ACCOUNT referred to in Sec. 3. of this Act.

RAILWAY.

HALF YEAR ENDING _____ 18 .

[No. 1.] STATEMENT OF CAPITAL AUTHORIZED, AND CREATED BY THE COMPANY,

ACTS OF PARLIAMENT, or Certificates of the Board of Trade.	CAPITAL AUTHORIZED.			CAPITAL CREATED OR SANCTIONED.			BALANCE.		
	Stock and Shares.	Loans.	Total.	Stock and Shares.	Loans.	Total.	Stock and Shares.	Loans.	Total.
	£	£	£	£	£	£	£	£	£
1. {									
2. {									
3. {									
4. {									
5. {									
&c.)									
[Except where Capital Powers are comprised in a Consolidation Act, each Act or Certificate authorizing Capital to be stated here separately in order of Date.]									
TOTAL									

[No. 2.] STATEMENT OF STOCK AND SHARE CAPITAL CREATED, SHOWING THE PROPORTION RECEIVED.

DESCRIPTION.	Amount created.	Amount received.	Calls in arrear.	Amount uncalled.	Amount unissued.
	£	£	£	£	£
[State each Class of Stock or Shares in order of Date of Creation, showing the Premium or Discount, if any, at which it was issued, the Preferential or fixed Dividends, if any, to which it is entitled, and any other Conditions attached to it.]					
TOTAL					

[No. 3.] CAPITAL RAISED BY LOANS AND DEBENTURE STOCK.

	RAISED BY LOANS.									RAISED BY ISSUE OF DEBENTURE STOCKS.			Total raised by Loans and by Debenture Stocks.
	At per Cent.	At per Cent.	At per Cent.	At per Cent.	At per Cent.	At per Cent.	At per Cent.	Total Loans	At per Cent.	At per Cent.	Total De-benture Stocks.		
	£	£	£	£	£	£	£	£	£	£	£	£	£ s. d.
Existing at													
Ditto at													
Increase	-	-	-										
Decrease	-	-	-										
<hr/>													
Total Amount authorized to be raised by Loans and by Debenture Stocks in respect of Capital created, as per Statement No. 1.													
Total Amount raised by Loans and by Debenture Stock as above													
Balance being available Borrowing Powers at 150													

[No. 4.] Dr. RECEIPTS AND EXPENDITURE ON CAPITAL ACCOUNT. Cr.

	Amount Expended to	Amount Expended during Half Year.	Total.		Amount Received to	Amount Received during Half Year.	Total.
	£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.
To Expenditure—				By Receipts—			
On Lines open for Traffic (No. 5.)				Shares and Stock, per Account No. 2.			
On Lines in course of Construction (No. 5.)				Loans, per Account No. 3.			
Working Stock (No. 5.)				Debenture Stock, per Account No. 3.			
Subscriptions to other Railways (No. 5.)				Sundries (in detail)			
Docks, Steamboats, and other special Items (No. 5.)							
Balance							

[No. 5.] DETAILS OF CAPITAL EXPENDITURE FOR HALF YEAR ENDING

186 .

Lines open for Traffic—	[Showing, under separate Heads, Amount paid for Land (Purchase and Compensation), Construction of Way and Stations, including Rails, Chairs, Sleepers, &c., engineering and surveying, Law Charges, Parliamentary Expenses, Interest, Commission, &c.]		
Particulars—			
Lines in course of Construction—			
Particulars—			
Working Stock—			
Particulars—Showing each Description of Stock			
Subscriptions to other Railways—			
Particulars—Stating Lines			
Docks, Steamboats, and other special Items—			
Particulars			
TOTAL Expenditure for Half Year, as per Account No. 4. .			

[No. 6.] RETURN OF WORKING STOCK.

	LOCOMOTIVE.		COACHING.			MERCHANDISE AND MINERAL.			
	Engines.	Tenders.	First Class.	Second Class.	Third Class.	Goods Waggon.	Goods Waggon covered.	Coke Trucks.	Cattle Trucks.
Stock on the 18									
Ditto on the 18									
Increase during the Half Year									
Decrease ditto ditto									

[No. 7.] ESTIMATE OF FURTHER EXPENDITURE ON CAPITAL ACCOUNT.

	FURTHER EXPENDITURE.		
	During the Half Year ending .	In subsequent Half Years.	Total.
Lines open for Traffic (Particulars, showing principal Items.)			
Lines in course of Construction (Details of each Line.)			
Working Stock (Particulars.)			
Subscription to other Railways (Specifying Lines.)			
Docks, Steamboats, and other special Items (Particulars.)			
Works not yet commenced and in abeyance (in detail).			
Other Items (in detail)			
Total estimated further Expenditure of Capital.			

[No. 8.]

CAPITAL POWERS and other ASSETS available to meet further EXPENDITURE,
as per No. 7.

Share and Loan Capital authorized or created but not yet received.			
Any other Assets (<i>in detail</i>)	-	-	-
Total	-	-	-

[No. 9.]

Dr. REVENUE ACCOUNT. Cr.

Half Year ended	EXPENDITURE.	£ s. d.	Half Year ended	RECEIPTS.	£ s. d.	£ s. d.
	To Maintenance } see of Way, Works } Abstract and Stations - } A.			By Passengers - -		
	„ Locomotive Power do. B.			„ Parcels, Horses, Carriages, &c.		
	„ Carriage and } Waggon Re- } do. C. pairs - - }			„ Mails - - -		
	„ Traffic Expenses do. D.			„ Merchandise - -		
	„ General Charges do. E.			„ Live Stock - -		
	„ Law Charges - - -			„ Minerals - - -		
	„ Parliamentary Expenses -			„ Special and Miscellaneous Receipts— <i>Such as Navigations, Steamboats, Rents, Transfer Fees, &c.</i>		
	„ Compensation (Accidents and Losses).			<i>Details.</i>		
	„ Rates and Taxes - -					
	„ Government Duty - -					
	„ Special and Miscellaneous Expenses (if any).					
	„ Balance carried to Net Revenue Account - -					
		£			£	

[No. 10.]

Dr.

NET REVENUE ACCOUNT.

Cr.

Half Year ended		£ s. d.	Half Year ended		£ s. d.
	To Interest on Mortgage and Debenture Loans -			By Balance brought from last Half Year's Account -	
	" Interest on Debenture Stock - . . . -			" Ditto Revenue Account, No. 9. -	
	" Interest on Calls in Advance - . . . -			" Dividends on Shares in other Companies	
	" Interest on Temporary Loans - . . . -			" Bankers and General Interest Account (if in Credit) -	
	" Interest on Lloyd's Bonds - . . . -			" Special and Miscellaneous Receipts (if any) - . . . -	
	" Interest on Banking Balances - . . . -			(Detail to be given.)	
	" General Interest Account (if in Debit) -				
	" Rents of Leased Lines, Guarantees, &c. - . .				
	Details - . . . -				
	" Special and Miscellaneous Payments (if any) - . . . -				
	Details.				
	" Balance, being Payment available for Dividend - . . . -				
	[See No. 13.]				
		£			£

[No. 11.]

PROPOSED APPROPRIATION OF BALANCE AVAILABLE FOR DIVIDEND.

Half Year ended	Balance available for Dividend, as per Account No. 10. - . . . -	£
	Preference Stock } to be stated in order of Creation, { £	
	Ditto } with Rate of Dividend. {	
	Ditto }	
	Ordinary Stock (being at the Rate of per cent.) -	
	Balance to next Half Year - . . . -	£

[o. 12.]

ABSTRACTS.

A. MAINTENANCE OF WAY, WORKS, &c.				C. REPAIRS AND RENEWALS OF CARRIAGES AND WAGGONS.			
Half Year ended		£ s. d.	£ s. d.	Half Year ended		£ s. d.	£ s. d.
	Salaries, Office Expenses, and General Superintendence				CARRIAGES:—		
	Maintenance and Renewal of Permanent Way				Salaries, Office Expenses, and General Superintendence		
	Wages				Wages		
	Materials				Materials		
	Repairs of Roads, Bridges, Signals, and Works				WAGGONS:—		
	Repairs of Stations and Buildings				Salaries, Office Expenses, and General Superintendence		
	Special Expenditure (if any)				Wages		
					Materials		
	MILES MAINTAINED:—				TOTAL		
	Double						
	Single						
	Total						
	Total						
B. LOCOMOTIVE POWER.				D. TRAFFIC EXPENSES.			
Half Year ended		£ s. d.	£ s. d.	Half Year ended		£ s. d.	
	Salaries, Office Expenses, and General Superintendence				Salaries and Wages, &c.		
					Fuel, Lighting, Water, and General Stores		
	RUNNING EXPENSES:—				Clothing		
	Wages connected with the working of Locomotive Engines				Printing, Stationery, and Tickets		
	Coal and Coke				Horses, Harness, Vans, Provender, &c.		
	Water				Waggon Covers, Ropes, &c.		
	Oil, Tallow, and other Stores				Joint Station Expenses		
					Miscellaneous Expenses		
	REPAIRS AND RENEWALS:—				Special Expenditure (if any)		
	Wages						
	Materials						
	Special Expenditure						
	£						
				E. GENERAL CHARGES.			
Half Year ended				Half Year ended		£ s. d.	
					Directors		
					Auditors and Public Accountants (if any)		
					Salaries of Secretary, General Manager, Accountant, and Clerks		
					Office Expenses ditto ditto		
					Advertising		
					Fire Insurance		
					Electric Telegraph Expenses		
					Railway Clearing House Expenses		
					Special Expenditure (if any)		

[No. 13.] Dr.

GENERAL BALANCE SHEET.

Cr.

	£	s.	d.		£	s.	d.
To Capital Account, Balance at Credit thereof, as per Account No. 4. -				By Cash at Bankers—Current Account -			
" Net Revenue Account, Balance at Credit thereof, as per Account No. 10				" Cash on Deposit at Interest -			
" Unpaid Dividends and Interest				" Cash invested in Consols and Government Securities -			
" Guaranteed Dividends and Interest payable or accruing and provided for				" Cash invested in Shares of other Railway Companies not charged as Capital Expenditure -			
" Temporary Loans -				" General Stores—Stock of Materials on hand -			
" Lloyd's Bonds and other Obligations not included in Loan Capital Statement, No. 3. -				" Traffic Accounts due to the Company			
" Balance due to Bankers -				" Amounts due by other Companies -			
" Debts due to other Companies -				" Do. Do. Clearing House -			
" Amount due to Clearing House -				" Do. Do. Post Office -			
" Sundry Outstanding Accounts -				" Sundry Outstanding Accounts -			
" Fire Insurance Fund on Stations, Works, and Buildings -				" Suspense Accounts (if any) to be enumerated -			
" Insurance Fund on Steamboats -				" Special Items -			
" Special Items -							
£				£			

[No. 14.]

MILEAGE STATEMENT.

Half Year ended		Miles authorized.	Miles constructed.	Miles constructing or to be constructed.	Miles worked by Engines.
	Lines owned by Company -				
	Do. partly owned -				
	Do. leased or rented -				
	TOTAL -				
	Do. worked -				
	Foreign Lines worked over -				
	TOTAL -				

[No. 15.]

STATEMENT OF TRAIN MILEAGE.

Half Year ended	
	Passenger Trains -
	Goods and Mineral Trains -
	TOTAL -

(Signed) _____ Chairman or Deputy Chairman of Company.

_____ Secretary or Accountant of Company.

CERTIFICATE RESPECTING THE PERMANENT WAY, &c.

I hereby certify that the whole of the Company's Permanent Way, Stations, Buildings, Canals, and other Works have during the past Half Year been maintained in good working Condition and Repair.

Engineer.

Date _____ 18 .

CERTIFICATE RESPECTING THE ROLLING STOCK.

I hereby certify that the whole of the Company's Plant, Engines, Tenders, Carriages, Waggon, Machinery, and Tools, also the Marine Engines of the Steam Vessels, have during the past Half Year been maintained in good working Order and Repair.

*Chief Engineer, or
Locomotive Superintendent.*

Date _____ 18 .

AUDITOR'S CERTIFICATE.

As prescribed by Act 30 & 31 Victoria, Cap. 37, to follow.

SECOND SCHEDULE.

Date and Chapter of Act.	Title of Act.
3 & 4 Vict. c. 97. - (in part.)	An Act for regulating Railways - - - - in part; namely,— Section Twenty.
5 & 6 Vict. c. 55. - (in part.)	An Act for the better Regulation of Railways, and for the } in part; namely,— Conveyance of Troops - - - - } Section Nineteen.
7 & 8 Vict. c. 85. - (in part.)	An Act to attach certain Conditions to the Construction of future } in part; namely,— Railways authorized or to be authorized by any Act of the } present or succeeding Sessions of Parliament, and for other } Purposes in relation to Railways - - - - } Section Twenty-three.

CAP. CXX.

West Indies.

ABSTRACT OF THE ENACTMENTS.

6 G. 4. c. 88., 7 G. 4. c. 4., and 5 Vict. Sess. 2. c. 4. recited. Appropriation of 14,000*l.* to Payment of Bishops and Archdeacons. Appropriation of 6,300*l.* to Payment of Ministers, &c. in Dioceses herein named.

1. No Person hereafter appointed Bishop, Archdeacon, Minister, or Catechist under recited Acts, or under any Letters Patent granted in pursuance thereof, to receive Salary out of Consolidated Fund.
2. Coadjutor Bishop to act as at present in case of Vacancy of See of Jamaica.
3. Amount of certain Payments to be laid before Parliament annually.

An Act to relieve the Consolidated Fund from the Charge of the Salaries of future Bishops, Archdeacons, Ministers, and other Persons in the West Indies. (31st July 1868.)

WHEREAS, under Authority of an Act passed in the Sixth Year of the Reign of His late Majesty King George the Fourth, Chapter Eighty-eight, and of an Act passed in the Seventh Year of the Reign of His said late Majesty King George the Fourth, Chapter Four, and of an Act passed in the Second Session of Parliament holden in the Fifth Year of the Reign of Her present Majesty, Chapter Four, or One or more of them, the Sum of Fourteen thousand Pounds has been appropriated and made payable out of the growing Produce of the Consolidated Fund of the United Kingdom to the Bishops of Jamaica, Nassau, Barbados, Antigua, and Guiana, in Her Majesty's Possessions in the West Indies, and to the Archdeacons of Barbados, Trinidad, Antigua, and St. Kitts, and to the Archdeacons of Surrey, Cornwall, and Middlesex in Jamaica, of whom the Archdeacon of Middlesex is also the Bishop of Kingston in Jamaica; and the further Sum of Six thousand three hundred Pounds has been appropriated to the Payment of divers Ministers, Catechists, and Schoolmasters in the Dioceses of Jamaica, Barbados, Antigua, and Guiana:

And whereas it is expedient that the said Consolidated Fund should be gradually relieved from such Payments, and that, except as herein-after mentioned, no Bishop, Archdeacon, Minister, Catechist, or Schoolmaster who may be hereafter appointed in Her Majesty's West Indian Possessions shall receive any Salary, Payment, or other Allowance out of the growing Produce of the said Consolidated Fund:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. No Person who, after the passing of this Act, shall be appointed Bishop of any Diocese

in Her Majesty's West Indian Possessions, or who, after the passing of this Act, shall be appointed Archdeacon, Minister, Catechist, or Schoolmaster in any such Diocese, shall receive under the Provisions of said Acts, in respect of any such Appointment, any Salary or other Sum whatsoever out of the growing Produce of the Consolidated Fund of the United Kingdom; and all the Powers, Provisions, and Clauses in the said recited Acts, or any of them, or in any other Act contained, so far as they are inconsistent with this Enactment, are hereby repealed.

Provided always, that nothing herein contained shall authorize any Diminution during the Life and Incumbency of any Bishop or Archdeacon of any Salary of which he is now in the Receipt: and that every Minister, Catechist, and Schoolmaster in the said Dioceses to whom at the Time of the passing of this Act any Sum has been appropriated and made payable as aforesaid under the said Act of the Fifth Year of the Reign of Her present Majesty shall continue to receive the same, but no larger Sum thereunder, so long as he shall hold the Appointment, and, subject to any Leave of Absence which may be granted to him by the Officer administering the Government of the Colony, perform the Duties in respect of which such Sum was so appropriated and made payable to him, or, subject as aforesaid, so long as he shall perform within the said Colony such other Duties as may be imposed on him by the Bishop of the Diocese, in addition to, or in lieu of, the Duties attached to the Appointment which he now holds.

2. In the event of a Vacancy of the said See or Diocese of Jamaica the present Coadjutor Bishop shall, so long as he administers the said Diocese as such Coadjutor, continue to act in the same Manner as at present as Archdeacon of Middlesex.

3. There shall be presented to Parliament annually a Return of the Amount paid out of the Consolidated Fund for Ecclesiastical Purposes in the West Indies, and of the Appropriation of it to different Islands and Persons therein, with their respective Offices.

CAP. CXXI.

The Pharmacy Act, 1868.

ABSTRACT OF THE ENACTMENTS.

15 & 16 Vict. c. 56. recited.

1. Persons selling or compounding Poisons, or assuming the Title of Chemist and Druggist, to be qualified.
2. Articles named in Schedule (A.) to be deemed Poisons within the Meaning of this Act.

3. *Chemists and Druggists within Meaning of this Act.*
4. *Apprentices and Assistants to be registered.*
5. *Registration of Chemists and Druggists.*
6. *Examiners under Pharmacy Act to be the Examiners under this Act. Certificate of competent Skill, &c.*
7. *Application of Fees to Purpose of Pharmaceutical Society.*
8. *Registrar under Pharmacy Act to be so under this Act.*
9. *Council of Pharmaceutical Society to make Orders for regulating Register to be kept.*
10. *Duty of Registrar to make and keep Register.*
11. *Notice of Death of Pharmaceutical Chemist or Chemist and Druggist to be given by Registrars.*
12. *Evidence of Qualification to be given before Registration.*
13. *Annual Register to be published and be Evidence.*
14. *Penalty on wilful Falsification of Register, or for obtaining Registration by false Representation.*
15. *Protection of Titles, and Restrictions on Sale of Poisons.*
16. *Reserving Rights of certain Persons.*
17. *Regulations to be observed in the Sale of Poisons.*
18. *Chemists and Druggists in Business prior to passing of Act eligible for Election as Members of Pharmaceutical Society.*
19. *Council of Pharmaceutical Society.*
20. *Chemists and Druggists registered eligible to be elected Associates, and, being in Business, have the Privilege of voting in the Society, on paying the same Subscriptions as Members.*
21. *Voting Papers for Election of Council.*
22. *Benecolent Fund may be applied to past Members and Associates, also to Pharmaceutical Chemists and registered Chemists and Druggists.*
23. *Registration under "Medical Act."*
24. *Adulteration of Food or Drink Act to extend to Medicines.*
25. *Acts of Privy Council.*
26. *Power to Privy Council to erase Names of Persons from Register.*
27. *Extent of Act.*
28. *Short Title.*
Schedules.

**An Act to regulate the Sale of Poisons,
and alter and amend the Pharmacy
Act, 1852. (31st July 1868.)**

WHEREAS it is expedient for the Safety of the Public that Persons keeping open Shop for the retailing, dispensing, or compounding of Poisons, and Persons known as Chemists and Druggists, should possess a competent practical Knowledge of their Business, and to that End that from and after the Day herein named all Persons not already engaged in such Business should, before commencing such Business, be duly examined as to their practical Knowledge, and that a Register should be kept as herein provided, and also that the Act passed in the Fifteenth and Sixteenth Years of the Reign of Her present Majesty, intitled "An Act for regulating the Qualification of "Pharmaceutical Chemists," herein-after described as the Pharmacy Act, should be amended:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, as follows:

1. From and after the Thirty-first Day of Expiration One thousand eight hundred and sixty-eight, it shall be unlawful for any Person to

sell or keep open Shop for retailing, dispensing, or compounding Poisons, or to assume or use the Title "Chemist and Druggist," or Chemist or Druggist, or Pharmacist, or Dispensing Chemist or Druggist, in any Part of Great Britain, unless such Person shall be a Pharmaceutical Chemist, or a Chemist and Druggist within the Meaning of this Act, and be registered under this Act, and conform to such Regulations as to the keeping, dispensing, and selling of such Poisons as may from Time to Time be prescribed by the Pharmaceutical Society with the Consent of the Privy Council.

2. The several Articles named or described in the Schedule (A.) shall be deemed to be Poisons within the Meaning of this Act, and the Council of the Pharmaceutical Society of Great Britain (herein-after referred to as the Pharmaceutical Society) may from Time to Time, by Resolution, declare that any Article in such Resolution named ought to be deemed a Poison within the Meaning of this Act; and thereupon the said Society shall submit the same for the Approval of the Privy Council, and if such Approval shall be given, then such Resolution and Approval shall be advertised in the *London Gazette*, and on the Expiration of One Month from such Advertisement the Article named in such Resolution shall

be deemed to be a Poison within the Meaning of this Act.

3. Chemists and Druggists within the Meaning of this Act shall consist of all Persons who at any Time before the passing of this Act have carried on in Great Britain the Business of a Chemist and Druggist, in the keeping of open Shop for the compounding of the Prescriptions of duly qualified Medical Practitioners, also of all Assistants and Associates who before the passing of this Act shall have been duly registered under or according to the Provisions of the Pharmacy Act, and also of all such Persons as may be duly registered under this Act.

4. Any Person who at the Time of the passing of this Act shall be of full Age, and shall produce to the Registrar, on or before the Thirty-first Day of December One thousand eight hundred and sixty-eight, Certificates according to Schedule (E.) to this Act that he had been for a Period of not less than Three Years actually engaged and employed in the dispensing and compounding of Prescriptions as an Assistant to a Pharmaceutical Chemist, or to a Chemist and Druggist as defined by Clause Three of this Act, shall, on passing such a modified Examination as the Council of the Pharmaceutical Society, with the Consent of the Privy Council, may declare to be sufficient Evidence of his Skill and Competency to conduct the Business of a Chemist and Druggist, be registered as a Chemist and Druggist under this Act.

5. The Persons who at the Time of the passing of this Act shall have been duly admitted Pharmaceutical Chemists, or shall be Chemists and Druggists within the Meaning of the Act, shall be entitled to be registered under the Act without paying any Fee for such Registration : Provided, however, as regards any such Chemist and Druggist, that his Claim to be registered must be by Notice in Writing, signed by him, and given to the Registrar, with Certificates according to the Schedules (C.) and (D.) to this Act; and provided also, that for any such Registration of a Chemist and Druggist, unless it be duly claimed by him on or before the Thirty-first Day of December One thousand eight hundred and sixty-eight, the Person registered shall pay the same Fee as Persons admitted to the Register after Examination under this Act.

6. All such Persons as shall from Time to Time have been appointed to conduct Examinations under the Pharmacy Act shall be and are hereby declared to be Examiners for the Purposes of this Act, and are hereby empowered and required to examine all such Persons as shall tender themselves for Examination under the Provisions

of this Act; and every Person who shall have been examined by such Examiners, and shall have obtained from them a Certificate of competent Skill and Knowledge and Qualification, shall be entitled to be registered as a Chemist and Druggist under this Act; and the Examination aforesaid shall be such as is provided under the Pharmacy Act for the Purposes of a Qualification to be registered as Assistant under that Act, or as the same may be varied from Time to Time by any Byelaw to be made in accordance with the Pharmacy Act as amended by this Act; provided that no Person shall conduct any Examination for the Purposes of this Act until his Appointment has been approved by the Privy Council; and such Appointment and Approval shall not in any Case be in force for more than Five Years; moreover it shall be the Duty of the said Pharmaceutical Society to allow any Officer appointed by the said Privy Council to be present during the Progress of any Examination held for the Purposes of this Act.

7. Upon every such Examination and Registration as aforesaid such Fees shall be payable as shall from Time to Time be fixed and determined by any Byelaw to be made in accordance with the Pharmacy Act as amended by this Act, and shall be paid to the Treasurer of the said Society for the Purposes of the said Society.

8. The Registrar appointed or to be appointed under or by virtue of the Pharmacy Act shall be Registrar for the Purposes of this Act.

9. The Council of the Pharmaceutical Society shall, with all convenient Speed after the passing of this Act, and from Time to Time as Occasion may require, make Orders or Regulations for regulating the Register to be kept under this Act as nearly as conveniently may be in accordance with the Form set forth in the Schedule (B.) to this Act or to the like Effect, and such Register shall be called the Register of Chemists and Druggists.

10. It shall be the Duty of the Registrar to make and keep a correct Register, in accordance with the Provisions of this Act, of all Persons who shall be entitled to be registered under this Act, and to erase the Names of all registered Persons who shall have died, and from Time to Time to make the necessary Alterations in the Addresses of the Persons registered under this Act: To enable the Registrar duly to fulfil the Duties imposed upon him, it shall be lawful for the Registrar to write a Letter to any registered Person, addressed to him according to his Address on the Register, to inquire whether he has ceased to carry on Business or has changed his Residence, such Letter to be forwarded by Post

as a Registered Letter, according to the Post Office Regulations for the Time being, and if no Answer shall be returned to such Letter within the Period of Six Months from the sending of the Letter, a Second, of similar Purport, shall be sent in like Manner, and if no Answer be given thereto within Three Months from the Date thereof it shall be lawful to erase the Name of such Person from the Register: Provided always, that the same may be restored by Direction of the Council of the Pharmaceutical Society should they think fit to make an Order to that Effect.

11. Every Registrar of Deaths in Great Britain, on receiving Notice of the Death of any Pharmaceutical Chemist, or Chemist and Druggist, shall forthwith transmit by Post to the Registrar under the Pharmacy Act a Certificate under his own Hand of such Death, with the Particulars of the Time and Place of Death, and on the Receipt of such Certificate the said Registrar under the Pharmacy Act shall erase the Name of such deceased Pharmaceutical Chemist, or Chemist and Druggist, from the Register, and shall transmit to the said Registrar of Deaths the Cost of such Certificate and Transmission, and may charge the Cost thereof as an Expense of his Office.

12. No Name shall be entered in the Register, except of Persons authorized by this Act to be registered, nor unless the Registrar be satisfied by the proper Evidence that the Person claiming is entitled to be registered; and any Appeal from the Decision of the Registrar may be decided by the Council of the Pharmaceutical Society; and any Entry which shall be proved to the Satisfaction of such Council to have been fraudulently or incorrectly made may be erased from or amended in the Register by Order in Writing of such Council.

13. The Registrar shall, in the Month of January in every Year, cause to be printed, published, and sold a correct Register of the Names of all Pharmaceutical Chemists, and a correct Register of all Persons registered as Chemists and Druggists, and in such Registers respectively the Names shall be in alphabetical Order according to the Surnames, with the respective Residences, in the Form set forth in Schedule (B.) to this Act, or to the like Effect, of all Persons appearing on the Register of Pharmaceutical Chemists, and on the Register of Chemists and Druggists, on the Thirty-first Day of December last preceding, and such printed Registers shall be called "The Registers of Pharmaceutical Chemists and Chemists and Druggists," and a printed Copy of such Registers for the Time being, purporting to be so printed and published as aforesaid, or any Certificate under the Hand of the said

Registrar, and countersigned by the President or Two Members of the Council of the Pharmaceutical Society, shall be Evidence in all Courts, and before all Justices of the Peace and others, that the Persons therein specified are registered according to the Provisions of the Pharmacy Act or of this Act, as the Case may be, and the Absence of the Name of any Person from such printed Register shall be Evidence, until the contrary shall be made to appear, that such Person is not registered according to the Provisions of the Pharmacy Act or of this Act.

14. Any Registrar who shall wilfully make or cause to be made any Falsification in any Matter relating to the said Registers, and any Person who shall wilfully procure or attempt to procure himself to be registered under the Pharmacy Act or under this Act, by making or producing or causing to be made or produced any false or fraudulent Representation or Declaration, either verbally or in Writing, and any Person aiding or assisting him therein, shall be deemed guilty of a Misdemeanor in England, and in Scotland of a Crime or Offence punishable by Fine or Imprisonment, and shall on Conviction thereof be sentenced to be imprisoned for any Term not exceeding Twelve Months.

15. From and after the Thirty-first Day of December One thousand eight hundred and sixty-eight, any Person who shall sell, or keep an open Shop for the retailing, dispensing, or compounding Poisons, or who shall take, use, or exhibit the Name or Title of Chemist and Druggist, or Chemist or Druggist, not being a duly registered Pharmaceutical Chemist, or Chemist and Druggist, or who shall take, use, or exhibit the Name or Title Pharmaceutical Chemist, Pharmaceutist, or Pharmacist, not being a Pharmaceutical Chemist, or shall fail to conform with any Regulation as to the keeping or selling of Poisons made in pursuance of this Act, or who shall compound any Medicines of the British Pharmacopœia except according to the Formularies of the said Pharmacopœia, shall for every such Offence be liable to pay a Penalty or Sum of Five Pounds, and the same may be sued for, recovered, and dealt with in the Manner provided by the Pharmacy Act for the Recovery of Penalties under that Act; but nothing in this Act contained shall prevent any Person from being liable to any other Penalty, Damages, or Punishment to which he would have been subject if this Act had not passed.

16. Nothing herein-before contained shall extend to or interfere with the Business of any legally qualified Apothecary or of any Member of the Royal College of Veterinary Surgeons of Great Britain, nor with the making or dealing in

Patent Medicines, nor with the Business of wholesale Dealers in supplying Poisons in the ordinary Course of wholesale Dealing; and upon the Decease of any Pharmaceutical Chemist or Chemist and Druggist actually in Business at the Time of his Death it shall be lawful for any Executor, Administrator, or Trustee of the Estate of such Pharmaceutical Chemist or Chemist and Druggist to continue such Business if and so long only as such Business shall be *bonâ fide* conducted by a duly qualified Assistant, and a duly qualified Assistant within the Meaning of this Clause shall be a Pharmaceutical Chemist or a Chemist and Druggist registered by the Registrar under the Pharmacy Act or this Act: Provided always, that Registration under this Act shall not entitle any Person so registered to practise Medicine or Surgery, or any Branch of Medicine or Surgery.

17. It shall be unlawful to sell any Poison, either by Wholesale or by Retail, unless the Box, Bottle, Vessel, Wrapper, or Cover in which such Poison is contained be distinctly labelled with the Name of the Article and the Word Poison, and with the Name and Address of the Seller of the Poison; and it shall be unlawful to sell any Poison of those which are in the First Part of Schedule (A.) to this Act, or may hereafter be added thereto under Section Two of this Act, to any Person unknown to the Seller, unless introduced by some Person known to the Seller; and on every Sale of any such Article the Seller shall, before Delivery, make or cause to be made an Entry in a Book to be kept for that Purpose, stating, in the Form set forth in Schedule (F.) to this Act, the Date of the Sale, the Name and Address of the Purchaser, the Name and Quantity of the Article sold, and the Purpose for which it is stated by the Purchaser to be required, to which Entry the Signature of the Purchaser, and of the Person, if any, who introduced him, shall be affixed; and any Person selling Poison otherwise than is herein provided shall, upon a summary Conviction before Two Justices of the Peace in England or the Sheriff in Scotland, be liable to a Penalty not exceeding Five Pounds for the First Offence, and to a Penalty not exceeding Ten Pounds for the Second or any subsequent Offence, and for the Purposes of this Section the Person on whose Behalf any Sale is made by any Apprentice or Servant shall be deemed to be the Seller; but the Provisions of this Section, which are solely applicable to Poisons in the First Part of the Schedule (A.) to this Act, or which require that the Label shall contain the Name and Address of the Seller, shall not apply to Articles to be exported from Great Britain by wholesale Dealers, nor to Sales by wholesale to retail Dealers in the ordinary Course of wholesale Dealing, nor shall any of

the Provisions of this Section apply to any Medicine supplied by a legally qualified Apothecary to his Patient, nor apply to any Article when forming Part of the Ingredients of any Medicine dispensed by a Person registered under this Act; provided such Medicine be labelled in the Manner aforesaid, with the Name and Address of the Seller, and the Ingredients thereof be entered, with the Name of the Person to whom it is sold or delivered, in a Book to be kept by the Seller for that Purpose; and nothing in this Act contained shall repeal or affect any of the Provisions of an Act of the Session holden in the Fourteenth and Fifteenth Years in the Reign of Her present Majesty, intituled "An Act to regulate the Sale of Arsenic."

18. Every Person who at the Time of the passing of this Act is or has been in Business on his own Account as a Chemist and Druggist as aforesaid, and who shall be registered as a Chemist and Druggist, shall be eligible to be elected and continue a Member of the Pharmaceutical Society according to the Byelaws thereof; but no Person shall, in right of Membership acquired pursuant to this Clause, be placed on the Register of Pharmaceutical Chemists, nor, save as is herein-after expressly provided, be eligible for Election to the Council of the Pharmaceutical Society.

19. Every Person who is or has been in Business on his own Account as a Chemist and Druggist as aforesaid at the Time of the passing of this Act, and who shall become a Member of the Pharmaceutical Society, shall be eligible for Election to the Council of the Pharmaceutical Society; but the said Council shall not at any Time contain more than Seven Members who are not on the Register of Pharmaceutical Chemists.

20. Every Person who shall have been registered as a Chemist and Druggist under this Act by reason of having obtained a Certificate of Qualification from the Board of Examiners shall be eligible to be elected an Associate of the Pharmaceutical Society, and every such Person so elected and continuing as such Associate, being in Business on his own Account, shall have the Privilege of attending all Meetings of the said Society and of voting thereat, and otherwise taking Part in the Proceedings of such Meetings, in the same Manner as Members of the said Society: Provided always, that such Associates contribute to the Funds of the said Society the same Fees or Subscriptions as Members contribute for the Time being under the Byelaws thereof.

21. At all Meetings of the Pharmaceutical Society at which Votes shall be given for the

Election of Officers all or any of the Votes may be given either personally or by Voting Papers in a Form to be defined in the Byelaws of the said Society, or in a Form to the like Effect, such Voting Papers being transmitted under Cover to the Secretary not less than One clear Day prior to the Day on which the Election is to take place.

22. And whereas by the Charter of Incorporation of the said Pharmaceutical Society it is provided that the Council of the said Society shall have the sole Control and Management of the Real and Personal Property of the said Society, subject to the Byelaws thereof, and shall make Provision thereout, or out of such Part thereof as they shall think proper, for the Relief of the distressed Members or Associates of the said Society, and their Widows and Orphans, subject to the Regulations and Byelaws of the said Society: And whereas, for extending the Benefits which have resulted from the said Provision in the said Charter of Incorporation, it is desirable that additional Power should be granted to the said Council: Be it enacted, That from and after the passing of this Act the said Council may make Provision out of the Real and Personal Property aforesaid, and out of any special Fund known as the Benevolent Fund, not only for the Relief of the distressed Members or Associates of the said Society, and their Widows and Orphans, subject to the said Regulations and Byelaws, but also for all Persons who may have been and have ceased to be Members or Associates of the said Society, or who may be or have been duly registered as "Pharmaceutical Chemists" or "Chemists and Druggists," and the Widows and Orphans of

such Persons, subject to the Regulations and Byelaws of the said Society.

23. Persons registered under "The Medical Act" shall not be or continue to be registered under this Act.

24. The Provisions of the Act of the Twenty-third and Twenty-fourth of Victoria, Chapter Eighty-four, intituled "An Act for preventing the Adulteration of Articles of Food or Drink," shall extend to all Articles usually taken or sold as Medicines, and every Adulteration of any such Article shall be deemed an Admixture injurious to Health; and any Person registered under this Act who sells any such Article adulterated shall, unless the contrary be proved, be deemed to have Knowledge of such Adulteration.

25. On and after the passing of this Act, all Powers vested by the Pharmacy Act in One of Her Majesty's Principal Secretaries of State shall be vested in the Privy Council, and the Seventh Section of the Public Health Act, 1858, shall apply to all Proceedings and Acts of the Privy Council herein authorized.

26. The Privy Council may direct the Name of any Person who is convicted of any Offence against this Act which in their Opinion renders him unfit to be on the Register under this Act to be erased from such Register, and it shall be the Duty of the Registrar to erase the same accordingly.

27. This Act shall not extend to Ireland.

28. This Act may be cited as The Pharmacy Act, 1868.

SCHEDULES.

SCHEDULE (A.)

PART I.

Arsenic and its Preparations.

Prussic Acid.

Cyanides of Potassium and all metallic Cyanides.

Strychnine and all poisonous vegetable Alkaloids and their Salts.

Aconite and its Preparations.

Emetic Tartar.

Corrosive Sublimate.

Cantharides.

Savin and its Oil.

Ergot of Rye and its Preparations.

PART 2.

Oxalic Acid.
 Chloroform.
 Belladonna and its Preparations.
 Essential Oil of Almonds unless deprived of its Prussic Acid.
 Opium and all Preparations of Opium or of Poppies.

SCHEDULE (B.)

Name.	Residence.	Qualification.
A. B.	Oxford Street, London.	In Business prior to Pharmacy Act, 1868.
C. D.	George Street, Edinburgh.	Examined and certified.
E. F.	Cheapside, London.	Assistant prior to Pharmacy Act, 1868.

SCHEDULE (C.)

DECLARATION BY A PERSON WHO WAS IN BUSINESS AS A CHEMIST AND DRUGGIST IN GREAT BRITAIN BEFORE THE PHARMACY ACT, 1868.

To the Registrar of the Pharmaceutical Society of Great Britain.

I , residing at in the County of , hereby declare that I was in Business as a Chemist and Druggist, in the keeping of open Shop for the compounding of the Prescriptions of duly qualified Medical Practitioners, at in the County of , on or before the Day of 186 .

Dated this

Day of

18 .

Signed (Name.)

SCHEDULE (D.)

DECLARATION TO BE SIGNED BY A DULY QUALIFIED MEDICAL PRACTITIONER, OR MAGISTRATE, RESPECTING A PERSON WHO WAS IN BUSINESS AS A CHEMIST AND DRUGGIST IN GREAT BRITAIN BEFORE THE PHARMACY ACT, 1868.

To the Registrar of the Pharmaceutical Society of Great Britain.

I , residing at in the County of , hereby declare that I am a duly qualified Medical Practitioner [or Magistrate], and that to my Knowledge residing at in the County of , was in Business as a Chemist and Druggist, in the keeping of open Shop for the compounding of the Prescriptions of duly qualified Medical Practitioners, before the Day of 186 .

(Signed)

SCHEDULE (E.)

DECLARATIONS TO BE SIGNED BY AND ON BEHALF OF ANY ASSISTANT CLAIMING TO BE REGISTERED UNDER THE PHARMACY ACT, 1868.

To the Registrar of the Pharmaceutical Society of Great Britain.

I hereby declare that the undersigned , residing at in the County of , had for Three Years immediately before the passing of the Pharmacy Act, 1868, been employed in dispensing and compounding Prescriptions as an Assistant to a Pharmaceutical Chemist, or Chemist and Druggist, and attained the Age of Twenty-one Years.

As witness my Hand, this

Day of

186 .

A. B., duly qualified Medical Practitioner.

C. D., Pharmaceutical Chemist.

E. F., Chemist and Druggist.

G. H., Magistrate.

(To be signed by One of the Four Parties named.)

I hereby declare that I was an Assistant to _____ of _____ in the County of _____ in the Year _____, and was for Three Years immediately before the passing of this Act actually engaged in dispensing and compounding Prescriptions, and that I had attained the full Age of Twenty-one Years at the Time of the passing of the Pharmacy Act, 1868.

N. O., Assistant.

SCHEDULE (F.)

Date.	Name of Purchaser.	Name and Quantity of Poison sold.	Purpose for which it is required.	Signature of Purchaser.	Signature of Person introducing Purchaser.

CAP. CXXII.

The Poor Law Amendment Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. Regulations as to General Orders of the Poor Law Board.
2. The sending of Copies of Orders to the Clerks of the Justices only to be required in certain Cases.
3. Repeal of Exception in Sect. 2. of 30 & 31 Vict. c. 106.
4. Consent of Guardians not required in certain Cases. Consent of Owners of Property and Rate-payers dispensed with in certain Cases.
5. Superintendent Registrars and Registrars in temporary Districts.
6. Poor Law Board may unite small Parishes for the Election of Guardians.
7. Poor Law Board may appoint Officers when Guardians make default.
8. Extension of the Power of the Poor Law Board to order Works and Furniture for Workhouses.
9. Provision for Vacancies and Resignations of Managers under the Metropolitan Poor Act.
10. Consent of Meeting of Guardians sufficient for the Formation of a School District.
11. New Basis for the Contributions in School and other Districts.
12. Provision for the Severance of a Parish from a Union in a School District, or the Addition of Parish thereto.
13. Guardians may pay the Cost of Idiots sent to Asylums for Idiots.
14. The 30 & 31 Vict. c. 106. s. 23. to have a retrospective Effect.
15. The 30 & 31 Vict. c. 106. s. 20. extended.
16. A separate Creed Register to be kept in every Workhouse and Pauper School.
17. How the Religion of Children to be entered in the Creed Register.
18. The Poor Law Board to decide Questions as to Correctness of the Register.
19. Creed Register to be open to Inspection of Minister.
20. Minister may, subject to Regulations, visit and instruct Inmates registered as of his Religious Creed.
21. Where no Religious Service provided in the Workhouse, the Inmate may, subject to Regulations, go to his own proper Place of Worship.
22. No Child in the Workhouse or School visited by a Minister of its own Religion shall be required to attend any other Religious Services, unless, being above Twelve Years of Age, he shall desire to do so.
23. Interpretation of 25 & 26 Vict. c. 43. and 29 & 30 Vict. c. 113. s. 14. as to Child and Consent of Parents.

24. *Poor Law Board to appoint Auditors. Notice of Appointment of Auditor to be inserted in London Gazette.*
25. *Existing Auditors may be superannuated under 22 Vict. c. 26.*
26. *Repeal of 6 & 7 W. 4. c. 86. s. 10. requiring the Poor Law Commissioners to appoint Registrars in certain Places.*
27. *Provision for Incorporation of certain Extra-parochial Places.*
28. *11 & 12 Vict. c. 110. s. 7. extended to a Parish.*
29. *Power for Guardians of Unions mutually to bear the Costs of several Appeals involving the same common Principle.*
30. *Columns in the Valuation Lists to be cast up by the Committee, and fair Copies of the approved Valuation Lists to be given to the Overseers instead of Originals.*
31. *Certified Copies of Valuation Lists rendered available whose Original is lost.*
32. *Guardians may appoint a paid Valuer to assist the Assessment Committee.*
33. *Order may be made in Petty Sessions upon a Husband to maintain his Wife.*
34. *Irremoveability of poor Persons not to be affected by an Addition of a Parish to a Union or a Separation therefrom.*
35. *Extension of Time for the Repayment of Loans. Explanation of 30 & 31 Vict. c. 6. s. 52.*
36. *Jurisdiction of Justices to make Orders of Maintenance.*
37. *Parents neglecting their Children liable to Punishment.*
38. *Provision for the Rating of new Houses or Buildings.*
39. *Demand of Poor Rate may be made on the Premises.*
40. *Demand of Rate from a Corporation or a Company.*
41. *Payments for Bastard Children.*
42. *Provision for poor Deaf and Dumb or Blind Children.*
43. *Certain Lunatics may be received in Workhouses from County Asylums.*
44. *Repeal of Penalties on Parish Officers supplying Goods in Unions.*
45. *Interpretation of Terms and Consolidation of the Acts.*
46. *Short Title.*

An Act to make further Amendments
in the Laws for the Relief of the Poor
in England and Wales.

(31st July 1868.)

WHEREAS it is desirable that sundry Amendments should be made in the Laws for the Relief of the Poor, and certain other Provisions enacted for facilitating the Administration of such Relief:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. The Poor Law Board shall cause a Copy of every General Rule, Order, or Regulation issued by them to be laid before both Houses of Parliament as soon as practicable after its Publication, but no Order of the said Board by which a District of Unions or Parishes and Unions shall have been or shall be formed shall be deemed to be a General Order within the Meaning of the Poor Law Board Act, 1847.

2. The said Board shall not be required to send Copies of any Orders issued by them to the Clerks to the Justices of the Petty Sessional Divisions, except such as relate to the Relief of the Poor, the Government and Management

of Workhouses and their Inmates, and the Guidance and Regulation of Guardians and their Officers.

3. So much of the Second Section of the Poor Law Amendment Act, 1867, as excepts the Unions and Parishes in the Metropolis from the Operation of that Section is hereby repealed.

4. The Poor Law Board may exercise the Powers contained in the Thirty-second Section of the Poor Law Amendment Act, 1834, with respect to any Union of Parishes formed under the Eighty-third Chapter of the Statute of the Twenty-second Year of King George the Third, and with respect to any Union governed by a Local Act of Parliament, where the Relief of the Poor is not wholly administered by One Board of Guardians, without such Concurrence of a Majority of not less than Two Thirds of the Guardians of such Union as is required in the said Section; and every single Parish in which the Provisions of the said Statute of George the Third shall have been adopted may be dealt with in like Manner as any Parish in which they shall not have been adopted, and the Powers conferred upon the said Board by the Forty-first Section of the said Poor Law Amendment Act, 1834, in regard to Unions and Parishes governed by any Local Act of Parliament, may be exercised by such Board without the Consent of the

Majority of the Owners and Ratepayers of Property as therein required, as and when such Board shall deem it expedient.

5. All Superintendent Registrars and Registrars of Births, Deaths, and Marriages, and Registrars of Marriages, in temporary Districts formed under the Provisions of the Act Sixth and Seventh William the Fourth, Chapter Eighty-six, shall be entitled to continue in Office in the event of such temporary Districts being dissolved, and the Parishes, Townships, and Places contained therein being formed into one and the same Union.

6. The said Board may, by Order under Seal, add any Parish in a Union, the Population of which Parish, according to the Census last declared, shall not exceed Three hundred, the annual rateable Value whereof shall not exceed the average rateable Value of the Parishes in the same Union according to the Valuation Lists in force for the Time being, to some adjoining Parish in the same Union for the Purpose of the Election of Guardians; and the Persons qualified to elect such Guardians in either Parish shall be qualified to vote at such Election for the Parishes so united.

7. In case the Board of Guardians fail for Twenty-eight Days after Receipt of a Requisition of the Poor Law Board in that Behalf to appoint, either originally or on a Vacancy, any Officer whom they shall be lawfully required to appoint, the Poor Law Board may, at any Time after the Expiration of the said Term of Twenty-eight Days, if they think fit, by Order under their Seal, appoint a fit Person to be such Officer, and determine the Salary or Remuneration to be paid to him by such Guardians; and the Person so appointed shall recover such Salary or Remuneration by Action in a County or other Court of Law against such Guardians, and shall have all the same Powers, Rights, and Privileges, and shall discharge all the same Duties, and incur the same Responsibilities, as if the Appointment had been duly made by the said Guardians.

8. The Power conferred upon the Poor Law Board by the Twenty-fifth Section of the Poor Law Amendment Act, 1834, as extended by the Eighth Section of the Poor Law Amendment Act, 1866, shall apply to the providing of proper Drainage, Sewers, Ventilation, Fixtures, Furniture, Surgical and Medical Appliances, and other Conveniences at any Workhouse.

9. All the Provisions contained in the Poor Law Amendment Act, 1842, in respect of the Election, Qualification, Resignation, and the Acts of Guardians of a Union, and in respect of the

Supply of Vacancies in the Board of Guardians, shall apply to the Members of the District Boards or Board formed or to be formed under the Authority of the Metropolitan Poor Act, 1867, whether nominated or elective, or of this Act, and to the Persons nominated as Guardians by the Poor Law Board under the said Act of 1867; and so much of the Metropolitan Poor Act, 1867, as requires Persons, other than Justices of the Peace, nominated by the Poor Law Board as Managers or Guardians, to be resident within the District, Union, or Parish respectively for which they may be nominated, shall be repealed.

10. Where the Consent of the Guardians of any Union or Parish is required to be given to the Formation of a School District, the Consent of the major Part of the Guardians assembled at one of their Ordinary Meetings, after Notice in Writing previously sent to every Member of the Board not less than Two Weeks previously, specifying the Proposal for such Consent, shall be sufficient.

11. From and after the Twenty-ninth Day of September next, the Act of the Session held in the Thirteenth and Fourteenth Years of Her present Majesty, Chapter Eleven, shall be repealed in respect of any Debts, Charges, and Liabilities to be incurred or created after that Day; and thenceforth all the Expenses and Charges which, according to the Provisions of the Poor Law Amendment Act, 1844, would be chargeable upon the Common Fund of any District formed or to be formed under that Act or under this Act, shall be borne by the several Unions or Parishes comprised in the District according to the annual rateable Value of the Property therein comprised, to be determined according to the Valuation Lists in force in such Unions, and according to the latest Poor Rate for the Time being for the Parishes not in Union, or, so far as respects any District wholly or partially within the Metropolis, as defined by the Metropolis Poor Act, 1867, on such other Basis as the Poor Law Board shall from Time to Time direct.

12. In the Case of a Parish added to or taken from any Union comprised in a School District the Poor Law Board shall ascertain the proportionate Value of the Property and Amount of Obligations of such Parish, and of every other Parish or Union affected by the Change, and shall fix the Amount to be received or paid or secured to be paid by every such Parish or Union, or by the District, as the Case may require.

13. The Guardians of any Union or Parish may, with the Consent of the Poor Law Board, send an idiotic Pauper to an Asylum or Establishment for the Reception and Relief of Idiots

maintained at the Charge of the County Rate or by public Subscription, and they may with the like Consent send any idiotic, imbecile, or insane Pauper who may lawfully be detained in a Workhouse to the Workhouse of any other Union or Parish, with the Consent of the Guardians of such last-mentioned Union or Parish, and pay the Cost of the Maintenance, Clothing, and Lodging of such Pauper in the Asylum, Establishment, or Workhouse, as well as the Cost of his Conveyance thereto or his Removal therefrom, and the Expenses of his Burial, when necessary.

14. The Provisions contained in the Twenty-third Clause of the Poor Law Amendment Act, 1867, shall apply to Pauper Lunatics sent to an Asylum before the passing of that Act as well as since.

15. The Provisions contained in the Twentieth Section of the Poor Law Amendment Act, 1867, shall extend to the Case of a Parish which shall have been or shall be added to or separated from a Union, and to any Officer who by reason of such Addition or Separation shall have been or shall be deprived of his Office or Employment.

16. The Officer for the Time being acting as the Master of a Workhouse, or as the Master or Superintendent of a District or other Pauper School, shall keep a Register of the Religious Creed of the Pauper Inmates of such Workhouse or School separate from all other Registers in such Form and with such Particulars as shall be prescribed by the Poor Law Board by an Order under their Seal, and shall, as regards every Inmate of such Workhouse or School at the Date to be fixed by such Order, and subsequently upon the Admission of every Inmate therein, make due Inquiry into the Religious Creed of such Inmate, and enter such Religious Creed in such Register.

17. In regard to any Child in the Workhouse or School under the Age of Twelve Years, whether either of its Parents be in the Workhouse or not, or whether it be an Orphan or deserted Child, the Master or Superintendent shall enter in such Register, as the Religious Creed of such Child, the Religious Creed of the Father, if the Master or Superintendent know or can ascertain the same by reasonable Inquiry, or, if the same cannot be so ascertained, the Creed of the Mother of such Child, if the same be known to the said Master or Superintendent, or can be by him in like Manner ascertained; and the Creed of an illegitimate Child under the said Age shall be deemed to be that of its Mother, when that can be ascertained.

18. If any Question shall arise as to the Correctness of any Entry in such Register, the Poor Law Board may, if they think fit, inquire into the Circumstances of the Case, and determine such Question by directing such Entry to remain or to be amended, according to their Judgment.

19. Every Minister of any Denomination officiating in the Church, Chapel, or other registered Place of Religious Worship of such Denomination which shall be nearest to any Workhouse or School, or any Ratepayer of any Parish in the Union, shall be allowed to inspect the Register which contains the Entry of the Religious Creed of the Inmates at any Time of any Day, except Sunday, between the Hours of Ten before Noon and Four after Noon.

20. Such Minister may, in accordance with such Regulations as the said Board shall approve of or by their Order prescribe, visit and instruct any Inmate of such Workhouse or School entered in such Register as belonging to the same Religious Creed as such Minister belongs to, unless such Inmate, being above the Age of Fourteen, and after having been visited at least once by such Minister, shall object to be instructed by him.

21. Every Inmate for whom a Religious Service according to his own Creed shall not be provided in the Workhouse shall be permitted, subject to Regulations to be approved of or ordered by the Poor Law Board, to attend, at such Times as the said Board shall allow, some Place of Worship of his own Denomination within a convenient Distance of the said Workhouse, if there be such in the Opinion of the Board: Provided that the Guardians may, for Abuse of such Permission previously granted, or on some other special Ground, refuse Permission to any particular Inmate, and shall in such Case cause an Entry of such Refusal and the Grounds thereof to be made in their Minutes.

22. No Child, being an Inmate of a Workhouse or such School as aforesaid, who shall be regularly visited by a Minister of his own Religious Creed for the Purpose of Religious Instruction, shall, if the Parents or surviving Parent of such Child, or in the Case of Orphans or deserted Children if such Minister, make Request in Writing to that Effect, be instructed in any other Religious Creed, or be required or permitted to attend the Service of any other Religious Creed, than that entered in such Register as aforesaid, except any Child above the Age of Twelve Years who shall desire to receive Instruction in some other Creed, or to attend the Service of any other Religious Creed, and who shall be considered by the Poor Law Board to be

competent to exercise a Judgment upon the Subject.

23. The Act of the Twenty-fifth and Twenty-sixth Victoria, Chapter Forty-three, and Section Fourteen of the Poor Law Amendment Act of 1866, shall apply to illegitimate as well as legitimate Children; and with regard to illegitimate Children the Consent of the Mother, if she has the Care, Custody, or Possession of the Child, shall be sufficient for the Purposes of those Acts; and in case of a deserted Child or an Orphan Child on behalf of whom no Relative, Next of Kin, Step-Parent, or God-Parent shall make Application, the Poor Law Board may exercise the Power conferred upon them by Section Fourteen of the said Act of 1866, upon being satisfied that there is reasonable Ground for their doing so.

24. So much of the Poor Law Amendment Act, 1844, Section Thirty-two, as provides for the Election of District Auditors, shall be repealed; and whenever the Office of an Auditor appointed or to be appointed under the Authority of the said Act shall, after the passing of this Act, become vacant, or whenever an Auditor shall be ordered to be appointed for any District or Parish under the Authority of the said Act, or of the Poor Law Amendment Act, 1834, the Poor Law Board may, by Order under their Seal, appoint a Person to be Auditor of such District (or any Part thereof) or of such Parish; and the said Person so appointed shall have all the Powers and Privileges, and shall do all the Matters and Things, which the Auditors of Districts under any Act of Her Majesty have or are required or empowered to do; and the Provisions contained in the Poor Law Board Act, 1847, relative to the Salaries of the Persons therein mentioned, shall apply to the Salaries of the Persons to be appointed as Auditors by the Poor Law Board; provided that before such Auditor shall be empowered to act a Notice of his Appointment shall be inserted in the *London Gazette*, and no further or other Notice or Proof of such Appointment shall be required.

25. Every Auditor for the Time being appointed under the Authority of the said Poor Law Amendment Act, 1834, or of any Act amending the same, shall be deemed to be a Civil Servant of the State within the Operation of the Act of the Twenty-second Year of Her Majesty's Reign, Chapter Twenty-six.

26. So much of the Eighty-sixth Chapter of the Act passed in the Session held in the Sixth and Seventh Years of the Reign of His late Majesty as provides that the Poor Law Commissioners shall appoint a Registrar to the temporary

Districts therein referred to shall be repealed; and the Board of Guardians acting therein shall henceforth appoint the Registrars for such Districts.

27. From the Twenty-fifth Day of December next every Place which was or is reputed to be extra-parochial, whether entered by Name in the Report upon the Census for the Year One thousand eight hundred and fifty-one or not, for which an Overseer has not been then appointed, or for which no Overseer shall be then acting, or which has not been then annexed to and incorporated with an adjoining Parish, shall for all civil parochial Purposes be annexed to and incorporated with the next adjoining Parish with which it has the longest common Boundary, and in case there shall be Two or more Parishes with which it shall have Boundaries of equal Extent, then with that Parish which now contains the lowest Amount of rateable Value; and every Accretion from the Sea, whether natural or artificial, and the Part of the Seashore to the Low-water Mark, and the Bank of every River to the Middle of the Stream, which on the said Twenty-fifth Day of December next shall not be included within the Boundaries of or annexed to and incorporated with any Parish, shall for the same Purposes be annexed to and incorporated with the Parish to which such Accretion, Part, or Bank adjoins in proportion to the Extent of the common Boundary.

28. The Provisions of the Seventh Section of the Poor Law Amendment Act, 1848, empowering Guardians of Unions to cause Valuations to be made upon Application as therein set forth, shall apply to the Guardians of a Parish not comprised in any Union.

29. Where an Appeal is brought against the Poor Rate of a Parish in a Union, and may appear to involve a Principle in which some neighbouring Parish has a common Interest, it shall be lawful for the Guardians of the Unions comprising such Parishes to enter into an Agreement mutually to bear the Costs which may be properly incurred in and about the Trial of such Appeals on the Part of the several Respondents, as well as the Costs of the Appellants, if any, which may be awarded against the Respondents, in such Proportions as shall be fixed and determined with reference to the Amount of Interest of the several Unions in the Question, or otherwise as shall appear just; and the said Agreement shall continue binding upon the several Boards of Guardians and their respective Successors in succession until the several Appeals shall have been finally determined.

30. When the Assessment Committee in any Union shall have finally approved of any Valua-

tion List, whether original, substitutional, or supplemental, they shall cause the Total of the Entries in the Columns for the Gross Estimated Value and the Rateable Value to be ascertained and entered at the Foot of the same, and shall retain such List for the Use of the Guardians, to be dealt with in the Manner provided by the Thirty-first Section of the Union Assessment Committee Act, 1862, and shall deliver a fair Copy of the same to the Overseers, signed by the Three Members of the Committee who approved of the same; and such Copy shall be countersigned by the Clerk of the Committee, and shall be preserved by the Overseers, and dealt with by them in all respects as the Lists made out by them would have been dealt with according to the Law now in force, and it shall not be necessary for the said Committee to cause any other Copy to be made.

31. Where any Valuation List heretofore approved, or the Copy hereafter to be made, shall be lost, injured, or destroyed, the Overseers of the Parish to which it relates may apply to the Clerk of the Guardians for a Copy of the same; and the Clerk, upon Payment of a reasonable Compensation, not exceeding Three Shillings for One hundred separate rateable Hereditaments, shall give such Copy, and certify the same to be a true Copy of the List deposited with the said Guardians, and such certified Copy shall be thenceforth available as the Original.

32. The Guardians may, upon the Application of the Assessment Committee, after Notice sent in the Manner required by the Union Assessment Committee Act, 1862, appoint some competent Person to assist the Committee in the Valuation of the rateable Hereditaments of the Union for such Period as they shall see fit, at a Salary or other settled Remuneration to be paid out of the Common Fund.

33. When a married Woman requires Relief without her Husband, the Guardians of the Union or Parish, or the Overseers of the Parish, as the Case may be, to which she becomes chargeable, may apply to the Justices having Jurisdiction in such Union or Parish in Petty Sessions assembled, and thereupon such Justices may summon such Husband to appear before them to show Cause why an Order should not be made upon him to maintain his Wife; and upon his Appearance, or, in the event of his not appearing, upon Proof of due Service of such Summons upon him, such Justices may, after hearing such Wife upon Oath, or receiving such other Evidence as they may deem sufficient, make an Order upon him to pay such Sum, weekly or otherwise, towards the Cost of the Relief of the Wife, as, after Consideration of all the Circum-

stances of the Case, shall appear to them to be proper, and shall determine in such Order how and to whom the Payments shall from Time to Time be made; which Order shall, if the Payments required by it to be made be in arrear, be enforced in the Manner prescribed by the Act of the Eleventh and Twelfth Victoria, Chapter Forty-three, for the enforcing of Orders of Justices requiring the Payment of a Sum of Money: Provided that such Order may be at any future Time revoked by the Justices in Petty Sessions assembled, if they see sufficient Cause for so doing.

34. Where any poor Person shall have acquired an Exemption from Removal in any Parish or Union, and the Parish wherein that Exemption shall have been wholly or partly acquired shall have been or shall be added to or separated from a Union, such poor Person shall continue to have the same Exemption from Removal as he would have been entitled to if no such Addition or Separation had taken place.

35. The Time limited for the Repayment of Money borrowed under "The Poor Law Amendment Act, 1834," and the subsequent Acts extending or amending the same, and "The Metropolitan Poor Act, 1867," shall be extended from Twenty to Thirty Years; and the Term "Promoters of the Undertaking," in Section Fifty-two of the last-mentioned Act, shall be deemed to have included Managers and Guardians desirous of purchasing Lands for any of the Purposes of the Poor Law Acts as therein defined.

36. So much of the Acts of the Forty-third Elizabeth, Chapter Two, and the Fifty-ninth George the Third, Chapter Twelve, as enables Orders of Maintenance to be made by the Justices having Jurisdiction in the Place where the Persons upon whom they are to be made dwell, and as prescribes the Penalty for Disobedience, and Section Seventy-eight of the Poor Law Amendment Act, 1834, shall, in respect of any Order to be made hereafter, be repealed; and such Orders shall be made by the Justices in Petty Sessions assembled at their usual Place of Meeting having Jurisdiction in the Union or Parish to which the poor Person in whose Behalf the same shall be sought to be made shall be chargeable, and shall be enforced in the Manner prescribed by the said Act of the Eleventh and Twelfth Victoria, Chapter Forty-three, for enforcing Orders of Justices.

37. When any Parent shall wilfully neglect to provide adequate Food, Clothing, Medical Aid, or Lodging for his Child, being in his Custody, under the Age of Fourteen Years, whereby the Health of such Child shall have been or shall be

likely to be seriously injured, he shall be guilty of an Offence punishable on summary Conviction, and being convicted thereof before any Two Justices shall be liable to be imprisoned for any Period not exceeding Six Months, with or without Hard Labour, as such Justices shall decide; provided that such Justices may suspend the Sentence until further Notice if the Offender enter into his own Recognizances, with or without One or more Sureties as the Justices may think fit, to come up for Judgment when called upon; and the Guardians of the Union or Parish in which such Child may be living shall institute the Prosecution and pay the Costs thereof out of their Funds.

38. When any Person shall occupy any new House or other Building in any Parish where the Poor Rate is not made under the Provisions of a Local Act, which House or Building was incomplete, or not fit for Occupation, or was not entered as such in the Valuation List in force in the Parish at the Time when the current Rate or the Time being was made, the Overseers may enter such House or Building with the Name of the Occupier thereof and the Date of the Entry in the Rate Book, and require the Occupier to pay such Amount as according to their Judgment shall be the proper Sum, having due Regard to the rateable Value of such House or Building, and the Time which shall have elapsed from the making of the current Rate to the Date of such Entry, and the Person so charged shall be considered as actually rated from such Date, and shall be liable to pay the Sum assessed in like Manner and subject to the like Penalty of Distress, and with the like Power of Appeal, as if he had been assessed for the same when the Rate was made: Provided that when the said Overseers shall so enter the said House or Building in the Rate Book they shall forward to the Assessment Committee of the Union comprising such Parish, if any such there be, a supplemental List with reference to such House or Building, and the same shall be dealt with in all respects, and with the like Incidents and Consequences, as a supplemental List made by the Overseers under Section Twenty-five of "The Union Assessment Committee Act, 1862."

39. When a Poor Rate shall be made and assessed upon any Land or Premises, and the Occupier thereof is not living on such Land or Premises nor in the Parish for which the Rate shall be made, or the Owner, if assessed for such Rate in the Place of the Occupier, is not living in such Parish, a Demand of the Rate in Writing delivered to the Person having the Custody of the Land or Premises, or if no such Person can be found then affixed upon some conspicuous Part of the Land or Premises, shall be deemed a

sufficient Demand to justify Proceedings for the Nonpayment of such Rate; and where the Residence or Place of Abode of the Person assessed is not known to the Overseers, and cannot be ascertained upon Inquiry at the said Land or Premises, the Summons for the Nonpayment of the Rate may be served in like Manner.

40. When a Poor Rate is assessed upon any Corporation Aggregate, Joint Stock or other Company, or any Conservators or other public Trustees, a Demand for Payment, either made by Letter sent through the Post addressed to the Clerk or Secretary or other principal Officer of the Corporation, Company, Conservators, or Trustees, at the Office of such Corporation, Company, Conservators, or Trustees, or made personally upon such Clerk, Secretary, or Officer at such Office, shall be deemed a sufficient Demand, and a Summons for the Nonpayment of such Rate may be served in like Manner.

41. When and so often as any Bastard Child for whose Maintenance an Order has been made by Justices under the Provisions of the Fifth Section of the Seventh and Eighth Victoria, Chapter One hundred and one, shall become chargeable to any Parish or Union, any Two Justices in Petty Sessions may, if they shall see fit, by Order under their Hands and Seals, from Time to Time appoint some Relieving or other Officer of the Parish or Union to which such Bastard Child shall be so chargeable to receive on account of such Parish or Union such Proportion of the Payments then due or becoming due under the Order of Petty Sessions made under the Provisions of the said Act as may accrue during the Period for which such Child is chargeable, and such Appointment shall remain in force for the Period of One whole Year whenever the Bastard Child shall be or have become chargeable as aforesaid, and may afterwards from Time to Time be renewed by Endorsement under the Hand of any One Justice for the like Period; and so much of Section Seven of the said Act as prohibits an Officer of any Parish or Union from receiving Money under such Order as aforesaid is hereby repealed, and any Payment so ordered to be made shall be recoverable by the Relieving Officer or other Officer appointed to receive it in the Manner provided by Section Three of the said Act.

42. The Guardians of any Union or Parish may, with the Approval of the Poor Law Board, send any poor Deaf and Dumb or Blind Child to any School fitted for the Reception of such Child, though such School shall not have been certified under the Provisions of the Act of the Twenty-fifth and Twenty-sixth Years of Victoria, Chapter Forty-three.

43. The Guardians of any Union or Parish may, with the Consent of the Poor Law Board and the Commissioners in Lunacy, and subject to such Regulations as they shall respectively prescribe, receive into the Workhouse any chronic Lunatic not being dangerous who may have been removed to a Lunatic Asylum, and selected by the Superintendent of the Asylum, and certified by him to be fit and proper so to be removed, upon such Terms as may be agreed upon between the said Guardians and the Committee of Visitors of any such Asylum, and thereupon every such Lunatic, so long as he shall remain in such Workhouse, shall continue a Patient on the Books of the Asylum for and in respect of all the Provisions in the Lunacy Acts, so far as they relate to Lunatics removed to Asylums.

44. So much of the Act of the Fifty-fifth Year of the Reign of King George the Third, Chapter One hundred and thirty-seven, and of the Poor

Law Amendment Act, 1834, as renders the Churchwardens and Overseers of the Poor of any Parish comprised in a Union liable to a Penalty in respect of the furnishing, providing, or supplying of Goods, Materials, or Provisions for the Use of any Workhouse, or the Support and Maintenance of the Poor, shall, as regards any Supply after the passing of this Act, be repealed.

45. The Words used in this Act, shall be construed in the like Manner as in the Poor Law Amendment Act, 1834, and subsequent Acts amending and extending the same, and the Provisions contained therein and in such subsequent Acts, and not repealed, shall, so far as they shall be consistent herewith, be extended to this Act.

46. This Act may be cited and described for all Purposes as "The Poor Law Amendment Act, 1868."

CAP. CXXIII.

The Salmon Fisheries (Scotland) Act, 1868.

ABSTRACT OF THE ENACTMENTS.

25 & 26 Vict. c. 97, 26 & 27 Vict. c. 50, 27 & 28 Vict. c. 118: *revised.*

1. *Short Title.*

2. *Revised Acts and this Act to be as One.*

3. *Appointment of District Board where none exists at the passing of this Act.*

4. *Roll of Proprietors to be made up.*

5. *Provisions for Valuation of Fisheries.*

6. *Vacancies or Defect in Qualification not to vitiate Proceedings of Board.*

7. *Evidence of Proceedings at Meetings.*

8. *Mandatory may be appointed Members of District Board.*

9. *Power of Secretary of State to alter Regulations.*

10. *Byelaws to be valid until altered by Secretary of State.*

11. *Acts not to apply to Streams not frequented by Salmon.*

12. *Byelaws not to apply to Watercourse or Mill-lade of Kinnaber.*

13. *Power to the Board to purchase and remove Dams by Agreement.*

14. *Power to the Board to borrow Money.*

15. *Penalties for Offences.*

16. *Amendment of Sect. 18. of 25 & 26 Vict. c. 97.*

17. *Penalties for using Lights, &c.*

18. *Penalty for using Roe.*

19. *Penalties for destroying the Young of Salmon, or disturbing Spawning Beds.*

20. *Penalties for taking unclean Salmon.*

21. *Penalty for buying or selling Salmon in Close Time.*

22. *Provision as to Exportation of Salmon.*

23. *All Boats and other Engines to be removed during Annual Close Time.*

24. *Penalties on Proprietor or Occupier for Breach of Weekly Close Time.*

25. *Amendment of 7 & 8 Vict. c. 95.*

26. *Sheriff or Justice may grant Warrant to search Premises.*

27. *Constables or Water Bailiffs entering on Lands not to be deemed Trespassers.*

28. *Board and its Officers to have Access to examine Dams, Wells, &c.*

29. *Apprehension of Offenders.*

30. *Prosecution for Offences under this Act, and Recovery of Penalties.*

31. *Forfeiture of Articles found in possession of any Offender.*
32. *Forfeited Articles may be seized.*
33. *Minimum Penalties.*
34. *As to Disqualification of Justices.*
35. *Offences on Boundary Rivers or on Sea Coast where to be tried.*
36. *Fishing illegal where prohibited by existing Law.*
37. *Title to sue.*
38. *Expenses may be decreed for.*
39. *Recovery of Penalties and Expenses.*
40. *Payment and Application of Penalties.*
41. *Extent of Act.*
42. *Repeal of Part of 22d and of 25th Sections of 25 & 26 Vict. c. 97.*
43. *This Act not to affect Liabilities incurred or Offences committed.*
Schedules.

An Act to amend the Law relating to Salmon Fisheries in Scotland.

(31st July 1868.)

WHEREAS an Act was passed in the Twenty-third and Twenty-sixth Years of Her present Majesty, Chapter Ninety-seven, intituled "An Act to regulate and amend the Law respecting the Salmon Fisheries of Scotland;" and another Act was passed in the Twenty-sixth and Twenty-seventh Years of Her present Majesty, Chapter Fifty, intituled "An Act to continue the Powers of the Commissioners under the Salmon Fisheries (Scotland) Act until the First Day of January One thousand eight hundred and sixty-five, and to amend the said Act;" and another Act was passed in the Twenty-ninth and Twenty-eighth Years of Her present Majesty, Chapter One hundred and eighteen, intituled "An Act to amend the Acts relating to Salmon Fisheries in Scotland;" and it is expedient that the recited Acts should be amended, and further Provision made with respect to Salmon Fisheries in Scotland:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as the Salmon Fisheries (Scotland) Act, 1868."

2. The recited Acts and this Act shall be read and construed together as One Act.

3. Where in any District a District Board has been constituted before the passing of this Act, it shall be lawful for any Two Proprietors of Salmon Fishings in the District, whether there be at the present Time Salmon in the Waters of the District or not, to present a Petition to the Sheriff praying that a District Board may be constituted, and the Sheriff shall thereupon direct the Sheriff Clerk to make up a Roll of the

Upper Proprietors and a Roll of the Lower Proprietors in the District, and the Sheriff shall thereafter direct the Sheriff Clerk to call a Meeting of the Upper Proprietors, and also a Meeting of the Lower Proprietors, at such Time and Place as he shall direct, and Notice of such Meeting shall be given by Advertisement inserted once at least in Two successive Weeks in a Newspaper printed or circulating in the County or Counties in which the District is situated, and at the same Time with the said Notice the Sheriff shall direct the Sheriff's Clerk also to intimate the Time and Place at which the First Meeting of the Board shall be held after its Election; and the Upper Proprietors and Lower Proprietors present at such separate Meetings respectively shall elect Members of the District Board in the Manner provided in the first-recited Act; and the First Meeting of the said District Board shall be held at the Time appointed by the Sheriff as aforesaid, unless the Upper Proprietors and the Lower Proprietors agree together to appoint another Time and Place for the First Meeting.

4. The Clerk of each District Board, constituted under the recited Acts or this Act, shall make up and keep Rolls of the Upper and Lower Proprietors in the District, and correct the same from Time to Time whenever a new Valuation Roll comes into force; and at any Meeting of the District Board it shall be lawful for any Person whose Name has been erroneously struck out or omitted from the said Roll to apply to the District Board to have his Name entered therein, or for any Person whose Name is on the Roll for the District to object to the Name of any other Person being entered or remaining on the said Roll on the Ground that he does not appear on the Valuation Roll to be qualified, or that he does not possess the requisite Frontage to the River; and if it shall be proved to the Satisfaction of the Board that such Claim or such Objection is well founded, the Board shall direct their Clerk to enter or strike out the Name accordingly, as shall appear to them just; and if any Person shall

be dissatisfied with the Decision of the Board, he may appeal by summary Petition to the Sheriff of the County within which the Subjects affording his Qualification, or the greater Part thereof, are situated; and the Sheriff's Decision shall be final, but in such Appeal the Jurisdiction of the Sheriff shall not extend to Questions of Heritable Right.

5. Where any Fishery is not entered in the Valuation Roll, or where any Fishery is entered in the Valuation Roll along with and as a Part of other Subjects, the County Assessor shall, on being required by the Clerk to the District Board, value and enter such Fishery in the Valuation Roll separately from other Subjects; and where any Fishery or Rod Fishing when let in the Sea happens to be situate in Two separate Districts, the County Assessor shall, on being required by the Clerk of either District, value and enter separately in the Valuation Roll the annual Value of such Fishery situate in the respective Districts.

6. No Act or Proceeding of a District Board shall be questioned on account of any Vacancy or Vacancies in their Body, and no Defect in the Qualification or Appointment of any Person or Persons acting as a Member or Members of such Board shall be deemed to vitiate any Proceedings of such Board in which he or they have taken part.

7. The Minutes of the Proceedings of every Meeting of a District Board shall be signed by the Chairman; and any Minute of Proceedings of any Meeting of such Board, signed by the Chairman of that Meeting, shall be receivable in Evidence in all legal Proceedings without further Proof; and, until the contrary is proved, every Meeting of the Board in respect of which Minutes have been so made and signed shall be deemed to have been duly convened and held, and all the Members thereof to have been duly qualified. On Requisition in Writing by any Two Members of a District Board, the Chairman shall be bound to convene a Meeting of the Board within a Fortnight of the Date of the Requisition, and the Clerk of the Board shall give Notice to each Member, by Circular, of the Date of said Meeting, and of the Business to be brought before it.

8. The Factor or Mandatory of any Proprietor of a Fishery (including the Factor or Mandatory of the Commissioners or Commissioner of Woods in charge of the Land Revenues of the Crown in Scotland where Her Majesty is the Proprietor of a Fishery) shall be qualified to be and may be elected as a Member of any District Board, and shall have all the Powers and Privileges which the Proprietors by whom he is appointed could

have had under the recited Acts or this Act; and any Member of any District Board appointed under the Powers of the recited Acts, or any of them, or this Act, may from Time to Time nominate and appoint, by Writing under his Hand, any Person as the Mandatory of such Member to attend, act, and vote at any Meeting of such District Board; and every such Nomination and Appointment shall subsist until recalled by the Member making the same.

9. Any District Board at any Meeting, of which due Notice has been given by Advertisement at least Ten Days previously in a Newspaper printed or circulated in the County or Counties in which the District is situated, may resolve to petition the Secretary of State to do any of the following Things:

- (1.) To vary the Annual Close Time in such District, provided that such Annual Close Time shall always be One hundred and sixty-eight Days:
- (2.) To vary the Weekly Close Time in such District, or in different Parts of such District, provided that the Weekly Close Time or such Weekly Close Times shall always be Thirty-six Hours:
- (3.) To alter the Regulations with respect to the Observance of Annual or Weekly Close Time in so far as they relate to such District:
- (4.) To alter the Regulations with respect to the Construction and Use of Cruives and Cruive Dykes or Weirs within such District, provided such Alterations do not injure the Supply of Water to any Person entitled to use any existing Cruive Dyke as a Dam Dyke.

And such Petition, authenticated by the Signature of the Chairman of the Board, shall be transmitted to the Secretary of State by the Clerk of the Board, after Notice thereof has been given by Advertisement once at least in each of Two successive Weeks in a Newspaper printed or circulating in the County or Counties in which the District is situated, and the Secretary of State may direct such Inquiry to be made, and such Notice thereof to be given, as he shall think fit.

And any Alteration petitioned for in such Manner by any District Board may be made by the Secretary of State, if he shall see fit, by Order under his Hand, and such Order shall be published in the *Edinburgh Gazette*, and a Copy of the *Edinburgh Gazette* containing such Order shall be Evidence of the same having been made; but the Secretary of State shall not entertain any such Petition until it shall be proved to him, by such Evidence as he shall think satisfactory, that Notice of such Petition has been duly given in manner aforesaid: Provided that such Alteration shall not interfere with any Rights held at the

Time of the passing of this Act under Royal Grant or Charter, or possessed for Time Immemorial.

10. The Byelaws contained in the Schedules (A.), (B.), (C.), (D.), (E.), (F.), and (G.) to this Act annexed shall in all respects be held to have been duly made and published, but only in so far as consistent with and authorized by the recited Acts, and to such Extent shall be as valid and binding as if the same had been expressly enacted in this Act: Provided always, that, notwithstanding the Terms of the said recited Acts, any such Byelaw shall be valid and binding as aforesaid although it includes in One District more than One River, or makes Provisions with respect to a District including more than One River, or to Two or more Districts having assigned to them a common Estuary.

11. Notwithstanding anything contained in or authorized by this Act or the recited Acts, no Regulations with respect to the Construction and Alteration of Mill Dams or Lades or Water-wheels, so as to afford a reasonable Means for the Passage of Salmon, shall apply to Streams or Branches or Tributaries of Rivers which are of such small Size as not to be frequented by Salmon, nor to Dam Dykes which in their existing State at the Time and in the average State of the River do not obstruct the Passage of Salmon; and where in any existing Intake Lade there is at present a sufficient Sluice, it shall not be necessary to remove said Sluice to a higher Point of the Lade, nor to construct an additional Sluice at the Intake thereof; and it shall be lawful to lift any Heck from out the Water as a Means of Protection during a Flood, or when the River is encumbered with Ice, or with Weeds and floating Leaves to an Extent to choke the Heck:

12. And whereas the Royal Burgh of Montrose is supplied with Water from Sources adjoining the River North Esk, which Water is raised to the Point of Distribution by means of Water Power derived from a Watercourse or Mill-lade having its Intake at Morpie Dam Dyke on the said River, and returning to the River at a Point near the Lower North Water Bridge on the said River, commonly called the Mill-lade of Kinnaber, and great Inconvenience would arise from the Application to the said Watercourse or Mill-lade of certain of the Byelaws by this Act made valid and binding: Be it enacted, That nothing in the said Byelaws, or in this or in the recited Acts, or any of them, as to the placing of Hecks or Gratings, or the shutting of Sluices at the Intake of Mill-lades or Watercourses, shall apply to the said Watercourse or Mill-lade known as the Mill-lade of Kinnaber, excepting in so far as

regards the lowering of the Intake Sluice during the Weekly Close Time, and then only so as to leave a free Space during such Close Time of not less than Eighteen Inches between the Bottom of the Sluice and the Sill or Bed of such Mill-lade or Watercourse.

13. The District Board shall by Agreement (which Agreement any Heir of Entail or other Person under Disability is hereby empowered to make with such Board, and to implement,) have Power to purchase, for the Purpose only of Removal, any Dam, Weir, Cruives, or other Fixed Engines they may deem it expedient to remove for the Benefit of the Fisheries in their District, and to remove any natural Obstructions to the Passage of Fish in the Bed of a River, or to attach a Fish Pass to any Waterfall, and generally to execute such Works, do such Acts, and incur such Expenses as may appear to them expedient for the Protection or Improvement of the Fisheries within their District, the Increase of Salmon, or the stocking of the Waters therewith; but it shall not be lawful for the Board to pay to any Member of the Board any Salary or Fees for his acting in any way as a Member of or under the Board; provided that such Powers of Purchase shall not be exercised unless the Resolution of the District Board shall have been consented to by the Proprietors representing Four Fifths in Value of the Fishings on the Roll in the District.

14. Any Expenses incurred by the District Board in carrying out the Provisions of this Act may be defrayed out of the Assessment which they are empowered to lay on by the first-recited Act; and any District Board may, for the Purpose of defraying any Charge or Expenses incurred by them under the Powers of the last Section, with the Consent of the Secretary of State, borrow and take up at Interest, on the Credit of any Assessment they are authorized by the first-recited Act to impose, such Sum of Money as may be necessary for defraying such Charge or Expenses, not exceeding the Amount of Two Years Assessments authorized by the said first-recited Act.

15. Sections Eleven and Twelve of the first-recited Act are hereby repealed, and in place thereof it is enacted as follows:

Every Person who commits any of the following Offences,—

- (1.) Who fishes for, takes, or attempts to take, or aids or assists in fishing for, taking, or attempting to take, Salmon during the Annual Close Time by any Means other than Rod and Line;
- (2.) Who fishes for, takes, or attempts to take, or aids or assists in fishing for, taking, or attempting to take, Salmon (except during

- Saturday or Monday by Rod and Line) during the Weekly Close Time, or contravenes in any way any Byelaw in force regarding the Observance thereof;
- (3.) Who fishes for or takes, or aids in fishing for or taking, Salmon during the Annual Close Time by means of Rod and Line at a Period not sanctioned by the Byelaws in force in the District;
 - (4.) Who fishes for or aids in fishing for Salmon with a Net having a Mesh contrary to any Byelaw;
 - (5.) Who sets or uses, or aids in setting or using, a Net or any other Engine for the Capture of Salmon when leaping at or trying to ascend any Fall or other Impediment, or when falling back after leaping;
 - (6.) Who does any Act for the Purpose of preventing Salmon from passing through any Fish Pass, or taking any Salmon in its Passage through the same;
 - (7.) Who wilfully puts or causes to be put, or neglects to take reasonable Precautions to prevent the Discharge of, any Sawdust, or any Chaff, or any Shelling of Corn into any River;
 - (8.) Who in any way contravenes any Byelaw, shall for every such Offence be liable to a Penalty not exceeding Five Pounds, and to a further Penalty not exceeding Two Pounds for every Salmon taken or killed in an illegal Manner, and shall forfeit the Salmon so taken; and all Penalties imposed under this Act and the recited Acts, or any of them, shall be in addition to the Costs and Expenses of Prosecution and Conviction.
16. The Thirteenth Section of the first-recited Act shall hereafter be read and construed as if the Words "or who shall discharge into any River Sawdust" therein contained were struck out of the Section.
17. Every Person that shall use any Light or Fire of any Kind, or any Spear, Lister, Gaff, or other Alike Instrument, or Otter, for catching Salmon, or any Instrument for dragging for Salmon, or have in his Possession a Light or any of the foresaid Instruments under such Circumstances as to satisfy the Court before whom he is tried that he intended at the Time to catch Salmon by means thereof, shall be liable to a Penalty not exceeding Five Pounds, and shall forfeit any of the foresaid Instruments and any Salmon found in his Possession; but this Section shall not apply to any Person using a Gaff as auxiliary to angling with a Rod and Line.
18. Every Person that shall use any Fish Roe for the Purpose of fishing, and every Person that shall buy, sell, or expose for Sale, or have in his Possession, any Salmon Roe, shall for every such Offence be liable to a Penalty not exceeding Two Pounds, and shall forfeit all Salmon-Roe found in his Possession; but this Section shall not apply to any Person who uses or has in his Possession Salmon Roe for artificial Propagation or scientific Purposes, or gives any Reason satisfactory to the Court by whom he is tried for having the same in his Possession.
19. Every Person who shall wilfully take or destroy any Smolt or Salmon Fry, or shall buy, sell, or expose for Sale, or have in his Possession, the same, or shall place any Device or Engine for the Purpose of obstructing the Passage of the same, or shall wilfully injure the same, or shall wilfully injure or disturb any Salmon Spawn, or disturb any Spawning Bed, or any Bank or Shallow in which the Spawn of Salmon may be, or during the Annual Close Time shall obstruct or impede Salmon in their Passage to any such Bed, Bank, or Shallow, shall be liable to a Penalty not exceeding Five Pounds for every such Offence, and shall forfeit every Rod, Line, Net, Device, or Engine used in committing any such Offence, and shall forfeit any Smolt or Salmon Fry that may be found in his Possession; but nothing herein contained shall apply to Acts done for the Purpose of artificial Propagation of Salmon or other scientific Purpose, or in the course of cleaning or repairing any Dam or Mill-lade, or in the course of the Exercise of Rights of Property in the Bed of any River or Stream: Provided also, that the District Board may, with the Consent of all the Proprietors of Salmon Fisheries in any River or Estuary, adopt such Means as they think fit for preventing the Ingress of Salmon into narrow Streams in which they or the Spawning Beds are from the Nature of the Channel liable to be destroyed, but always so that no Water Rights used or enjoyed for the Purposes of Manufactures, or agricultural Purposes or Drainage, shall be interfered with thereby.
20. Every Person who shall wilfully take, fish for, or attempt to take or aid or assist in taking, fishing for, or attempting to take, any unclean or unseasonable Salmon, or who shall buy, sell, or expose for Sale, or have in his Possession, any unclean or unseasonable Salmon, shall be liable to a Penalty not exceeding Five Pounds in respect of each such Fish taken, sold, or exposed for Sale, or in his Possession, and shall forfeit every such Fish; but this Section shall not apply to any Person who takes such Fish accidentally, and forthwith returns the same to the Water with the least possible Injury, or to any Person who takes or is in possession of such

ish for artificial Propagation or scientific purposes.

21. Any Person who shall buy, sell, or expose or Sale, or have in his Possession, any Salmon taken within the Limits of this Act between the Commencement of the latest and the Termination of the earliest Annual Close Time which is in force at the Time for any District, shall be liable to a Penalty not exceeding Five Pounds, and to a further Penalty not exceeding Two Pounds for every Salmon so bought, sold, or exposed for Sale, or in his Possession; and any Salmon so bought, sold, or exposed for Sale, or in his Possession, shall be forfeited; and the Burden of proving that any such Salmon was caught beyond the Limits of this Act shall lie on the Person selling or exposing the same for Sale, or having the same in his Possession.

22. All Salmon intended for Exportation shall be entered for that Purpose with the proper Officer of Customs at the Port or Place of intended Exportation before Shipment thereof; and any Salmon shipped or exported or brought to any Wharf, Quay, or other Place for Exportation between the Commencement of the latest and the Termination of the earliest Annual Close Time for any District in Scotland contrary to this Section shall be forfeited unless Proof be given to the Satisfaction of the Commissioners of Customs of the Salmon having been legally captured, and the Person so illegally shipping or exporting or bringing the same for Exportation shall be liable to a Penalty not exceeding Two Pounds for every Salmon so shipped or exported or brought for Exportation; and no Salmon caught by Rod and Line during the Annual Close Time for Net-fishing shall be shipped, exported, or brought for Exportation, under the like Penalties; and any Officer of Customs may during the aforesaid Period open any Parcel entered or intended for Exportation, or brought to any Quay, Wharf, or Place for that Purpose, and suspected by him to contain Salmon, and may detain any Salmon found in such Parcel until Proof is given to the Satisfaction of the Commissioners of Customs of the Salmon being such as may be legally exported; and if the Salmon before such Proof is given become unfit for Human Food the Officer of Customs may destroy the same.

23. The Proprietor or Occupier of any Fishery shall within Thirty-six Hours after the Commencement of the Annual Close Time remove and carry from such Fishery, and from the Landing Places and Grounds adjacent thereto, all Boats, Oars, Nets, Engines, and other Tackle used or employed by such Occupier in taking Salmon, and effectually secure the same so as

to prevent their being used in fishing until the End of the Close Time, with the Exception of such Boats and Oars as may be used for angling; and the Proprietor or Occupier of any Cruive shall within Thirty-six Hours after the Commencement of the Annual Close Time remove and carry away all the Hecks, Rails, and Incales, and effectually secure the same so as to prevent their being used in fishing, and shall also remove all Planks and temporary Fixtures and other Obstructions to the free Passage of Fish through the Cruive; and any Proprietor or Occupier who neglects to remove and carry away and effectually secure in manner aforesaid any Boat, Oar, Net, Engine or other Tackle, or any Heck, Rail, or Incale, or any Obstruction to the Passage of Salmon through a Cruive, shall forfeit every Engine and Thing not removed and carried away in compliance with the Terms of this Section, and for every Day during which he suffers any such Engine or Thing to remain unremoved beyond the Period prescribed in this Act he shall be liable to a Penalty not exceeding Ten Pounds: Provided always, that nothing herein contained shall apply to any Ferry Boat, or prevent any Proprietor of Lands from continuing any Boat for the Use of himself or of his Family; if such Boat shall have the Name of the Proprietor painted thereon, and be secured, when not in use for lawful Purposes, by Lock and Key.

24. The Proprietor, or when let the Occupier, of every Fishery in which Stake, Weir, or Stake Nets, Fly Nets, or Bag Nets are used, shall in regard to such Nets do all Acts required by any Byelaw in force within the District in which such Fishery is situated for the due Observance of the Weekly Close Time; and if any such Proprietor or Occupier shall omit to do any Act so required he shall incur the following Penalties; that is to say,

1. He shall forfeit the Net or Nets with regard to which such Omission has occurred;
2. He shall for each Weekly Close Time during any Part of which such Omission has occurred pay, in respect of each Net to which the Proof of such Omission applies, a Sum not exceeding Ten Pounds, and a further Sum not exceeding Two Pounds for every Salmon taken or killed by means of such Nets during the said Weekly Close Time.

25. In order the better to carry out the Provisions of the Act of the Seventh and Eighth Years of Her present Majesty, Chapter Ninety-five, it shall be lawful for any Water Bailiff, Constable, Watcher, or Officer of any District Board, or any Police Officer, to search all Boats, Boat Tackle, Nets, or other Engines, and all

Receptacles, whether at Sea or on Shore, which he or they may have reason to suspect may contain Salmon captured in contravention of the said last-mentioned Act, and to seize all Salmon found in the Possession of Persons not having a Right to fish Salmon, and the Possession of such Salmon shall be held *prima facie* Evidence of the Purpose of the Possessor to contravene the Provisions of the said last-mentioned Act: Provided also, that the Words "the said recited Act" contained in the Second Section of the last-mentioned Act shall be read and construed as if they meant and included this Act and the Acts recited therein.

26. It shall be lawful for the Sheriff or any Justice of the Peace, upon an Information on Oath that there is probable Cause to suspect any Breach of the Provisions of this Act to have been committed on any Premises, or any Salmon illegally taken, or any illegal Nets or other Engines or Instruments, to be concealed on any Premises, by Warrant under his Hand to authorise and empower any Water Bailiff, Constable, Watcher, or other Officer of the Board, or Police Officer, to enter such Premises for the Purpose of detecting such Offence, or such concealed Fish or Instruments, at such Time or Times in the Day or Night as in such Warrant may be mentioned, and to seize all illegal Nets, Engines, or other Instruments, or any Salmon illegally taken, that may be found on such Premises; provided that no such Warrant shall continue in force for more than One Week from the Date thereof.

27. Any Water Bailiff, Constable, Watcher, or Officer of the Board, or any Police Officer, may enter and remain upon any Lands in the Vicinity of any River or of the Sea Coast during any Hour of the Day and Night for the Purpose of preventing a Breach of the Provisions of this or the recited Acts, or of detecting the Persons guilty of any Breach thereof, and no such Person entering and remaining upon such Lands as aforesaid shall be deemed to be a Trespasser: Provided always, that the Owner or Occupier of such Land may require such Person to quit, and such Person may on Refusal be proceeded against as a Trespasser, and shall be liable to the Penalties, unless he shall prove to the Satisfaction of the Sheriff or Justices before whom he is tried that he had Reason to apprehend a Breach of the Law had been or was about to be committed.

28. Any Member of the District Board, or Water Bailiff, Constable, Watcher, or Officer of the Board, or any Police Officer, may examine any Dam, Weir, Cruive, or fixed Engine within the Limits of the District, or any artificial Watercourse in that District; and any Owner or Occupier of any such Dam, Weir, Cruive, or

Fixed Engine, or artificial Watercourse, refusing Access thereto to any such Member of the Board, Water Bailiff, Constable, or Officer of the Board, or any Police Officer, shall be liable to a Penalty not exceeding Five Pounds for each Offence; and any Member of the Board, or Water Bailiff, Constable, Watcher, or Officer of the Board, or any Police Officer, may search all Boats, Nets, Baskets, or Bags and other Instruments used in fishing for Salmon, or which he may have reason to suspect may contain Salmon illegally taken, and he may seize all illegal Nets, or Nets being used illegally, and other Instruments of fishing, and all Fish and other Articles liable to be forfeited under the Provisions of this Act, and generally may act as a Constable for the Enforcement of the Provisions of this Act, and when so acting shall be deemed to be a Constable.

29. It shall be lawful for any Person, without any Warrant or other Authority than this Act, *brevi manu* to seize and detain any Person who shall be found committing any Offence contained in the First Six Sub-divisions of the Fifteenth Section, or in the Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, and Twenty-second Sections of this Act, and to carry such Person before any Sheriff or Justice of the Peace or other Magistrate, or to deliver such Person to a Constable, who is hereby required to carry such Person before a Justice of the Peace or other Magistrate, who shall forthwith examine and discharge or commit such Person until Caution *de judicio sisti* be found, as the Case may require.

30. All Offences under this Act may be prosecuted, and all Penalties incurred under this Act may be recovered, before any Sheriff or any Two or more Justices acting together, and having Jurisdiction in the Place where the Offence was committed, at the Instance of the Clerk of any District Board, or of any other Person; and it shall be lawful for the Sheriff or Justices to whom any Petition or Complaint is presented to proceed in a summary Form, and to grant Warrant for bringing the Persons complained against before him or them, or for citing them to appear before him or them, and on Proof on Oath by One or more credible Witness or Witnesses, or Confession of the Person accused, or other legal Evidence, forthwith to determine and give Judgment in such Complaint, without any written Pleadings or Record of Evidence other than a Record of the Charge and of the Judgment pronounced thereon, and to grant Warrant for the Recovery of all Penalties and Expenses decreed for by Poinding, and Imprisonment for any Period not exceeding Six Months; and any Person who shall think himself aggrieved by any Judgment of the Sheriff or Justices pronounced

in any Complaint or Prosecution under this Act may appeal to the Court of Justiciary at their next Circuit Court or where there is no Circuit Court to the High Court of Justiciary at Edinburgh, in the Manner and under the Rules, Limitations, Conditions, and Restrictions contained in the Act passed in the Twentieth Year of the reign of His Majesty King George the Second, Chapter Forty-three, for taking away and abolishing Heritable Jurisdictions in Scotland, with this Variation that such Person shall, in place of finding Caution in the Terms prescribed by the said Act, be bound to find Caution to pay the Penalty and Expenses awarded against him by the Judgment appealed from in the event of such Appeal being dismissed, together with any additional Expenses that shall be awarded by the Circuit Court or Court of Justiciary on dismissing such Appeal; and it shall not be competent to appeal from or bring the Judgments of any Sheriff or Justices acting under this Act under Review by Advocates, or in any other Way than as herein provided.

31. Every Person found guilty of any Offence against any of the Provisions of the recited Acts or any of them, or of this Act, shall, in addition to any other Penalties to which he may be liable, at the Discretion of the Sheriff or Justices before whom he has been tried, forfeit every Boat, Net, Rod, Line, Gaff, Spear, Leister, or other Article or Instrument of whatever Kind which has been or may be used in fishing for or in taking Salmon, and which is found in the Possession of such Person at the Time of committing such Offence, and which was capable of being used in the Commission of such Offence, and also any Salmon that may be found in his Possession.

32. Where any Salmon, Net, Rod, Line, or other Article directed to be forfeited under this Act has been seized by any Constable, Water Bailiff, Watcher, or other Officer appointed by the Board or by any Police Officer, the Sheriff or Justices may order the same to be destroyed or handed over to the District Board, or to the Person prosecuting, to be disposed of as such Board or Person prosecuting may think fit.

33. The Penalty in respect of any Offence under this Act or the recited Acts shall, on a Conviction for a Second Offence, be not less than One Half the greatest Penalty capable of being imposed in respect of such Offence, and on a Conviction for a Third or subsequent Offence the greatest Amount of Penalty mentioned in this Act shall be imposed; and any Boat, Net, Rod, Line, or other Article or Thing used in the Commission of any Offence under this Act, or found in the Possession of the Offender, shall be forfeited.

34. No Justice of the Peace shall be disqualified from hearing any Case arising under this Act by reason of his being a Member of a District Board; provided that no Justice shall be entitled to hear any Case in respect of an Offence committed on his own Fishery.

35. Where any Offence under this Act is committed in or upon any Waters forming the Boundary between any Two Counties, such Offence may be prosecuted before a Sheriff or Two Justices of the Peace in either of such Counties, and any Offence committed under this Act on the Sea Coast, or at Sea beyond the ordinary Jurisdiction of any Sheriff or Justices of the Peace, shall be held to have been committed within the Body of any County abutting on such Sea Coast, or adjoining such Sea, and may be tried and punished accordingly.

36. It shall not be lawful to fish for or take Salmon at any Place or by any Mode prohibited by any Statute relating to Salmon or Salmon Fisheries in Scotland subsisting and in force at the Date of this Act; and nothing contained in this Act or in any Byelaw shall render legal any Mode of fishing which was or would have been illegal at the Date of the passing of this Act.

37. Any Proprietor of a Fishery shall be held to have a good Title and Interest at Law to sue by Action any other Proprietor or Occupier of a Fishery within the District, or any other Person who shall use any illegal Engine or illegal Mode of fishing for catching Salmon within the District.

38. In giving Judgment on any Application or Complaint under this Act the Sheriff or Justices may find the Person complaining or complained against liable in Expenses, and may decree for Payment of the same.

39. All Penalties and Expenses incurred under this Act, or under any Byelaw or Regulation made under the Authority thereof, may be recovered by ordinary Action or in the Small Debt Court of the Sheriff.

40. The Penalties incurred under this Act shall in all Prosecutions at the Instance of the Clerk of any District Board, or by any Person authorized by any District Board, be payable to and recoverable by such Clerk, and shall in all other Cases be paid and applied in such Manner as the Sheriff or Justices may direct; and all Penalties and Expenses received by the Clerk, and the Proceeds of the Sale of any Articles seized and directed to be sold as before provided, shall be applied by the District Board towards defraying

the Expenses incurred by them in carrying into execution the Provisions of this Act.

41. This Act shall not extend to England or Ireland; and no Part of this Act, except the Thirteenth, Eighteenth, Twentieth, and Thirty-third Sections thereof, shall apply to the River Tweed as defined by the Tweed Fisheries Act, 1859; and the Penalties imposed by this Act, so far as applicable to the River Tweed and its Fisheries, shall be recoverable and applicable in the same Manner as Penalties imposed by the Tweed Fisheries Act, 1857; and the Sections of this Act hereby applied to the River Tweed shall be read and taken as if they formed Part of such last-mentioned Act and of Tweed Fisheries

Amendment Act, 1859; and the Words "District Board" in the said Sections shall signify the Board of Commissioners of the River Tweed.

42. So much of the Twenty-second Section of "The Salmon Fisheries (Scotland) Act, 1862," as confers on District Boards the Power "to make" and alter from Time to Time Regulations for "the Preservation of the Fisheries in the District," and the Twenty-fifth Section of said Act, are hereby repealed.

43. This Act shall not affect any Action or Prosecution which has been or may hereafter be begun in respect of any Liability incurred or Offence committed before the passing of this Act.

SCHEDULES.

SCHEDULE (A.)

BYELAW.

25th and 26th Vict. Cap. 97.

26th and 27th Vict. Cap. 50.

27th and 28th Vict. Cap. 118.

"Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland."

We, the Commissioners appointed under the said Acts, and empowered thereby "to fix for the Purposes of this [the first-recited] Act the Limits of every District, and the Portions of the Sea Coast adjoining to the Mouth or Estuary of any River to be included in such District,"—and "to fix for the Purposes of this [the first-recited] Act a Point on each River (including the Estuary thereof) below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors,"—do hereby fix and determine—

- 1st. That the Limits of the District of the River Add shall be—on the North, Craignish Point; on the South, Knap Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River contained between the said Points.
- 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be 600 Yards below the Junction of the Burn which runs by Dreamore Steading, known as Ruddell Burn; the Distance to be measured along the Course of the Add River.

Given under our Hands, this 24th Day of December 1862.

WM. J. FFENNELL,
FRED. EDEN.
JAMES LESLIE, } Commissioners.

Fisheries Department, Home Office.

Whitehall, 30th January 1863.

Approved,
G. GREY.

(This Byelaw to take effect from the 10th Day of February 1863.)

The same Byelaw shall apply to the several Districts, according to the Limits thereof, and take effect from the Dates, under mentioned respectively.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
A LINE	<p>1st. That the Limits of the District of the River Aline shall be—on the West, the East End of Fuenary Island; on the East, Barony Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge at the Castle.</p>	10th Feb. 1863.
ALNESS	<p>1st. That the Limits of the District of the River Alness shall be—a Line drawn South from the Left Bank of the Mouth of the Aultgraad River to the Centre of the Firth at High Water, and along the Centre of the Firth as far as Invergordon Ferry, and continued thence by a straight Line to the Ferry Landing place at Majick Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from Munro of Novars Ice House on the West Bank of the River to Dalmore Distillery Chimney on the East Side of the River.</p>	10th Feb. 1863.
ANNAN	<p>1st. That the Limits of the District of the River Annan shall be—on the West, a Line drawn due South (true) from the Easternmost End of East Park Farm, Sea Bank; on the East, the West Bank or Side of the Water Sark; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Dyke or Mill Dam immediately below the Bridge of the Public Road from Dumfries to Annan.</p>	10th Feb. 1863.
APPLECROSS	<p>1st. That the Limits of the District of the River Applecross shall be—on the North, Ru-na-Uag Point, at or near the Mouth of Loch Torridon; on the South, Skier Vore Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the East Gable of the Manse on the Right Side of the River Applecross to the Corner next the Sea of the Dyke Slit on the Left Bank enclosing Fullein Park.</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
ARNISDALE (in Loch Houra)	<p>1st. That the Limits of the District of the River Arnisdale (in Loch Houra) shall be—on the North, a Line drawn due East from the North End of Sandag Island; on the South, Aird-na Slisnich Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Stepping Stones 70 Yards above the Foot Bridge at Corran Village.</p>	10th Feb. 1863.
AWE - - -	<p>1st. That the Limits of the District of the River Awe shall be—on the North Point, Appin Ferry, including the East Shore of Lismore Island; on the South, Craignish Point, excepting Loch Crinan, the Loch to be defined by a Line drawn from the Southernmost Point of the Mainland immediately North of Enska Island, and continued along the Outer Face of that Island to the projecting Point of the Mainland nearest to the South-west Point of the said Island, and excepting the Portions of the Sea Coast and Estuary, and River contained between Minard Point and the Bridge from the Mainland over Siel Sound to Siel Island; the Awe District to include all the Islands within the said Limits South of Lismore Island, East of the Island of Mull and North of Jura; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn at Right Angles with and across the River from the Ice House immediately above the House in the Occupation of Mr. David Baird, at present Tacksman of the Awe Fishings.</p>	10th Feb. 1863.
AYLORT (Kinloch) -	<p>1st. That the Limits of the District of the River Aylort (Kinloch) shall be—on the North, Ru-Arasaig; on the South, Ru-smersiri; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Burn on the Left Bank of the Aylort next below the Bridge opposite Kinloch Aylort Inn.</p>	10th Feb. 1863.
AYR - - -	<p>1st. That the Limits of the District of the River Ayr shall be—on the North, the Lighthouse on the Point of Troon Harbour; on the South, a</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
AYR—cont.	<p>Line drawn due West from Seafeld House ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the lower Dyke or Dam at Ayr Mills.</p>	
BALGAY - - -	<p>1st. That the Limits of the District of the River Balgay shall be—On the East, the Mouth of the Burn at Camushole, near the South-east Corner of Upper Loch Torridon ; on the West, Ru na Uag Point, at or near the Mouth of Lower Loch Torridon ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be 140 Yards below the Foot Bridge on the Path from Shieldag to Torridon.</p>	10th Feb. 1863.
BAA and GLENCOILLEADAR	<p>1st. That the Limits of the District of the Rivers Baa and Glencoilleadar shall be—Ardmore Point at the North-west Entrance of the Sound of Mull on the North ; Fidden Point in the Sound of Iona on the South, including Coll Tíree and other Islands lying to the West of the Coast between those Two Points ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, BAA, Ford at Saw Mill and Water Wheel on the Right Bank, being the nearest Mill to the Mouth of the River ; GLENCOILLEADAR, Bridge of Road from Craignure to Bunessan.</p>	23d May 1865.
BEAULY - - -	<p>1st. That the Limits of the District of the River Beaully shall be—A straight Line drawn from the North Pier to the South Pier of Kessock Ferry ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge on the Public Road from Inverness to Beaully, commonly called Beaully Bridge.</p>	10th Feb. 1863.
BADACHRO and KERRY (in Gairloch).	<p>1st. That the Limits of the District of the Rivers Badachro and Kerry in Gairloch shall be—on the North, Ru Bane, on the South, Ru Ruag ; and that the District shall consist of the Portions of</p>	9th Oct. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
BADACHRO and KERRY (in Gairloch)— <i>cont.</i>	the Sea Coast and the Estuary, and the Rivers, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, on the River BADACHRO, the Rapid 80 Yards above the Herring Store on the Left Bank of the River ; 2d, on the River KERRY, the Site of the Old Foot Bridge at the Mouth of the River.	
BLADENOCH - -	1st. That the Limits of the District of the River Bladenoch shall be — on the West, Gillespie River ; on the East, Bishop's Burn ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be 400 Yards below the Dyke of Bladenoch Distillery.	10th Feb. 1863.
BERRIEDALE - -	1st. That the Limits of the District of the River Berriedale shall be—on the South, the Boundary of the Counties of Sutherland and Caithness ; and on the North, a Line drawn South-east from Dunbeath Castle ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the Row of Cottages on the Beach on the Left Bank of the River to the Fish Smoking House on the Right Bank.	10th Feb. 1863.
BERVIE - - -	1st. That the Limits of the District of the River Bervie shall be — on the North, the Boundary between the Parishes of Dunnottar and Kineff ; on the South the Boundary between the Parishes of Bervie and Benholm ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Cruive Dyke next the Mouth of the River.	10th Feb. 1863.
BROOM - -	1st. That the Limits of the District of the River Broom shall be — on the North, the Boundary between that Portion of the County of Cromarty and of the County of Ross ; and on the South, Cailleach Head ; and that the District shall con- sist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
BROOM — <i>cont.</i>	2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn between Loch Broom Kirk on the Left Bank, and the School House on the Right Bank of the River.	
BRORA - - -	1st. That the Limits of the District of the River Brora shall be—on the South, Strathsteven Point; on the North, Crackaig Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge on the Road from Golspie to Wick.	9th Oct. 1863.
CARRADALE (in Cantyre) -	1st. That the Limits of the District of the River Carradale in Cantyre shall be—Skipness Point on North; Mull of Cantyre on South, including Davar and Sanda Islands; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be—Remains of Bridge on old Road between Skipness and Campbelltown.	24th Nov. 1865.
CARRON - - -	1st. That the Limits of the District of the River Carron shall be—on the North, the Aird; on the South, Kyle Akin Berry; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the Bridge over Beachan Water, on the Public Road from Jeantoun to Dingwall to the West End of Achintee Village.	10th Feb. 1863.
CLAYBURN, FINNIS-BAY, AVEN-NAN-GEREN, STRATHGRAVAT, NORTH LACASTILE, SCALLADALE, and MAWRIG (East Harris).	1st. That the Limits of the District of the Rivers Clayburn, Finnis-Bay, Aven-nan-geren, Strathgravat, North Lacastile, Scalladale, and Mawrig shall be—on the South Ru Renish, and on the North the Boundary between Lewis and Harris, including the Island of Scalpa; and that the District shall consist of the Portions of the Sea Coast, and the Estuaries and Rivers contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, with regard to the Clay-	31st Dec. 1867.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
CLAYBURN, FINNIS-BAY, AVEN - NAN - GEREN, STRATHGRAVAT, NORTH LACASTLE, SCALLADALE, and MAWRIG (East Harris)— <i>cont.</i>	burn River, the Wooden Bridge over the River ; with regard to the Finnis-Bay River, the Bridge on the Finnis-Bay Road ; with regard to the Aven-nan-geren River, the Bridge on the Cuidenish Road ; with regard to the Strathgravat River, the Rock in the Channel of the River reached by Spring Tides ; with regard to North Lacastile River, the Bridge over River ; with regard to Scalladale and Mawrig Rivers, the Bridge on Road from Stornoway to Tarbet.	
CLYDE and LEVEN -	<p>1st. That the Limits of the District of the Rivers Clyde and Leven shall be—on the North, Strone Point at the North End of Holy Loch ; and on the South, Fairlie Head ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, on the CLYDE, the Dam or Dyke of the Glasgow Waterworks ; and on the LEVEN, a Line drawn at Right Angles with the River from the Tail Lade of Dalquhurn Dye- works.</p>	10th Feb. 1863.
CONON - - -	<p>1st. That the Limits of the District of the River Conon shall be—on the North, Tarbet Ness ; on the South, West Sutor Point, excepting that Portion of the North Side of the Cromarty Firth contained within a Line drawn South from the Left Bank of the Mouth of the Aultgraad River to the Centre of the Firth at High Water, and along the Centre of the Firth as far as Inver- gordon, and continued thence by a straight Line to the Ferry Landing-place at Majick Point ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge (commonly called Conan Bridge) of the Public Road from Inverness to Dingwall.</p>	10th Feb. 1863.
CREE - - -	<p>1st. That the Limits of the District of the River Cree shall be—on the West, Bishop's Burn ; on the East, the Point South of Mossyard called Ringdow Points ; and that the District shall con- sist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the Castle of Machermore, in the Occupation of James Kinna, Esq., on the Left Bank, to Corvish House, in feu to Mrs. M'Kirle, on the Right Bank.</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
CREED or STORNOWAY and LAXAY.	<p>1st. That the Limits of the District of the Rivers Creed or Stornoway and Laxay shall be—Chumpan or Tiumpnan Head on the North, to Boundary between Lewis and Harris on the South; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be—CREED, the Fall opposite Sir James Matheson's Grotto on the Left Bank of the River about 80 Yards above the Place where the High-water Channel is divided into Two by a Rocky Island; LAXAY, Rock called Fellow Rock, Man Rock or Cruich-a-dhuinne.</p>	22d May 1868.
CERAN - - -	<p>1st. That the Limits of the District of the River Ceran shall be—a Line drawn from the Southernmost Point of the Mainland immediately North of Eriska Island, and continued along the outer Face of that Island to the projecting Point of the Mainland nearest to the South-west Point of the said Island; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Ford a little above Clark's Farmhouse of Glasdrum.</p>	2nd Dec. 1864.
CROWE and SHIEL (Loch Duich).	<p>1st. That the Limits of the District of the Rivers Crowe and Shiel shall be—on the North, Elliean Donan Castle; on the South, Kyle Rhea Ferry; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, on the CROWE, 450 Yards, measured down the Course of the Crowe from the Bridge over the said River of the public Road from Shiel to Dornie Ferry; and on the SHIEL 200 Yards measured down the Course of the Shiel from the Bridge over the said River of the public Road from Kyle Rhea to Dornie Ferry.</p>	10th Feb. 1863.
DEE (Aberdeenshire) -	<p>1st. That the Limits of the District of the River Dee (Aberdeenshire) shall be—on the North, the March Stone heretofore placed for the Purpose of dividing the Coast Fishings of the Dee and the Don Rivers; and on the South, the Boundary between the Parishes of Dunnottar and Kineff; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
DEE (Aberdeenshire)— <i>cont.</i>	2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the Boundary between Pot and Ford Fishings and the Poldown Fishings, to the Boundary between the Pot and Ford Fishings and the Ruthrieston Fishings.	
DEE (Kirkcudbright) -	<p>1st. That the Limits of the District of the River Dee (Kirkcudbright) shall be—on the West, a straight Line drawn from the Summit of Bar Hill, to the most Northernly Point of Barlocco Island, and continued through the Isle on the East Aird Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the Fishing House on the Left Bank of the River to the North End of Ashton Villa, the Property of Murray Stewart, Esq., and in feu to James Knoworthy, Esq.</p>	10th Feb. 1863.
DEVERON - - -	<p>1st. That the Limits of the District of the River Deveron shall be—on the West, Cowhyth Point; on the East, Cairnbulg Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Fall immediately below the Island below Kickside.</p>	10th Feb. 1863.
DON - - -	<p>1st. That the Limits of the District of the River Don shall be—on the North, the Northern Boundary of the Fishings of Menie; and on the South, the March Stone heretofore placed for the Purpose of dividing the Coast Fishings of the Dee and Don Rivers; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn at Right Angles with the River from the Outlet of the Tail Lade of the Mill on the Left Bank, immediately below Seaton House.</p>	1st May 1863.
DOON - - -	1st. That the Limits of the District of the River Doon shall be—on the North, a Line drawn due West from Seafeld House; on the South, Turnberry Castle Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
DOON — <i>continued.</i>	2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Dyke or Mill Dam next the Mouth of the River.	
DRUMMACHLOY OF GLEN- MORE (Isle of Bute.)	1st. That the Limits of the District of the River Drummachloy or Glenmore, Island of Bute, shall be the whole Coasts of the Islands of Bute, Inchmarnoch, Greater and Lesser Cumbraes. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge on the Public Road between Rothesay and Kilmichael.	22d Nov. 1867.
DUNBEATH - - -	1st. That the Limits of the District of the River Dunbeath shall be—on the South, a Line drawn South-east from Dunbeath Castle; and on the North, Ulbster Head; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Point of 120 Yards above Line to be drawn from the Fish Smoking House on the Right Bank to the Cross Fence Dyke opposite to the said Fish Smoking House, and running at Right Angles with the River, on the Left Bank of the said River.	10th Feb. 1863.
ECKAIG - - -	1st. That the Limits of the District of the River Eckraig shall be—on the North, Strone Point at the North End of Holy Loch; and on the South, Strone Point in the Kyles of Bute; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge on the High Road from Dunoon to Kilmun.	10th Feb. 1863.
NORTH ESK - -	1st. That the Limits of the District of the River North Esk shall be—on the North, the Boundary between the Parishes of Bervie and Benholm; on the South, the March between the Properties of Montrose and Charlton; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper	1st May 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
NORTH Esk— <i>continued</i> .	Proprietors, shall be a Line drawn across the Ford above Fluke Hole, from the East End of the Land Embankment on the Right Side of the River, to the Pigeon House under Kirkside Plantation, on the Left Side of the River.	
SOUTH Esk	<p>1st. That the Limits of the District of the River South Esk shall be—on the North, the March between the Properties of Montrose and of Charlton; on the South, Red Head; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge of Dun.</p>	10th Feb. 1863.
EWE	<p>1st. That the Limits of the District of the River Ewe shall be—on the North, Greenstone Point; on the South, Ru Bane, opposite the North End of Longa Island; and that the Districts shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge of the Public Road from Aultbea to Pool Ewe.</p>	10th Feb. 1863.
FINCASTLE, MEAVEG, BALLANACHIST, SOUTH LACASTILE, BORVE, and OBB (West Harris).	<p>1st. That the Limits of the District of the Rivers Fincastle, Meaveg, Ballanachist, South Lacastile, Borge, and Obb, on the West Coast of Harris, shall be—on the North, the most Northernly Point of the Island of Scarpa, thence along the West and South Coast of that Island, and by the shortest Line to the Mainland of Harris; and on the South Ru Renish, including the Islands of Taransay, Ensay, and Killegray; and that the District shall consist of the Portions of the Sea Coast and the Estuaries and Rivers contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be—with regard to the Fincastle River, the Top of the Sea Pool at High Water; with regard to the River Meaveg, the Bridge on the High Road between Tarbert and Fincastle; with regard to the River Ballanachist, the Ford on the Road from Tarbert to Fincastle; with regard to the South Lacastile River, the Ford on the Road from Tarbert to Luscantire; with regard to the Borge River, the Bridge at Borge; and with regard to the Obb River, the Mill at Obb.</p>	31st Dec. 1867.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
FINDHORN - .	<p>1st. That the Limits of the District of the River Findhorn shall be—on the West, a Line drawn due North-west (true) from the Summit of Macbeth's Hillock, and on the East, the Ditch known as Cooper's Ditch, being the Boundary between the Properties of Lady Dunbar Brander, and Sir Alexander Gordon Cumming, Bart.; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the Chimney of the Steam Engine of Netherton, of Grange Farm, Steading, to the North End of the Cot House, now in the Occupation of the Shepherd Donald McLellan, on Seafield Farm, and continued across the River.</p>	10th Feb. 1863.
FLEET (Sutherlandshire) -	<p>1st. That the Limits of the District of the River Fleet (Sutherlandshire), shall be—on the South, Embo Point; on the North, Strathsteven Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Mound.</p>	9th Oct. 1863.
FLEET (Kirkcudbright) -	<p>1st. That the Limits of the District of the River Fleet (Kirkcudbright), shall be—on the West, the Point South of Moss Yard, called Ringdow Point; on the East, a straight Line drawn from the Summit of Bar Hill to the most Northernly Point of Barlocco Isle, and continued through the Isle; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge of the High Road from Castle Douglass to Newton Stewart.</p>	10th Feb. 1863.
FORSS - .	<p>1st. That the Limits of the District of the River Forss shall be—on the East, Brims Head; on the West, the Boundary between the Counties of Caithness and Sutherland; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the North Side of the Fishing House on the Beach, and on the Right Bank of the River, at Right Angles with the River.</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
FORTH -	<p>1st. That the Limits of the District of the River Forth shall be—on the North, Fife Ness; on the South, the Boundary between the Counties of Haddington and of Berwick; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, on the FORTH, the Craigh-forth Cruive Dyke; and on the ALLAN, the Scottish Central Railway Bridge.</p>	10th Feb. 1863.
FYNE (Loch) - -	<p>1st. That the Limits of the District of Loch Fyne shall be—on the East, Ardlamont Point; on the West, Skipness Castle Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge of the Public Road from Inverary running round the Head of Loch Fyne over the Rivers Aray, Shira, and Fyne.</p>	10th Feb. 1863.
GIRVAN - - -	<p>1st. That the Limits of the District of the River Girvan shall be—on the North, Turnberry Castle Point; on the South, Bennane Head; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be 100 Yards below the Bridge on the High Road from Ayr to Girvan.</p>	10th Feo. 1863
GLENELG - - -	<p>1st. That the Limits of the District of the River Glenelg shall be—on the North, Kyle Rhea Ferry; on the South, a Line drawn due East from the North End of Sanday Island; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Stepping Stones across the River from Kirkton on the Left Bank to Galder on the Right Bank.</p>	10th Feb. 1863.
GOUR - - -	<p>1st. That the Limits of the District of the River Gour shall be—on the North, the Landing Place at Corran Ferry; and on the South, a Point Two Statute Miles to the Southward of the River Gour; the Distance to be measured along the</p>	10th Oct. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
GOUR—continued.	Coast at High-water Mark from the Easternmost Point of the South Bank of the said River's Mouth; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be Sallachan Bridge.	
GREISS, LAXDALE, and TONG OF THUNGA.	1st. That the Limits of the District of the River Greiss shall be Butt of Lewis on the North; Chumpan or Tiumpun Head on the South; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be GREISS Stone Wall on Left Bank running North and South a little to the Eastward of Greiss Shepherd's House, and extending down to the River. LAXDALE—Line due South from Giarraidh Scoir. TONG OF THUNGA—Ford of Sands Road which passes Manse.	22d May 1868.
GRUDIE OF DIONARD	1st. That the Limits of the District of the River Grudie or Dionard shall be—on the East, Cave of Smoo; on the West, Cape Wrath; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Site of the old Cruives above Rocky Island.	9th Oct. 1863.
GRUINARD and LITTLE GRUINARD.	1st. That the Limits of the District of the Rivers Gruinard and Little Gruinard shall be—on the East, Statie Point; on the West, Greenstone Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the Lodge in the Occupancy of Major Duff, at Right Angles with the River.	10th Feb. 1863.
HALLADALE	1st. That the Limits of the District of the River Halladale shall be—on the East, the Boundary between the Counties of Caithness and Sutherland; on the West, Rhu-na-Claich; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.	9th Oct. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
HALLADALE— <i>continued</i> .	2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Ferry on the Road from Thurso to Tongue.	
HELMSDALE - -	<p>1st. That the Limits of the District of the River Helmsdale shall be—on the South, Crakaig Point; on the North, Boundary between the Counties of Caithness and Sutherland; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the West Dyke of the Burying Ground at Helmsdale to the Cross Dyke opposite.</p>	9th Oct. 1863.
HOPE and POLLA, or STRATHBEG.	<p>1st. That the Limits of the District of the Rivers Hope and Polla, or Strathbeg, shall be—on the East, Strone-an-dainf; on the West, Cave of Smoo; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, for the HOPE, the Bottom of "Great Hill Pool," 48 Yards below the Old Cruives; and for the River POLLA, the Bridge of the Road from Tongue to Durness.</p>	9th Oct. 1863.
INCHARD - -	<p>1st. That the Limits of the District of the River Inchard shall be—on the North, Cape Wrath; on the South, Ardmore Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Cruive below Bridge of public Road from Durness to Scourie.</p>	9th Oct. 1863.
INNER (in Jura) - -	<p>1st. That the Limits of the District of the River Inner in Jura shall be—the whole Coasts of the Islands of Jura and Scarba, with the Rocks and Islets adjoining thereto.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the End of Wall extending to Right Bank of River from Keeper's House.</p>	24th Nov. 1865.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
INVER - - -	<p>1st. That the Limits of the District of the River Inver shall be—on the North, Stoirhead ; on the South, Kirkaig Point ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge on the Road from Inver to Lairg.</p>	9th Oct. 1863.
IORSA (in Arran) - -	<p>1st. That the Limits of the District of the River Iorsa in Arran shall be—the whole Coast of the Island of Arran, including Pladda and Lamlash, or Holy Island.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge below Iorsa Cottage.</p>	24th Nov. 1865.
IRVINE and GARNOCK -	<p>1st. That the Limits of the District of the Rivers Irvine and Garnock shall be—on the North, Fairlie Head ; on the South, the Lighthouse on the Point of Troon Harbour ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be Fullerton Bridge on the IRVINE, and the Bridge of the Glasgow and South-western Railway on the GARNOCK.</p>	10th Feb. 1863.
KENNART - - -	<p>1st. That the Limits of the District of the River Kennart shall be—on the North, Ru Dunan Point ; on the South, a Line drawn from the South-east Point of Isle Martin to Ardmair Point ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge of the High Road from Inver to Ullapool.</p>	10th Feb. 1863.
KINLOCH (Kyle of Tongue)	<p>1st. That the Limits of the District of the River Kinloch (Kyle of Tongue) shall be—on the East, Port Lamigoe ; on the West, Strone-andain ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be Stepping Stones above Kinloch Farm House.</p>	9th Oct. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
KILCHOAN OF INVERIE (Loch Nevis).	<p>1st. That the Limits of the District of the River Kilchoan or Inverie (Loch Nevis) shall be—on the North, Ardna Slisnich Point ; on the South, Maleg Rocks ; and that the District shall consist of the Portion of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn at Right Angles with the River, from the End nearest the River of the Dyke next below Kilchoan House.</p>	10th Feb. 1863.
KIRKAIG - - -	<p>1st. That the Limits of the District of the River Kirkaig shall be—on the North, Kirkaig Point ; on the South, the Dunan Point ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Head of the Pool below the Old Cruives known as the Craigford Pool.</p>	10th Feb. 1863.
KISHORN - - -	<p>1st. That the Limits of the District of the River Kishorn shall be—on the North, Skeir Vore ; and on the South, the Aird ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge of the public Road from Jeantoun to Applecross.</p>	10th Feb. 1863.
KYLE OF SUTHERLAND -	<p>1st. That the Limits of the District of the Kyle of Sutherland shall be—on the East, Tarbet Ness ; on the West, Embo Point ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be—on the OYKILL, the End next the Rim of the Cross Dyke at the West End of the Castlehaugh situated at Side of public Road from Lairg to Oykill Bridge ; on the CASSILY, the End next the Run of the Cross Dyke on the Left Bank of the Cassily next to its Junction with the Oykill ; on the SHLN, the Upper End of the Garden Pool ; on the CARRON, a Line drawn from Balganowan Fishing House on the Right Bank to the Chimney of the Steam Engine of the Farm of Inver Carron on the Left Side of the River.</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
LAGGAN and SORN (in Islay)	<p>1st. That the Limits of the District of the River Laggan in Islay shall be—the whole Coast of the Islands of Islay, Colonsay, and Oronsay, with the Rocks and Islets immediately adjoining thereto.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be—LAGGAN, Corner of Wall with Field Gate on the Right Bank at First Bend from River Mouth ; SORN, Fence of Islay House Grounds.</p>	24th Nov. 1865.
LAXFORD - - -	<p>1st. That the Limits of the District of the River Laxford shall be—on the North, Ardmore Point ; on the South, Stoirhead ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge on the Road from Durness to Scourie.</p>	9th Oct. 1863.
LEVEN - - -	<p>1st. That the Limits of the District of the River Leven shall be—on the North, the Landing-place on the Inverness-shire Shore of Corran Ferry ; on the South, the projecting Point North-west of Ardsheal House ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be 150 Yards below the Boine Burn on the Right Bank of the River, the Distance to be measured down the Course of the River.</p>	10th Feb. 1863.
LITTLE BROOM - - -	<p>1st. That the Limits of the District of the River Little Broom shall be—on the North, Cailleach Head ; on the South, Statie Point ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn due North-east from the Saw Mill, the Property of Hugh Mackenzie of Dundonnell, Esquire.</p>	9th Oct. 1863.
LOCHY - - -	<p>1st. That the Limits of the District of the River Lochy shall be—on the West, Barony Point ; on the East, Port Appin Ferry, including the West Coast of Lismore, excepting those Portions of the Coast and Estuary and Rivers which lie between</p>	6th Oct. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect
<i>Locity—continued.</i>	<p>a Point Two Statute Miles to the Northward of the Mouth of the River Scaddle, the Distance to be measured by a Line drawn along the Shore at High-water Mark from the most Southernly Point on the Left Bank of the Mouth of the said River, and the March Burn forming the Boundary between the Properties of Ardgour and Kingairloch, and excepting the Portions of the Sea Coast and Estuary and River which lie between the Landing Place on the Inverness Shore of Corran Ferry and the projecting Point North-west of Ardsheal House; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be One Quarter of a Mile above the Suspension Bridge on the public Road from Bannavie to Fort William, the Distance to be measured along the Course of the River.</p>	
LOCH LONG (Luingi and Elchaig).	<p>1st. That the Limits of the District of Loch Long (Luingi and Elchaig) shall be—on the West, Kyle Akin Ferry; on the East, Eilean Donan Castle, together with that Portion of the Island of Skye which lies between Kyle Akin and Kyle Rhea Ferries; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn at Right Angles with the River immediately below the Junction of the Luingi and Elchaig.</p>	10th Feb. 1863.
LOCH ROAG (Lewis), Rivers BLACKWATER, GRIMERSTA, and MORSGAIL.	<p>1st. That the Limits of the District of Loch Roag (Lewis); Rivers Blackwater, Grimersta, and Morsgail, shall be—Butt of Lewis on the North-east to Gobnah Airde Moire on the Ordnance Map, called Ru-a-Chruidh on the Admiralty Chart, on the South-west; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, BLACKWATER, lowest Bridge, namely, that of public Road from Stornoway to Uig; GRIMERSTA, Cruive below lowest Bridge, namely, that of public Road from Stornoway to Uig; MORSGAIL, lowest Bridge, namely, that of public Road from Stornoway to Uig.</p>	22d May 1848.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
LUCE - - -	<p>1st. That the Limits of the District of the River Luce shall be—on the West, the Lighthouse on the Mull of Galloway; and on the East Gillespie River; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the Point of the Bent of Balcarrie, the Property of Sir John Dalrymple Hay, Bart., to the Cottage in the Occupation of John Baillie of the Island, also the Property of the said Sir John Dalrymple Hay.</p>	10th Feb. 1863.
LOSSIE - - -	<p>1st. That the Limits of the District of the River Lossie shall be—on the West, the Ditch known as Cooper's Ditch, being the Boundary between the Properties of Lady Dunbar Brander and Sir Alexander Gordon Cumming, Bart.; and on the East, a Line, drawn due North (true) from the West End of the Bent Hills on the Right Bank of the said River Lossie; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Ford on the old Road from Lossie-Mouth to Garmouth.</p>	10th Feb. 1863.
LUSSA (Mull) and River, LOCH UISK to LOCH BUY.	<p>1st. That the Limits of the District of the River Lussa (Mull) and River from Loch Uisk to Loch Buy shall be Duart Castle, at the South-east; Entrance of the Sound of Mull, on the North-east; Fiddin in the Sound of Iona, including Earraid Island on the South-west; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, LUSSA, Junction of the First Stream from the Left Bank down from the Bridge of the public Road over the Lussa to Loch Buy, which Stream flows through the Bridge on the public Road between Craignure and Loch Scraidain; River from LOCH UISK into LOCH BUY, Line of North or North-west Side of Moy Castle.</p>	23d May 1865.
MOIDART - - -	<p>1st. That the Limits of the District of the River Moidart shall be—a Line, drawn in a Northernly Direction from a Point of Land or Rock on the Mainland of the South Shore of Loch Moidart, called Stroulinorg, through the Centre of the Island called Eilean Grucach or Gruachan, thence</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
<i>MOIDART—continued.</i>	<p>through that Portion of the Island of Strona called Stronabeg till it reaches the Mainland of the North Shore of Loch Moidart; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be 200 Yards (to be measured by the Course of the River) down Stream from the Bridge over the Moidart on the Road from Moidart to Shiel.</p>	
MORAR - - -	<p>1st. That the Limits of the District of the River Morar shall be—on the North, Maleg Rocks; on the South, Ru-Arasaig; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge on the Road to Arasaig.</p>	10th Feb. 1863.
MULLANAGEREN, HORASARY, and LOCH-NA-CISTE (North Uist).	<p>1st. That the Limits of the District of the Rivers Mullanageren, Horasary, and Loch-na-Ciste shall be the whole Coasts of the Island of North Uist, including the Islands of Pabbay, Berneray, Baleshare, and adjacent Islets; and that the District shall consist of the Portions of the Sea Coast, and the Estuaries and Rivers of the said Islands.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be—with regard to the Mullanageren River, the Mill on the River; with regard to the Horasary River, the Bridge over the River; and with regard to Loch-na-Ciste, the Bridge on the South Road.</p>	31st Dec. 1867.
NAIRN - - -	<p>1st. That the Limits of the District of the River Nairn shall be—on the West, a Point on the Coast Two and One Half Statute Miles, to be measured Westward in a straight Line from the outer End of the West Pier of Nairn Harbour, and on the East a Line drawn due North-west (true) from the Summit of Macbeth's Hillock; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge of the public Road over the Nairn River from Nairn to Forres.</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
NAVER and BORGIE -	<p>1st. That the Limits of the District of the Rivers Naver and BORGIE shall be—on the East, Armadale Point; on the West, Port Larmigoe; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be,—for the River Naver, the Ferry at the Road from Thurso to Tongue; for the River BORGIE, the Foot Bridge between Torriadale and BORGIE Lone.</p>	27th Nov. 1863.
Ness - - -	<p>1st. That the Limits of the District of the River Ness shall be—on the West, a straight Line drawn from the North Pier to the South Pier of Kessock Ferry; on the East, a Point on the Coast Two and One Half Statute Miles, to be measured Westward in a straight Line from the Outer End of the West Pier of Nairn Harbour, and on the North-west Sutor Point; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a straight Line drawn at Right Angles with the River at the lowest Point of the Island.</p>	10th Feb. 1863.
NELL, FECHAN, and EUCHAR (Loch Feochan).	<p>1st. That the Limits of the District of the Rivers Nell, Feochan, and Euchar shall be—on the North, Minard Point; on the South, the Bridge from the Mainland over Siel Sound to Jul Island; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, the Rivers NELL and FECHAN, the Bridge of the public Road between Oban and Airdrishaig; and for the River EUCHAR, an Extension of the Line of Cross Stone Dyke on Left Bank of the River below the Free Church and a little above Breadalbane Fishing House.</p>	2d Dec. 1864.
NITH . - -	<p>1st. That the Limits of the District of the River Nith shall be—on the West, the most projecting Point of Land, South-east of Whitehill, between Portling Bay and Portowarren Bay; on the East a Line drawn due South (true) from the Easternmost End of East Park Farm, Sea Bank; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
NITH— <i>continued</i> .	Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Dyke or Mill Dam next the Mouth of the River.	
ORMSARY (Loch Killisport), LOCH HEAD RIVER, and STORNOWAY (Mull).	<p>1st. That the Limits of the District of the Rivers Ormsary (Loch Killisport), Loch Head River, and Stornoway (Mull) shall be—Knap Point on the North, Mull of Cantyre on the South; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, ORMSARY, Fall 60 Yards below Bridge of public Road along Shore; LOCH HEAD RIVER, Upper End of new straight Cut or Channel on Left Bank of River, which New Cut has been closed up at the Ends; STORNOWAY RIVER, Bridge of public Road to Lergnahunseon; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p>	2d May 1865.
PENNYGOWN or GLENFORSA and AROS.	<p>1st. That the Limits of the District of the Rivers Pennygown or Glenforsa and Aros shall be—on the East Duart Castle, and on the West Ardmore Point at the Two Extremities of the Sound of Mull; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, PENNYGOWN, Rocky Waterfall about 100 Yards above general Time of High Water at Beach; AROS, Bridge of Road between Salen and Tobermory.</p>	2d May 1865.
RESORT - - -	<p>1st. That the Limits of the District of the River Resort shall be—Gobnah Airde Moire, on the Ordnance Map called Ru-a-Chruidh on the Admiralty Chart in Lewis, on the North or East through the shortest Distance between the Main Land of Harris to Scarpa Island, and to the most Northernly Point of that Island on the South or West; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Mouth of Stream in Harris immediately below Mr. Millbank's Cottage.</p>	22d May 1868.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
RUEL or DARUEL - -	<p>1st. That the Limits of the District of the River Ruel or Daruel shall be—on the West, Ardlamont Point ; on the East, Strone Point, in the Kyles of Bute ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Head of Island in Gos-then, Ferninach Field, on the Farm of Loch Head, the Property of Mrs. Campbell, Ormidale House.</p>	10th Feb. 1863.
SANDA - - -	<p>1st. That the Limits of the District of the River Sanda shall be—on the North, a Point Two Statute Miles to the Southward of the Mouth of the River Gour, the Distance to be measured along the Coast at High-water Mark from the Easternmost Point of the South Bank of the said River's Mouth ; and on the South the March Burn forming the Boundary between the Properties of Ardgour and Kingairloch ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a straight Line drawn from a Rock known as the Sanda Rock to the Smearing House, which is 70 Yards below the Stepping Stone, in the Ford below the Farmhouse of Inver-sanda.</p>	17th July 1863.
SCADDLE - - -	<p>1st. That the Limits of the District of the River Scaddle shall be—on the North, a Point Two Statute Miles to the Northward of the Mouth of the River Scaddle, the Distance to be measured by a straight Line from the most Southernly Point on the Left Bank of the Mouth of the River, and on the South the Landing-place on the Argyll-shire Shore of Corran Ferry ; and that the Dis-trict shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge on the public Road from Inverscaddle to Corran Ferry.</p>	10th Feb. 1863.
SHIEL (Loch Shiel) -	<p>1st. That the Limits of the District of the River Shiel, Loch Shiel, shall be—on the North Ru Smirsiri, and on the South Stron Beg in the Sound of Mull, excepting that Portion of the Coast and Estuary and River contained within a Line drawn in a Northernly Direction from a Point of Land or Rock on the Mainland on the</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
SHIEL (Loch Shiel)— <i>cont.</i>	<p>South Shore of Loch Moidart called Stroulinorg, through the Centre of the Island, called Eilean Grucach, thence through that Portion of the Island of Strona called Stronabeg till it reaches the Mainland of the North Shore of Loch Moidart; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Site of the Cruives.</p>	
SLIGACHAN, BROADFORD, and PORTREE.	<p>1st. That the Limits of the District of the Rivers Sligachan, Broadford, and Portree shall be — South Coast included between Ru Ard de Cheolan or Aird Point on North to Sleat Point on South; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, SLIGACHAN, Forrester's House at Mound on Left Bank of the River; BROADFORD, Mr. Mackinnon's Shepherd's House; PORTREE, Foot Bridge to Bentmore Farm.</p>	2d May 1865.
SNIZORT, ORLEY, OZE (Loch Bracadale), and DRYNOCH (Loch Har- port).	<p>1st. That the Limits of the District of the Rivers Snizort, Orley, Oze (Loch Bracadale), and Drynoch (Loch Harport) shall be—West Coast included between Ru Ard de Cheolan or Aird Point on North; Sleat Point on South; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the Rivers, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, SNIZORT, at the Rocky Fall at Meal Mill on Right Bank; ORLEY, Bridge of public Road near Caroy Inn on Map; OZE, Upper End of Old Yairs; DRYNOCH, Head of Loch Harport, Bridge of public Road, Dunvegan to Sligachan.</p>	23d May 1865.
SPEY - - -	<p>1st. That the Limits of the District of the River Spey shall be—on the West, a Line drawn due North (true) from the West End of the Bent Hills on the Right Bank of the River Lossie, and on the East Cowhyth Head; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the Gas-</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
SPEY — <i>continued.</i>	works Chimney at Garmouth to Flood Farm-house in the Occupation of Adam Robertson, and the Property of the Duke of Richmond.	
STINCHAR - - -	1st. That the Limits of the District of the River Stinchar shall be—on the North, Bennane Head ; on the South, the Lighthouse on the Mull of Galloway ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be 200 Yards below the Bridge of the High Road from Ballantrae to Stranraer.	20th Sept. 1867.
STRATHY - - -	1st. That the Limits of the District of the River Strathy shall be—on the East, Rhu-na-Claich ; on the West, Armadale Point ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge on the Road from Thurso to Tongue.	9th Oct. 1863.
SUNART (Loch) - - -	1st. That the Limits of the District of Loch Sunart shall be—on the East, the End of Fuenary Island ; on the West, Stron Beg in the Island of Mull ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be on the River STRONTIAN, Bridge of public Road from Strontian to Sheil-bridge ; on River CARNICH, Bridge of Road to Carnich Farm and Loch Head.	13th Oct. 1863.
TAY - - -	1st. That the Limits of the District of the River Tay shall be—on the North, Red Head ; on the South, Fife Ness ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points. 2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be, on the TAY, the Bridge of Perth ; on the EARN, the North British Railway Bridge.	10th Feb. 1863.
THURSO - - -	1st. That the Limits of the District of the River Thurso shall be—on the East, Duncansbay Head, and on the West, Brims Ness ; and that the Dis-	10th Feb. 1863

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
THURSO— <i>continued.</i>	<p>trict shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Bridge of the public Road at Thurso.</p>	
TORRIDON - - -	<p>1st. That the Limits of the District of the River Torridon shall be—on the North, Ru Ruag; and on the South, the Mouth of the Burn at Camustrole near the South-east Corner of Upper Loch Torridon; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the Stepping Stones leading from Torridon Road to Shieldag.</p>	10th Feb. 1863.
TWEED - - -	See the End of this Schedule.	
UGIE - - -	<p>1st. That the Limits of the District of the River Ugie shall be—on the North, Cairnbulg Point; on the South, the Boundary between the Parishes of Peterhead and Cruden; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn from the Rock standing on the Left Bank of the River Ugie in Mains of Inverugie Farm to the North Side of the Farm Steading of Waterside of Balmoor on the Right Bank.</p>	10th Feb. 1863.
ULLAPOOL - - -	<p>1st. That the Limits of the District of the River Ullapool shall be—on the North, a Line to be drawn from the South-east Point of Isle Martin to Ardmail Point, and on the South the Boundary between that Portion of the County of Cromarty and of the County of Ross; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn at Right Angles with the River, from the Lower End of the Island next the Mouth of the River.</p>	10th Feb. 1863.

Names of Rivers.	Limits of District and Division between Upper and Lower Proprietors.	Date from which Byelaw to take effect.
URR - - -	<p>1st. That the Limits of the District of the River Urr shall be—on the West, Aird Point ; on the East, the most projecting Point of Land South-east of Whitehill between Portling Bay and Portowarren Bay ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Rock or large Stone on the Left Bank of the River 140 Yards above the Point of Junction with the Dalbeattie Burn.</p>	10th Feb. 1863.
WICK - - -	<p>1st. That the Limits of the District of the River Wick shall be—on the South, Ulbster Head, and on the North, Duncansbay Head ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be a Line drawn at Right Angles with the River, at the upper End of the old Cruives.</p>	10th Feb. 1863.
YTHAN - - -	<p>1st. That the Limits of the District of the River Ythan shall be—on the North, the Boundary between the Parishes of Peterhead and Cruden ; on the South, the Northern Boundary of the Fishings of Menie ; and that the District shall consist of the Portions of the Sea Coast and the Estuary, and the River, contained between the said Points.</p> <p>2d. That the Point below which the Proprietors of Fisheries shall be Lower Proprietors, and above which the Proprietors of Fisheries shall be Upper Proprietors, shall be the old Ford, known as Ellis Ford, on the old Road (now unused) from Peterhead to Aberdeen.</p>	1st May 1863.

TWEED.

25 & 26 Vict. Cap. 97. and 26 & 27 Vict. Cap. 50.

We, the Commissioners appointed under the 25th and 26th Vict. Cap. 97., and empowered by the 26th and 27th Vict. Cap. 50., to extend the Limits of the Mouth or Entrance of the River Tweed Northwards from the Limits thereof, as defined in the "Tweed Fisheries Amendment Act, 1859," along the Sea Coast and into the Sea to such Points and to such Extent as we may fix, do hereby fix and determine that the Limits of the Mouth or Entrance of the said River Tweed shall extend Northwards from the Limits thereof as defined in the said "Tweed Fisheries Amendment Act, 1859," along the Sea Coast to the Boundary between the Counties of Haddington and of Berwick, and shall also

extend into the Sea Five Miles in front of that Portion of the Coast hereby added to the Limits of the said River Tweed, the Distance to be measured at Right Angles with the Coast.

Given under our Hands, this 10th Day of August 1863,

WM. J. FFENNELL,
FRED. EDEN,
JAMES LESLIE, } Commissioners.

Fisheries Department, Home Office.

Approved,
Whitehall, 30th September 1863,
G. GREY.

(This Byelaw to take effect from the Sixth Day of October 1863.)

SCHEDULE (B.)

BYELAW.

25th and 26th Vict. Cap. 97.

26th and 27th Vict. Cap. 50.

27th and 28th Vict. Cap. 118.

“ Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland.”

District of the River ADD.

We, the Commissioners appointed under the said Acts, and empowered thereby “to fix and define, for the Purposes of this [the first-recited] Act, and the other Acts relating to Salmon and Salmon Fisheries in Scotland, the natural Limits which divide each River in Scotland (including the Estuary thereof) from the Sea, in so far as the same may not be already fixed by Statute or by judicial Decision,” do hereby fix and define the Limits which divide the River Add, including the Estuary thereof, from the Sea, to be, on the North, the most projecting Point 400 Yards West-south-west of Duntroon Castle; on the South, a Point nearly 200 Yards West of the Mouth of the Crinan Canal.

WM. J. FFENNELL,
FRED. EDEN,
JAMES LESLIE, } Commissioners.

Fisheries Department, Home Office.
26th Day of April 1864.

Approved,
Whitehall, 25th August 1864,
G. GREY.

(This Byelaw to take effect from the 6th Day of September 1864.)

The same Byelaw shall apply to the several Rivers according to the Limits, and take effect from the Dates, under mentioned respectively.

Names of Rivers.	Limits of Estuary.	Date from which Byelaw to take effect.
ALINE - - -	A straight Line drawn 15 Degrees North of true West from Bolorkle Point on the East Shore to the Mainland on the West Shore.	11th Mar. 1865.
ALNESS - - -	A straight Line drawn between the East and West Sutors of Cromarty.	14th Mar. 1865.
ANNAN - - -	<i>See Nith.</i>	—
APPLECROSS - - -	A straight Line drawn from Mouth of Burn on the North Shore outward, and distant 1,500 Yards from the Manse, to the outermost Pier on the South Shore, which is distant 900 Yards from the innermost Pier.	11th Mar. 1865.
ARNISDALE (in Loch Houra)	A straight Line drawn from the West End of Dry Island on the North Side of Arnisdale River, through Skier Laven, to the Ru on the South Side of that River.	11th Mar. 1865.
AWE - - -	The Point North-west of Dunstaffnage Castle on the South, and the South-west Point of Garbhart on the North.	6th Sept. 1864.
AYLORT (Kinloch) -	A straight Line drawn from the outermost Point of Aird Nish on the North Shore, through Goat Island, to the Mainland on the South.	11th Mar. 1865.
AYR - - -	A Segment of a Circle of 400 Yards Radius, drawn from a Centre placed Halfway between the outer End of the Breakwater and the outer End of the South Pier, with Tangents to the Circle extended to meet High-water Mark of Spring Tides in the Direction of the South End of Newton Lodge on the North, and in the Direction of the Seaward End of the Lane South of the Gasworks on the South.	14th Mar. 1865.
BALGAY - - -	<i>See Torridon.</i>	—
BAA and GLENCOILLEADAR	As regards the River BAA,—a straight Line due North and South through the outer End of Eorsa Island. As regards the River GLENCOILLEADAR,—Ard Kilfinichen on the North, a straight Line thence in the Direction of the Free Church to the South Shore.	4th Aug. 1865.
BRAULY - - -	A straight Line, drawn due South-east, true Meridian, from the Centre of the Three Burns to the Southern Shore, thus cutting the Black Buoy, as at present placed on the North End of the Whiten Ness Sands.	13th June 1865
BADACHRO and KERRY (in Gairloch).	A straight Line drawn from the North-western Point of Stron-na-Ard, on the East Shore, touching the outer End of Eilean Horridale, to the Mainland West.	13th June 1865.

Names of Rivers.	Limits of Estuary.	Date from which Byelaw to take effect.
BLADENOCH CREE and FLEET.	A straight Line drawn from Eggersness Point on the West, through the Centre of Barlocco Island, thence to the nearest Point of the Mainland on the East of that Island.	11th Mar. 1865.
BERRIEDALE - -	A straight Line of about 250 Yards in Length, drawn in a Direction a little to the East of true North from the most projecting Point of Rocks above Low Water, South-east of the old Castle, to the most projecting Point of Rock at Low Water, South-east of the Northern Extremity of the small Bay into which the River discharges, and the shortest Lines connecting those Rocks with the Shore.	22d April 1864.
BERVIE - - -	A Portion of a Circle of 150 Yards Radius, to be drawn from a Centre placed Mid-channel in the River where it joins the Sea at Low Water at Equinoctial Spring Tides, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark, also of Equinoctial Spring Tides.	22d April 1864.
BROOM and ULLAPOOL (Loch Broom).	A straight Line drawn from Ru-na-Caddal on the North to the Ru-Camas Voarach on the South.	13th June 1865.
BRORA - - -	A Portion of a Circle of 300 Yards Radius, having its Centre in Mid-channel of the River at Low Water of Spring Tides, and extended Shorewards by Tangents at Right Angles to (or to the nearest Point of) High-water Mark.	11th Mar. 1865.
CARRADALE (in Cantyre) -	From the outermost Point at Low Water of Spring Tides of the most projecting Point of Rocks on the South or Right Side of the River a straight Line drawn Westward to the nearest Point of the Shore, and another straight Line drawn in the Direction of Carradale House, both Lines extending up to High-water Mark.	26th Jan. 1866.
CARRON - - -	See Kishorn.	—
CLAYBURN, FINNIS-BAY, AVEN - NAN - GEREN, STRATHGRAVAT, NORTH LACASTILE, SCALLADALE, and MAWRIG (East Harris).	As regards the River CLAYBURN, a straight Line drawn between the Two outer Points across the Mouth of Bayhead; as regards FINNIS-BAY and AVEN-NAN-GEREN River, a straight Line from Cuidenish Point on the North to Ru Ardtulash on the South; as regards STRATHGRAVAT River, a straight Line drawn from Ru Ghoecrabb on the South, through the Centre of Stockinish Island, to the opposite Shore of the Bay; as regards NORTH LACASTILE River, a straight Line from the Ru Meanach on the East to Rhu Dhu on the West; as regards SCALLADALE and MAWRIG Rivers, a straight Line drawn from the Mouth of the River forming the Boundary between Lewis and Harris at Low Water to the narrow Point of Rainigatel.	19th June 1868.

Names of Rivers.	Limits of Estuary.	Date from which Byelaw to take effect.
CLYDE and LEVEN and ECKAIG.	A straight Line drawn East from Toward Point Light.	7th March 1865.
CONON - - -	A straight Line drawn between the East and West Sutors of Cromarty.	7th March 1865.
CREE - - -	See Bladenoch.	—
CREED OF STORNOWAY, and LAXAY.	As regards the River CREED or STORNOWAY, a Line drawn due East from the Lighthouse. As regards the River LAXAY, a straight Line drawn from Eilean Chalasbriugh on the North to the outer End of Eilean Chalam Ghille and a straight Line thence to the South Shore.	4th Aug. 1865.
CREHAN (Loch Crehan) -	A Line drawn from the Southernmost Point of the Mainland immediately North of Ereska Island, and continued along the outer Face of that Island to the projecting Point of the Mainland nearest to the South-west Point of the said Island.	11th Mar. 1865.
DEB (Aberdeenshire) -	A Portion of a Circle of 400 Yards Radius to be drawn from a Centre placed Midway between the outermost Point of the North Pier and the outermost Point of the Breakwater, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark of Equinoctial Spring Tides.	7th March 1865.
DEB (Kirkcudbright) -	A straight Line drawn from Balinoc Head to the outer Point of Little Ross Island, and thence to the nearest Point on the Mainland.	22d April 1864.
DEVERON - - -	A Portion of a Circle of 400 Yards Radius to be drawn from a Centre placed Mid-channel in the River where it joins the Sea at Low Water of Equinoctial Spring Tides, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark, also of Equinoctial Spring Tides.	7th March 1865.
DON - - -	A Portion of a Circle of 400 Yards Radius to be drawn from a Centre placed Mid-channel in the River where it joins the Sea at Low Water of Equinoctial Spring Tides, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark, also of Equinoctial Spring Tides.	22d April 1864.
DOON - - -	A Segment of a Circle of 400 Yards Radius, drawn from a Centre placed Halfway between the nearest End of the Two Rocks on the opposite Sides of the River Mouth, and on the Line of the Seaward Side of those Rocks, both at Low Water of Equinoctial Spring Tides, with Tangents to the	14th Mar. 1865.

Names of Rivers.	Limits of Estuary.	Date from which Byelaw to take effect.
DOON—continued.	Circle extending to where the other Line on the 6-Inch Ordnance Map, showing the Municipal Boundary, crosses High-water Mark on the North, and extending to High-water Mark in the Direction of Alloway Corn Mill on the South, being at High-water Mark 250 Yards from the South Side of the River.	
DRUMMACHLOY OF GLENMORE (Island of Bute).	A straight Line drawn from Kildavannan Point to Island McNeil.	5th May 1868.
DUNBEATH - - -	On the North, the most projecting Point of Pitormie Head; on the South, the projecting Rock near the Castle, and between the Castle and the Harbour and Seaward a Semicircle drawn from a Centre placed Halfway between those Points.	11th Mar. 1865.
ECKAIG - - -	See Clyde and Leven.	—
ESK (Kirkcudbright) - -	See Nith.	—
ESK, NORTH (Forfar) - -	A Portion of a Circle of 400 Yards Radius to be drawn from a Centre placed Mid-channel in the River where it joins the Sea at Low Water of Equinoctial Spring Tides, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark, also of Equinoctial Spring Tides.	14th Mar. 1865.
ESK, SOUTH - - -	A straight Line drawn from the Tower of Scurdy Ness to the outermost Point of Scurdy Stone; thence a straight Line extending due North 500 Yards; and on the North a straight Line to be drawn from the last-named Point to a Point at High-water Mark, Spring Tides, 800 Yards distant from the Low Light House, the Distance to be measured in a straight Line.	22d April 1864.
EWE - - -	A straight Line drawn from Ru-na-Gavann on the West Shore to Ru Con on the East Shore.	11th Mar. 1865.
EUCAR - - -	See Nell and Feochan.	—
FINCASTLE, MEAVEG, BALLANACHIST, SOUTH LACASTILE, BORVE, and OBB (West Harris).	As regards the FINCASTLE River, a straight Line from Ru More to Airdthurinish; as regards the MEAVEG River, a straight Line drawn from Airdmeaveg on the West to Airdtolmochan on the East; as regards the BALLANACHIST River, a straight Line from Hellenish Point on the West to Camp Point on the East; as regards the SOUTH LACASTILE River, a straight Line from Aird Nisibost on the South to Airdgrodernish on the North; as regards the River BORVE, a straight Line from Ru Romagi on the North to Sgeir-nan-Sgarb on the South; and as regards the River OBB, a straight Line from Ru Harman to Cornenish Point.	19th June 1868.
FINDHORN - - -	A Line drawn due North from the outermost of the Two Shipping Piers of the Town of Findhorn as extends from High-water Mark outwards to 200	7th March 1865.

Names of Rivers.	Limits of Estuary.	Date from which Byelaw to take effect.
FINDHORN—continued.	Yards below Low Water of Equinoctial Spring Tides; on the West, a Line parallel with and One and a Half Miles distant from the foregoing described Line, and also extending outwards from High-water Mark to 200 Yards below Low Water of Equinoctial Spring Tides; and on the North a Line of 200 Yards out from Low Water of Equinoctial Spring Tides, and connecting the outer Ends of the Two Lines herein-before described.	
FLEET (Sutherlandshire) -	A Portion of a Circle of 1,200 Yards Radius, having its Centre in Mid-channel of the River at the Lower Light, and continued to meet High-water Mark.	11th Mar. 1865.
FLEET (Kirkcudbright) -	See Bladenoch.	—
FORS - - -	A straight Line drawn from the most North-westerly Point of the Shore on the West Side of the River to the projecting Point midway between Brimsness and Cross Kirk on the East Side of the River.	22d April 1864.
FORTH - - -	A straight Line drawn from the Hound Point on the South Shore to St. David's Point on the North.	14th Mar. 1865.
FYNE, SHIRA, and ARAY (Loch Fyne).	Craigan's Ferry - - - - -	11th Mar. 1865.
GIRVAN - - -	A Portion of a Circle of 300 Yards Radius, drawn from a Centre placed Mid-channel of the River where it joins the Sea at Low Water of Equinoctial Spring Tides, and continued to the Shore at High-water Mark on the respective Sides of the River by Tangents to the Circle drawn at Right Angles with the Shore.	22d April 1864.
GLENELG - - -	A straight Line drawn from the East Side of the Rocks forming the Western Extremity of Bernera Bay on the North to the projecting Point of Land at High-water Mark immediately North of Eilean Reach or Glenbeg River, and Eilean Reach House on the South.	11th Mar. 1865.
GOUR - - -	See Lochy.	—
GREISS, LAXDALE, and TONG of THUNGA.	As regards the Rivers LAXDALE and TONG or THUNGA, from the Rocks at Rudhu-na-Monach at Low-water Line on the North to Gobnan Clach at High-water Line on the South. As regards the River GREISS, from the outer Point of Sgeir Leathain Island a straight Line drawn North to Ston Ruadh and South-west to Creag-Mhor-Bhataisgeir.	4th Aug. 1865.
GRUDIE OF DIONARD -	A straight Line from Far Out Point on the East to Stoir Point on West (Admiralty Chart).	11th Mar. 1865.
GRUINARD and LITTLE GRUINARD.	A straight Line drawn from the most projecting Point between Gruinard House and Douran Rocks on the North to the projecting Point West of Mill Bay on the South.	11th Mar. 1865.

Names of Rivers.	Limits of Estuary.	Date from which Byelaw to take effect.
HALLADALE - -	A straight Line drawn due West across Melvert Bay from the most projecting Point of Salmon Rocks on East.	11th Mar. 1865.
HELMSDALE - -	A Portion of a Circle of 300 Yards Radius, having its Centre in Mid-channel of the River at Low Water of Spring Tides, and extended Shorewards on the North Side by a Tangent drawn at Right Angles to (or the nearest Point of) High-water Mark, and on the South by a Tangent drawn to meet High-water Mark at the Distance of 300 Yards West of the Point of Land occupied by a Curing Yard on the West or Left Bank of the River at High Water.	11th Mar. 1865.
HOPE and POLLA or STRATHBEG.	A straight Line from Grave Point on West, through outer End of Skeir Bhuie Island and continued East Shore (Admiralty Chart).	11th Mar. 1865.
INCHARD - - -	A straight Line drawn from Kean Point on North to the outer Point of Land between Loch Inchard and Loch Kinsale on South.	11th Mar. 1865.
INNER (in Jura) - -	A Part of a Circle of 300 Yards Radius, having its Centre in the Middle of the principal Channel of the River at Low Water of Equinoctial Spring Tides, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark, also of Equinoctial Spring Tides.	26th Jan. 1866.
INVER - - -	A straight Line drawn from Kirkaig Point on South to Rue Roe on North (Admiralty Chart).	11th Mar. 1865.
IORSA in Aitran - -	A Portion of a Circle of 400 Yards Radius drawn from the Centre of the River at Low Water of Equinoctial Spring Tides, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark, also of Equinoctial Spring Tides.	26th Jan. 1866.
IRVINE and GARNOCK -	A Portion of a Circle of 400 Yards Radius to be drawn from a Centre placed Mid-channel abreast of the Beacon, and continued to the Shore at High-water Mark on the respective Sides of the River by Tangents to the Circle drawn at Right Angles with the Shore.	11th Mar. 1865.
KENNART - - -	A straight Line drawn from Ru Beg on the South to the Westernmost Point of Mealan Bhuie on the North.	11th Mar. 1865.
KINLOCH (Kyle of Tongue)	A straight Line from outer Point of Pier, Scullornie Harbour, on East, to most projecting Point of Ard Skuinee on West (Burnett and Scott's County Map).	11th Mar. 1865.
KILCHOAN of INVERIE -	A straight Line drawn from Scottis House on the North Side of the River to Creag Eilean on the South Side of the River, and a Line from thence to the nearest Point of the Mainland.	11th Mar. 1865.

Names of Rivers.	Limits of Estuary.	Date from which Byelaw to take effect.
KIRKAIG - - -	A straight Line drawn from Weather Lump on the North Shore, through Big Rock, to the South Shore.	11th Mar. 1865.
KISHORN and CARRON -	A straight Line drawn from the most Northernly Point of Ru-More to the Outside of Garra Island, and a Line thence along the Outside of Kishorn Island to the nearest Point to that last-mentioned Island of the Mainland to the North.	11th Mar. 1865.
KYLE of SUTHERLAND (Shin, Carron, Oykill, and Cassily).	On the North, a straight Line drawn from Dornoch Church in the Direction of Tarbet Ness Light-house; and on the East, a straight Line drawn due South, true Meridian, from the Village of Inver, to meet the before-mentioned Line, the Point of Meeting of the Two Lines being Three and a Quarter Statute Miles from High-water Mark at Dornoch, and a like Distance from High-water Mark at Inver.	13th June 1865.
LAGGAN and SORN (in Islay).	LAGGAN.—Part of a Circle of 400 Yards Radius, having its Centre in the Middle of the River at Low Water of Equinoctial Spring Tides, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark, also of Equinoctial Spring Tides. SORN.—A straight Line from the Point of the Black Rocks on the West, to Penneyraig on the East, both Ends of the Line extending up to High-water Mark.	26th Jan. 1866.
LAXFORD - - -	From Dougal Head on the North-east, through Centre of Island Skein, to Mainland on South-west (Admiralty Chart).	11th Mar. 1865.
LEVEN - - -	See Lochy.	—
LITTLE LOCH BROOM -	A straight Line drawn from Camus-na-Goal Point on the South to the nearest Point of Land on the Northern Shore.	13th June 1865.
LOCHY, LEVEN, SCADDLE, GOUR, and SANDA.	A straight Line drawn due North-west, true Meridian, from the Westernmost Point of Land forming the Western Shore of Cail Bay, and lying North-east of Balnagowan Island to the Mainland on the North Shore of the Linnhe Loch.	11th Mar. 1865.
LOCH DUICH - - -	See Loch Luig.	—
LOCH LUING and LOCH DUICH.	A straight Line drawn due South, true Meridian, from Scart Point on the North Shore to the Mainland on the South.	13th June 1865.
LOCH ROAG (Lewis) -	A straight Line drawn from Aird-Lamiesheadar on the East to Sgeir-na-ha-on Chaorach on the West; also from Camus Ennaidh on the East to Eala Sheadha on the West.	4th Aug. 1865.

Names of Rivers.	Limits of Estuary.	Date from which Byelaw to take effect.
LUCE - - -	A straight Line drawn from a Point on the Shore at High-water Mark on the East Side of the River 650 Yards South of Stair Haven Pier to a Point on the Shore at High-water Mark on the West Side of the River 1,300 Yards South-west from Ringdon Point.	6th Jan. 1865.
LOSSIE - - -	A straight Line to be drawn from the North Pier Head to a Point at Low Water of Equinoctial Spring Tides 200 Yards, measured in a straight Line, East of the South Pier of the Old Harbour, and thence continued by a straight Line to the nearest Point of the Shore at High-water Mark of Equinoctial Spring Tides.	11th Mar. 1865.
LUSSA (Mull), and River from LOCH UISK to LOCH BUI.	As regards the River LUSSA, a straight Line between the most projecting Points of the Heads of the Mouth of Loch Speive. As regards LOCH UISK River, a Line North-west and South-east through the outer Side of Mor Island.	4th Aug. 1865.
MOIDART and SHIEL -	A straight Line drawn from Farquhar Point on the South Shore to the South-west Point of Eilean Shona, and a straight Line drawn from North-west Point of Eilean Shona to the nearest Point of the Mainland on the North.	11th Mar. 1865.
MORAR - - -	A straight Line drawn from Bonan Caraidich on the North Side of the River to the outermost Point of Fraoch Eilean on the South Admiralty Chart.	11th Mar. 1865.
MULLANAGEREN, HORASARY, and LOCH-NA-CISTE (North Uist).	As regards the River MULLANAGEREN, the shortest Line from Dramanan Point and Valeque Point to Ornisay Island; as regards the River HORASARY, the shortest Lines from the Point of Arnal and from the Point of Canoch to the North End of Kirkibost Island; and as regards LOCH-NA-CISTE River, from the Wooden Jetty near Lochmaddy Inn to the opposite Point of Camaird.	19th June 1868.
NAIRN - - -	A Portion of a Circle of 400 Yards Radius to be drawn from a Centre placed Mid-channel in the River where it joins the Sea at Low Water of Equinoctial Spring Tides, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark, also of Equinoctial Spring Tides.	7th March 1865.
NAVER and BORGIE -	A straight Line drawn from Aird-in-iaskich on East to Claishaidie on West. (Burnett and Scott's County Map.)	11th Mar. 1865.
NESS - - -	A straight Line drawn due South-east, true Meridian, from the Centre of the Three Burns to the Southern Shore, thus cutting the Black Buoy as at present placed on the North End of the Whiten Ness Sands.	7th March 1865.
NELL, FEOCHAN, and EUCHAR (Loch Feochan).	From Minard Point on the North to Eastern Extremity of Barnacaryu Bay on the South.	11th Mar. 1865.



Names of Rivers.	Limits of Estuary.	Date from which Byelaw to take effect.
NITH, ANNAN, and ESK -	A straight Line drawn from the Hotel of Skinberness in the Parish of Abbey Holme in the County of Cumberland to the Large House at Carset House of Arbigland in the Stewartry of Kirkcudbright.	7th March 1865.
ORMSBARY and LOCH HEAD (Loch Killisport) and STORNOWAY.	From Knap Point on the North, a straight Line thence in the Direction of Kilmaluag on the South. STORNOWAY, the Two extreme projecting Points of Stornoway Bay, namely, about Halfway between Lergnahunseon and Point Gallon on the North, and between Lergnahunseon and Ardpatrick Point on the South.	4th Aug. 1865.
PENNYGOWN or GLENFORSA and AROS (Mull).	A straight Line from Alasaid Head on the West on the Direction of the Burying Ground to the projecting Point North-east of the Mouth of Pennygown River on the East.	4th Aug. 1865.
RUEL - - -	From Runin-a-Crotch Point on the East, Line thence due West.	11th Mar. 1865.
RESORT - - -	On the North Ru Carnach (Admiralty Chart), thence to the Seaward Side of Greine Sgeir Island, and on the North-west Point of the Promontory on which the Hill or Mountain Meilein is situated.	4th Aug. 1865.
SANDA - - -	See Lochy.	—
SCADDLE - - -	See Lochy.	—
SHIEL (Loch Shiel) -	See Moidart.	—
SLIGACHAN, BROADFORD, and PORTREE.	As regards the River SLIGACHAN, a straight Line from Bal-na-Roinn Point at Low Water on North to Ru-an-Fhaing on the South. As regards the River BROADFORD, a straight Line from Mr. Mackinnon's Pier on the North to the Cottage on the Beach a little to the Eastward of the Lime Kiln and Pier on the South. As regards the River PORTREE, Skin Voire on the North to the Point on the South lying due South-east.	4th Aug. 1865.
SNIZORT - - -	As regards the River SNIZORT, a straight Line from Lyndale Point on the West to Aird-nan-Eirach on the East. As regards the Rivers ORLEY and OZE, Loch Bracadale, a straight Line from the most projecting Point between Callboist and Eabost on the East to the most projecting Point between Loch Caroy and Loch Roag on the West. As regards the River DRYNOCH, Loch Harport, a straight Line from the projecting Point between Struanmore and Struanbeg on the North to the projecting Point North of Dunard Kirk on the South.	4th Aug. 1865.
SOLWAY - - -	See End of Schedule.	—

Names of Rivers.	Limits of Estuary.	Date from which Byelaw to take effect.
SPEY - - -	A Portion of a Circle of 400 Yards Radius to be drawn from a Centre placed Mid-channel in the River where it joins the Sea at Low Water of Equinoctial Spring Tides, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark, also of Equinoctial Spring Tides.	7th March 1865.
STINCHAR - -	A Portion of a Circle of 350 Yards Radius drawn from a Centre placed Mid-channel of the River where it joins the Sea at Low Water of Equinoctial Spring Tides, and continued by Tangents to the Circle drawn at Right Angles with the Shore.	22d April 1864.
STORNOWAY - -	<i>See Creed.</i>	—
STRATHY - - -	A straight Line drawn across Strathy Bay from Point South of Geo Ghoulán on the West to North-west Point, Balligill Head on East.	11th Mar. 1865.
THURSO - - -	A Portion of a Circle of 400 Yards Radius drawn from a Centre placed Mid-channel at the Line of Low Water of Equinoctial Spring Tides, and continued to the Shore at High Water by Tangents, that on the East being to a Point 500 Yards North-east of Thurso Castle, and that on the West being in the Direction of the Toll House.	11th Mar. 1865.
TONG or THUNG - -	<i>See Greiss.</i>	—
TORRIDON, BALGAY, and SHIELDAG.	A straight Line drawn across the Narrows between Loch Shieldag and Outer Loch Torridon, where Diobaig Point and Ru Ardtishlic most nearly approach each other.	11th Mar. 1865.
UGIE - - -	A Portion of a Circle of 200 Yards Radius to be drawn from a Centre placed Mid-channel in the River where it joins the Sea at Low Water of Equinoctial Spring Tides, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark, also of Equinoctial Spring Tides.	7th March 1865.
ULLAPOOL - -	<i>See Broom.</i>	—
URR - - -	A straight Line drawn from Balcarry Point on the West, through the Outside of Hestan Island, to the Eastern Extremity of Gatcher's Island at Low Water, and thence Inshore to High-water Mark at the projecting Point distant One Mile from Castle Hill Point.	13th June 1865.
WICK - - -	The Line of the Breakwater now in course of Construction, and a straight Line drawn due North from the outer End of the said Breakwater to the North Shore.	11th Mar. 1865.

Names of Rivers.	Limits of Estuary.	Date from which Byelaw to take effect.
YTHAN - - -	A Portion of a Circle of 300 Yards Radius to be drawn from a Centre placed Mid-channel in the River where it joins the Sea at Low Water of Equinoctial Spring Tides, and continued Shorewards by Tangents to the Circle drawn to the nearest Points of the Shore of the respective Sides of the River at High-water Mark, also of Equinoctial Spring Tides.	22d April 1864.

25th and 26th Vict. Cap. 97.

We, the Commissioners appointed under the said Act, and empowered thereby "to fix, for the Purposes of this Act, the Limits of the Solway Firth, having regard to an Act passed in the Forty-fourth Year of the Reign of His Majesty King George the Third, Chap. Forty-five," do hereby fix the Limit dividing the Solway Firth from the Sea to be a straight Line drawn from the Mull of Galloway in the County of Wigton to Hodbarrow Point in the Parish of Millam in the County of Cumberland.

Given under our Hands, this 22d Day of January 1864.

WM. J. FFENNELL, }
JAMES LESLIE, } Commissioners.

Fisheries Department, Home Office.

Approved,
Whitehall, 9th April 1864.
G. GREY.

SCHEDULE (C.)

BYELAW.

25th and 26th Vict. Cap. 97.,
26th and 27th Vict. Cap. 50., and
27th and 28th Vict. Cap. 118.

"Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland."

District of the River ADD.

We, the Commissioners appointed under the said Acts, and empowered thereby "to determine, subject to the Provisions of this [the first-recited] Act, at what Dates the Annual Close Time for every District shall commence and terminate, and at what Periods subsequent to the Commencement and prior to the Termination of the Annual Close Time it shall be lawful to fish for and take Salmon with the Rod and Line," do hereby determine that the Annual Close Time for the District of the River Add shall commence on the 1st Day of September and terminate on the 15th Day of February, both Days inclusive, and that it shall be lawful to fish for and to take Salmon with the Rod and Line from the 1st Day of September to the 31st Day of October, both Days inclusive.

WM. J. FFENNELL, }
FRED. EDEN, }
JAMES LESLIE, } Commissioners.

Fisheries Department, Home Office,
11th Day of January 1864.

Approved,
Whitehall, 19th Day of April 1864,
G. GREY.

(This Byelaw to take effect from the 20th Day of May 1864.)

The same Byelaw shall apply to the several Rivers, according to the Times, and take effect from the Dates, under mentioned respectively.

Names of Rivers.	Annual Close Time.	Extension of Time for Rod-fishing.	Date from which Byelaw to take effect.
ALINE - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
ALNESS - - -	From 27th August to 10th February.	From 27th August to 31st October.	14th March 1865.
ANNAN - - -	From 27th August to 10th February.	From 27th August to 31st October.	13th June 1865.
APPLECROSS - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
ARNISDALE (in Loch Houra).	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
AWE - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th Oct. 1864.
AYLORT (Kinloch) -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
AYR - - -	From 27th August to 10th February.	From 27th August to 31st October.	13th June 1865.
BAA and GLENCOIL-LEADAR.	From 27th August to 10th February.	From 27th August to 31st October.	4th Aug. 1865.
BADACHRO and KERRY (in Gairloch).	From 27th August to 10th February.	From 27th August to 31st October.	13th June 1865.
BALGAT and SHIELDAG -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
BEAULTY - - -	From 27th August to 10th February.	From 27th August to 15th October.	7th March 1865.
BERRIEDALE - - -	From 27th August to 10th February.	From 27th August to 31st October.	29th Jan. 1864.
BERVIE - - -	From 10th September to 24th February.	From 10th September to 31st October.	29th Jan. 1864.
BLADENOCH - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
BROOM - - -	From 27th August to 10th February.	From 27th August to 31st October.	13th June 1865.
BRORA - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
CARRADALE (in Can-tye).	From 10th September to 24th February.	From 10th September to 31st October.	26th Jan. 1866.
CARRON - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.

Names of Rivers.	Annual Close Time.	Extension of Time for Rod-fishing.	Date from which Byelaw to take effect.
CLAYBURN, FINNIS-BAY, AVEN - NAN - GEREN, STRATHGRAVAT, NORTH LACASTILE, SCALLADALE, and MAWRIG (East Harris).	From 10th September to 24th February.	From 10th September to 31st October.	19th June 1868.
CLYDE and LEVEN -	From 27th August to 10th February.	From 27th August to 31st October.	7th March 1865.
CONON - - -	From 27th August to 10th February.	From 27th August to 31st October.	7th March 1865.
CREE - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
CREED OF STORNOWAY, and LAXAY (Lewis).	From 27th August to 10th February.	From 27th August to 31st October.	4th Aug. 1865.
CRERAN (Loch Creran) -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865
CROWE and SHIEL (Loch Duich).	From 27th August to 10th February.	From 27th August to 31st October.	13th June 1865.
DEE (Aberdeenshire) -	From 27th August to 10th February.	From 27th August to 31st October.	7th March 1865.
DEE (Kirkcudbright) -	From 27th August to 10th February.	From 27th August to 31st October.	19th April 1864.
DEVERON - - -	From 27th August to 10th February.	From 27th August to 31st October.	7th March 1865.
DON - - -	From 27th August to 10th February.	From 27th August to 31st October.	29th Jan. 1864.
DOON - - -	From 27th August to 10th February.	From 27th August to 31st October.	14th March 1865.
DRUMMACHLOY or GLENMORE (Isle of Bute).	From 1st September to 15th February.	From 1st September to 15th October.	5th May 1868.
DUNBEATH - - -	From 27th August to 10th February.	From 27th August to 15th October.	11th March 1865.
ECKAIG - - -	From 1st September to 15th February.	From 1st September to 31st October.	20th May 1864.
ESK, NORTH - - -	From 1st September to 15th February.	From 1st September to 31st October.	14th March 1865.
ESK, SOUTH - - -	From 1st September to 15th February.	From 1st September to 31st October.	1st March 1864.
EWE - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.

Names of Rivers.	Annual Close Time.	Extension of Time for Rod-fishing.	Date from which Byelaw to take effect.
FINCASTLE, MEAVEG, BALLANACHIST, SOUTH LACASTILE, BORVE, and OBB (West Harris).	From 10th September to 24th February.	From 10th September to 31st October.	19th June 1868.
FINDHORN - -	From 27th August to 10th February.	From 27th August to 10th October.	7th March 1865.
FLEET (Sutherlandshire)	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
FLEET (Kirkcudbright) -	From 10th September to 24th February.	From 10th September to 31st October.	20th May 1864.
FORSS - - -	From 27th August to 10th February.	From 27th August to 31st October.	29th Jan. 1864.
FORTH - - -	From 27th August to 10th February.	From 27th August to 15th October.	14th March 1865.
FYNE, SHIRA, and ARAY (Loch Fyne).	From 1st September to 15th February.	From 1st September to 31st October.	11th March 1865.
GIRVAN - - -	From 10th September to 24th February.	From 10th September to 31st October.	29th Jan. 1864.
GLENELG - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
GOUR - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
GREISS, LAXDALE, or THUNGA.	From 27th August to 10th February.	From 27th August to 31st October.	4th Aug. 1865.
GRUDIE OF DIONARD -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
GRUINARD and LITTLE GRUINARD.	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
HALLADALE - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
HELMSDALE - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
HOPE and POLLA, or STRATHBEG.	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
INCHARD - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
INNER in Jura - -	From 10th September to 24th February.	From 10th September to 31st October.	26th Jan. 1864.

Names of Rivers.	Annual Close Time.	Extension of Time for Rod-fishing.	Date from which Byelaw to take effect.
INVER - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
IORSÀ (in Arran) -	From 10th September to 24th February.	From 10th September to 31st October.	26th Jan. 1866.
IRVINE and GARNOCK -	From 10th September to 24th February.	From 10th September to 31st October.	11th March 1865.
KENNART - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
KILCHOAN OF INVERIE (Loch Nevis).	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
KINLOCH (Kyle of Tongue).	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
KIRKAIG - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
KISHORN - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
KYLE of SUTHERLAND -	From 27th August to 10th February.	From 27th August to 15th October.	7th March 1865.
LAGGAN and SORN (in Islay).	From 10th September to 24th February.	From 10th September to 31st October.	26th Jan. 1866.
LAXFORD - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
LEVEN - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
LITTLE LOCH BROOM -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
LOCHY - - -	From 27th August to 10th February.	From 27th August to 31st October.	15th Nov. 1864.
LOCH DUGH - - -	From 27th August to 10th February.	From 27th August to 31st October.	13th June 1865.
LOCH LUING - - -	From 27th August to 10th February.	From 27th August to 31st October.	13th June 1865.
LOCH ROAG - - -	From 27th August to 10th February.	From 27th August to 31st October.	4th Aug. 1865.
LOSSIE - - -	From 27th August to 10th February.	From 27th August to 15th October.	11th March 1865.
LUCE - - -	From 10th September to 24th February.	From 10th September to 31st October.	7th March 1865.

Names of Rivers.	Annual Close Time.	Extension of Time for Rod-fishing.	Date from which Byelaw to take effect.
LUSSA (Mull) - -	From 27th August to 10th February.	From 27th August to 31st October.	4th Aug. 1865.
MOIDART - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
MORAR - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
MULLANAGEEN, HORASARY, and LOCHNA-CISTE (North Uist).	From 10th September to 24th February.	From 10th September to 31st October.	19th June 1868.
NAIRN - -	From 27th August to 10th February.	From 27th August to 15th October.	7th March 1865.
NAVER and BORGIE -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
NELL, FEOCHAN, and EUCHAR (Loch Feochan).	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
NESS - -	From 27th August to 10th February.	From 27th August to 15th October.	7th March 1865.
NITH - -	From 27th August to 10th February.	From 27th August to 31st October.	7th March 1865.
ORMSARY (Loch Killisport), LOCH HEAD, and STORNOWAY (Mull).	From 27th August to 10th February.	From 27th August to 31st October.	4th Aug. 1865.
PENNYGOWN or GLENFORS, and AROS.	From 27th August to 10th February.	From 27th August to 31st October.	4th Aug. 1865.
RESORT - -	From 27th August to 10th February.	From 27th August to 31st October.	4th Aug. 1865.
RUEL - -	From 1st September to 15th February.	From 1st September to 31st October.	11th March 1865.
SANDA - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
SCADDLE - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
SHIEL (Loch Shiel) -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
SLIGACHAN, BROADFORD, and PORTREE.	From 27th August to 10th February.	From 27th August to 31st October.	4th Aug. 1865.
SNIZORT, ORLEY, OZE, and DRYNOCH.	From 27th August to 10th February.	From 27th August to 31st October.	4th Aug. 1865.
SPEY - -	From 27th August to 10th February.	From 27th August to 15th October.	7th March 1865.

Names of Rivers.	Annual Close Time.	Extension of Time for Rod-fishing.	Date from which Byelaw to take effect.
STINCHAR - -	From 10th September to 24th February.	From 10th September to 31st October.	29th January 1864.
STORNOWAY - -	See CREED.	—	—
STRATHY - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
TAY - - -	From 21st August to 4th February.	From 21st August to 10th October.	28th July 1865.
THURSO - -	From 27th August to 10th February.	From 27th August to 15th October.	11th March 1865.
TORRIDON, BALGAY, and SHIELDAG.	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
UGIE - - -	From 10th September to 24th February.	From 10th September to 31st October.	7th March 1865.
ULLAPOOL (Loch Broom)	From 27th August to 10th February.	From 27th August to 31st October.	13th June 1865.
URE - - -	From 10th September to 24th February.	From 10th September to 31st October.	29th January 1864.
WICK - - -	From 27th August to 10th February.	From 27th August to 31st October.	11th March 1865.
YTHAN - - -	From 10th September to 24th February.	From 10th September to 31st October.	29th January 1864.

SCHEDULE (D.)

BYELAW.

25th and 26th Vict. Cap. 97.,
 26th and 27th Vict. Cap. 50., and
 27th and 28th Vict. Cap. 118.

“ Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland.”

District of the River ADD.

We, the Commissioners appointed under the said Acts, and empowered thereby “ to make General Regulations with respect to the due Observance of the Weekly Close Time,” do hereby make the following Regulations with respect to the due Observance of the Weekly Close Time in the said District; namely,

1. That in each and every Stake Weir or Stake Net a clear Opening of at least Four Feet in Width from Top to Bottom shall be made and kept free from Obstruction in each and every Pouch, Trap, or Chamber of same.
2. That the Pouches, Traps, or Chambers of each and every Fly Net shall be either raised and tied up to the upper Ropes of same, or lowered and tied to the lower Ropes, so as effectually to prevent the Capture or Obstruction of Salmon.

3. That the Netting of the Leader of each and every Bag Net shall be entirely removed, and taken out of the Water.

WM. J. FFENNELL,
FRED. EDEN,
JAMES LESLIE, } Commissioners.

Fisheries Department, Home Office,
11th Day of January 1864.

Approved,
Whitehall, 19th April 1864.
G. GREY.

(This Byelaw to take effect from 20th Day of May 1864.)

The same Byelaw shall apply to the Rivers and take effect from the Dates under mentioned respectively.

Names of Rivers.	Date from which Byelaw to take effect.	Names of Rivers.	Date from which Byelaw to take effect.
ALINE - - -	11th March 1865.	CLYDE and LEVEN - - -	7th March 1865.
ALNESS - - -	14th March 1865.	CONON - - -	7th March 1865.
ANNAN - - -	13th June 1865.	CREE - - -	11th March 1865.
APPLECROSS - - -	11th March 1865.	CREED or STORNOWAY and LAXAY.	4th August 1865.
ARNISDALE (in Loch Houra) -	11th March 1865.	CRERAN - - -	11th March 1865.
AWE - - -	20th May 1864.	CROWE and SHIEL (Loch Duich).	13th June 1865.
ATLORT (Kinloch) - - -	11th March 1865.	DEE (Aberdeenshire) -	7th March 1865.
AYR - - -	13th June 1865.	DEE (Kirkeudbright) -	29th April 1864.
BAA and GLENCOILLEADAR -	4th August 1865.	DEVERON - - -	7th March 1865.
BADACHRO and KERRY (in Gairloch).	13th June 1865.	DON - - -	29th April 1864.
BALGAT and SHIELDAG -	11th March 1865.	DOON - - -	14th March 1865.
BEAULY - - -	7th March 1865.	DRUMMACHLOY or GLENMORE (Island of Bute).	5th May 1868.
BERRIEDALE - - -	29th April 1864.	DRYNOCHE (in Loch Harport) -	4th August 1865.
BERVIE - - -	29th April 1864.	DUNBEATH - - -	11th March 1865.
BLADENOCH - - -	11th March 1865.	ECKAIG - - -	20th May 1864.
BROOM - - -	13th June 1865.	ESK, NORTH - - -	14th March 1865.
BRORA - - -	11th March 1865.	ESK, SOUTH - - -	29th April 1864.
CARRADALE (in Cantyre) -	26th Jan. 1866.	EWE - - -	11th March 1865.
CARRON - - -	11th March 1865.	FINCATTLE, MEAVEG, BALLANACHIST, SOUTH LACASTILE, BORVE, and OBB (West Harris).	19th June 1868.
CLAYBURN, FINNIS-BAY, AVENAN-GEREN, STRATHGRAVAT, NORTH LACASTILE, SCALLADALE, and MAWRIG (East Harris).	19th June 1868.		

Names of Rivers.	Date from which Byelaw to take effect.	Names of Rivers.	Date from which Byelaw to take effect.
FINDHORN - - -	7th March 1865.	LAXFORD - - -	11th March 1865.
FLEET (Sutherlandshire) -	11th March 1865.	LEVEN - - -	11th March 1865.
FLEET (Kirkcudbright) -	29th April 1864.	LITTLE LOCH BROOM -	13th June 1865.
FORSS - - -	29th April 1864.	LOCHY - - -	4th August 1865.
FORTH - - -	14th March 1865.	LOCH DUICH - - -	13th June 1865.
FYNE, SHIRA, and ARAY (Loch Fyne).	11th March 1865.	LOCH LUING - - -	13th June 1865.
GIRVAN - - -	29th April 1864.	LOCH ROAG (Lewis), Rivers BLACKWATER, GRIMERSTA, and MORSGAIL.	4th August 1865.
GLENELG - - -	11th March 1865.	LOSSIE - - -	11th March 1865.
GOUE - - -	11th March 1865.	LUCE - - -	7th March 1865.
GREISS (Laxdale and Tong or Thunga).	4th August 1865.	LUSKA (Mull) and River, LOCH UISK to LOCH BUY.	4th August 1865.
GRUIDIE OF DIONARD -	11th March 1865.	MOIDART - - -	11th March 1865.
GRUINARD and LITTLE GRUINARD.	11th March 1865.	MORAR - - -	11th March 1865.
HALLADALE - - -	11th March 1865.	MULLANAGEREN, HORASARY, and LOCH-NA-CISTE (North Uist).	19th June 1868.
HELMSDALE - - -	11th March 1865.	NAIRN - - -	7th March 1865.
HOPE and POLLA, or STRATH- BEG.	11th March 1865.	NAVER and BORGIE -	11th March 1865.
INCHARD - - -	11th March 1865.	NELL, FEOCHAN, and EUCHAR (Loch Feochan).	11th March 1865.
INVER in Jura - - -	26th Jan. 1866.	NESS - - -	7th March 1865.
INVER - - -	11th March 1865.	NITH - - -	7th March 1865.
IORSA in Aitah - - -	26th Jan. 1866.	ORMSARY (Loch Killisport), LOCH HEAD RIVER, and STORNOWAY (Mull).	4th August 1865.
IRVINE and GARNOCK -	11th March 1865.	PENNYGOWN or GLENFORSA, and AROS.	4th August 1865.
KENNART - - -	11th March 1865.	RESORT - - -	4th August 1865.
KILCHOAN or INVERIE (Loch Nevis).	11th March 1865.	RUEL - - -	11th March 1865.
KINLOCH (Kyle of Tongue) -	11th March 1865.	SANDA - - -	11th March 1865.
KIRKAIG - - -	11th March 1865.	SCADDLE - - -	11th March 1865.
KISHORN - - -	11th March 1865.	SHIEL (Loch Shiel) -	11th March 1865.
KYLE OF SUTHERLAND -	7th March 1865.		
LAGGAN and SORN (in Islay) -	26th Jan. 1866.		

Names of Rivers.	Date from which Byelaw to take effect.	Names of Rivers.	Date from which Byelaw to take effect.
SLIGACHAN, BROADFORD, and PORTREE.	4th August 1865.	THURSO - - -	11th March 1865.
SNIZORT, ORLEY, OZE (Loch Bracadale), and DRYNOCH (Loch Harport).	4th August 1865.	TORRIDON, BALGAY, and SHIELDAG.	11th March 1865.
SPEY - - -	7th March 1865.	UGIE - - -	7th March 1865.
STINCHAR - - -	29th April 1864.	ULLAPOOL - - -	13th June 1865.
STRATHY - - -	11th March 1865.	URR - - -	29th April 1864.
TAY - - -	29th April 1864.	WICK - - -	11th March 1865.
		YTHAN - - -	29th April 1864.

SCHEDULE (E.)

BYELAW.

25th and 26th Vict. Cap. 97.

26th and 27th Vict. Cap. 50.

27th and 28th Vict. Cap. 118.

“Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland.”

District of the River ADD.

We, the Commissioners appointed under the said Acts, and empowered thereby “to make General Regulations with respect to the Meshes of Nets,” to be used for the Capture of Salmon, do hereby make the following Regulations with respect to the Meshes of Nets for the District of the River ADD :—

That no Net shall be used for the Capture of Salmon the Meshes whereof shall be under One Inch and Three Quarters in Extension from Knot to Knot, measured on each Side of the Square, or Seven Inches measured round each Mesh when wet; and the placing Two or more Nets behind or near to each other in such Manner as to practically diminish the Mesh of the Nets used, or the covering the Nets used with Canvas, or the using any other Artifice so as to evade the Provisions of the Regulations with respect to the Meshes of Nets, shall be deemed to be an Act in contravention of this Byelaw.

WM. J. FFENNELL, }
FRED. EDEN, } Commissioners.
JAMES LESLIE, }

Fisheries Department, Home Office,
11th Day of January 1864.

Approved,
G. GREY.
Whitehall, 19th April 1864.

(This Byelaw to take effect from the 20th Day of May 1864.)

The same Byelaw shall apply to the Rivers and take effect from the Dates under mentioned respectively.

Names of Rivers.	Date from which Byelaw to take effect.	Names of Rivers.	Date from which Byelaw to take effect.
ALINE - - -	11th March 1865.	DEE (Aberdeenshire) - -	7th March 1865.
ALNESS - - -	14th March 1865.	DEE (Kirkcudbright) - -	10th May 1864.
ANNAN - - -	13th June 1865.	DEVERON - - -	7th March 1865.
APFLEROSS - - -	11th March 1865.	DON - - -	10th May 1864.
ARMISDALE (in Loch Houra) -	11th March 1865.	DOON - - -	14th March 1865.
AWE - - -	20th May 1864.	DRUMMACHLOY or GLENMORE (Isle of Bute).	5th May 1868.
AYLORT (Kinloch) - -	11th March 1865.	DRYNOCH (in Loch Harport) -	4th August 1865.
AYR - - -	13th June 1865.	DUNBREATH - - -	11th March 1865.
BAA and GLENCOILLEADAR -	4th August 1865.	ECKAIG - - -	20th May 1864.
BADACHRO and KERRY (in Gairloch).	13th June 1865.	ESK, NORTH - - -	14th March 1865.
BALGAT and SHIELDAG -	11th March 1865.	ESK, SOUTH - - -	10th May 1864.
BRAULY - - -	7th March 1865.	EWE - - -	11th March 1865.
BERRIEDALE - - -	10th May 1864.	FINCASTLE, MEAVEG, BALLANACHIST, SOUTH LACASTLE, BORVE, and OBB (West Harris).	19th June 1868.
BERVIE - - -	10th May 1864.	FINDHORN - - -	7th March 1865.
BLADENOCH - - -	11th March 1865.	FLEET (Sutherlandshire) -	11th March 1865.
BROOM - - -	13th June 1865.	FLEET (Kirkcudbright) -	10th May 1864.
BRORA - - -	11th March 1865.	FORSS - - -	10th May 1864.
CARRADALE (in Cantyre) -	26th Jan. 1866.	FORTH - - -	14th March 1865.
CARRON - - -	11th March 1865.	FYNE, SHIRA, and ARAY (Loch Fyne).	11th March 1865.
CLAYBURN, FINNIS-BAY, AVENAN-GEREN, STRATHGRAVAT, NORTH LACASTLE, SCALLADALE, and MAWRIG (East Harris).	19th June 1868.	GIRVAN - - -	10th May 1864.
CLYDE and LEVEN - -	7th March 1865.	GLENELG - - -	11th March 1865.
COMON - - -	7th March 1865.	GOUR - - -	11th March 1865.
CREE - - -	11th March 1865.	GREISS (Laxdale, and Tong or Thunga).	4th August 1865.
CREED or STORNOWAY and LAXAY.	4th August 1865.	GRUIDIE or DIONARD -	11th March 1865.
CREHAN - - -	11th March 1865.	GRUINARD and LITTLE GRUINARD.	11th March 1865.
CROWE and SHIEL (Loch Duich).	13th June 1865.	HALLADALE - - -	11th March 1865.

Names of Rivers.	Date from which Byelaw to take effect.	Names of Rivers.	Date from which Byelaw to take effect.
HELMSDALE - - -	11th March 1865.	MULLANGEREN, HORASARY, and LOCH-NA-CISTE (North Uist).	19th June 1868.
HOPE and POLLA, or STRATH- BEG.	11th March 1865.	NAIRN - - -	7th March 1865.
INCHARD - - -	11th March 1865.	NAVER and BORGIE - -	11th March 1865.
INNER in Jura - -	26th Jan. 1866.	NELL, FECHAN, and EUCHAR (Loch Feochan).	11th March 1865.
INVER - - -	11th March 1865.	NESS - - -	7th March 1865.
IORSA in Arran - -	26th Jan. 1866.	NITH - - -	7th March 1865.
IRVINE and GARNOCK -	11th March 1865.	ORMSARY (Loch Killisport), LOCH HEAD RIVER and STORNOWAY (Mull).	4th August 1865.
KENNART - - -	11th March 1865.	PENNYGOWN or GLENFORSA, and AROS.	4th August 1865.
KILCHOAN or INVERIE (Loch Nevis).	11th March 1865.	RESORT - - -	4th August 1865.
KINLOCH (Kyle of Tongue) -	11th March 1865.	RUEL - - -	11th March 1865.
KIRKAIG - - -	11th March 1865.	SANDA - - -	11th March 1865.
KISHORN - - -	11th March 1865.	SCADDLE - - -	11th March 1865.
KYLE OF SUTHERLAND -	7th March 1865.	SHIEL (Loch Shiel) - -	11th March 1865.
LAGGAN and SORN (in Islay) -	26th Jan. 1866.	SLIGACHAN, BROADFORD, and PORTREE.	4th August 1865.
LAXFORD - - -	11th March 1865.	SNIZORT, ORLEY OZE (Loch Bracadale), and DRYNOCH (Loch Harport).	4th August 1865.
LEVEN - - -	11th March 1865.	SPEY - - -	7th March 1865.
LITTLE LOCH BROOM -	13th June 1865.	STINCHAR - - -	10th May 1864.
LOCHY - - -	4th August 1865.	STRATHY - - -	11th March 1865.
LOCH DUICH - - -	13th June 1865.	TAY - - -	10th May 1864.
LOCH LUING - - -	13th June 1865.	THURSO - - -	11th March 1865.
LOCH ROAG (Lewis), Rivers BLACKWATER, GRIMERSTA, and MORSGAIL.	4th August 1865.	TORRIDON, BALGAY, and SHIELDAG.	11th March 1865.
LOSSIE - - -	11th March 1865.	UGIE - - -	7th March 1865.
LUCE - - -	7th March 1865.	ULLAPOOL - - -	13th June 1865.
LUSSA (Mull) and River, LOCH UIISK to LOCH BUY.	4th August 1865.	URR - - -	10th May 1864.
MOIDART - - -	11th March 1865.	WICK - - -	11th March 1865.
MORAR - - -	11th March 1865.	YTHEAN - - -	10th May 1864.

SCHEDULE (F.)

BYELAW.

25th and 26th Vict. Cap. 97.
 26th and 27th Vict. Cap. 50.
 27th and 28th Vict. Cap. 118.

"Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland."

We, the Commissioners appointed under the said Acts, and empowered thereby "to make General Regulations with respect to the Construction and Use of Cruives," do hereby make the following General Regulations with respect to the Construction and Use of Cruives:—

I. The upper Surface of the Sill of each Cruive shall be not higher than Twelve Inches above the natural Bed of the River where the Cruive is placed, and in the event of the Sill being placed any higher than the natural Bed of the River there must be a paved Floor or Apron to it down Stream at least as wide as the Cruive, having its lower End not higher than the natural Level of the River, and having a Slope not steeper than One in Six; and otherwise the Cruives shall be so constructed as to afford a ready and easy Passage for the Fish during the Annual and Weekly Close Times.

II. No Cruive shall be less at any Part of it than Four Feet broad in the Clear; provided that where an upright Post is used to support the Cruive, thereby dividing the Width into Two Parts, the aggregate Width exclusive of such Post shall not be less than Four Feet.

III. The Hecks or Rails and Incales shall be capable of being removed from the Cruive, and shall be removed during the Annual Close Time. During the Weekly Close Time the Hecks or Rails shall be removed, and the Incales shall either be removed or kept open for the Space of Four Feet.

IV. The Bars of the upper Hecks or Rails shall be placed perpendicularly, not less than Three Inches apart, and they shall not be more than Two Inches thick, and not more than Four Inches broad in the up and down Way of the Stream, and they shall have their Edges rounded off, so that only $1\frac{1}{2}$ Inches in Breadth of the whole Thickness of Two Inches shall remain in the Side of the Hecks or Rails in the up and down Way of the Stream.

V. The Bars of the Incales shall not be of larger Dimensions than those of the Hecks or Rails, and they shall not be less than Two Inches apart.

VI. Each Side or Half of the Incales shall not be less than Three Feet long for a Cruive Four Feet wide in the Clear, and shall be longer in the same Proportion to any additional Width of Cruive. They shall be constructed so that the Up Stream Ends cannot and shall not at any Time approach nearer to each other than Five Inches.

VII. No Net or other Contrivance whatever shall be placed or used on or at any Cruive, or Structure connected with a Cruive, for the Purpose of catching Fish, or for preventing their Entry into or passing through the same; nor shall any Device be employed to scare, deter, or obstruct Fish from entering into or passing through any such Cruive. But, notwithstanding anything herein contained, it shall be lawful to place a Canvas Cloth or a Wooden Blind or Blinds over the Heck or Hecks of a Cruive whilst the Fish are being taken out of it, provided such Cloth, Blind or Blinds, be not applied longer than Fifteen Minutes at a Time, or oftener than Six Times in the Course of Twenty-four Hours, and that when there are more Cruives than One at the same Dam only One Cruive shall be covered by the Cloth or Blinds at the same Time.

VIII. No Cruive shall be so constructed, inclosed, roofed, or built over, or in any other Manner hidden or fenced in, as to prevent Persons duly authorized from inspecting the same at all Times, and ascertaining whether the Law is being duly complied with.

IX. No Cruive shall be so altered as to create a greater Obstruction to the free Passage of Fish than at present exists.

WM. J. PFENNELL,
 FRED. EDEN,
 JAMES LESLIE, } Commissioners.

Fisheries Department, Home Office,
 18th Day of April 1865.

Approved,
 G. GREY.

Whitehall, 19th July 1865.

(This Byelaw to take effect from the 28th July 1865.)

SCHEDULE (G.)

BYELAW.

25th and 26th Vict. Cap. 97.

26th and 27th Vict. Cap. 50.

27th and 28th Vict. Cap. 118.

“Acts to regulate and amend the Law respecting the Salmon Fisheries of Scotland.”

We, the Commissioners appointed under the said Acts, and empowered thereby “to make General Regulations with respect to the Construction and Alteration of Mill Dams or Lades, or Water Wheels, so as to afford a reasonable Means for the Passage of Salmon,” do hereby make the following General Regulations with respect to the Construction and Use of Mill Dams or Lades, or Water Wheels:—

1. Every new Dam, and every Portion of any Dam that may require to be renewed or repaired after this Time, shall be made and maintained Water-tight or as nearly so as possible, so that no Water that can reasonably be prevented shall run through the Dam; but all Water not taken into the Lade for the Use of the Mills or other lawful Purpose shall be made to flow over the Dam as fully as may be practicable.

2. There shall be a Sluice or Sluices at the Intake of every Mill Lade. No Water shall, with the Exception herein-after stated, be allowed to enter any Mill Lade beyond the Quantity required for the Use of the Water Wheel or Wheels of any One Fall on that Lade, or for other lawful Purpose in the Lade; that is to say, no Water shall be allowed to escape from any Lade into the River by means of any Bye-wash or Overflow, but all Water not required for the Uses aforesaid shall be made to flow over the Dam into the River as far as may be practicable.

At the Option of the Millers or Manufacturers, this Provision may be carried out either by shutting the Sluice or Sluices, at the Intake of the Lade, or by raising the Banks of the Lade to a Height that will prevent an Overflow of Water from the Lade when the Sluice at the Wheel and the Bye-wash Sluice herein-after mentioned are both kept shut. Provided always, that the said Byelaw shall not apply to Millers or Manufacturers when taking Measures necessary for the Protection of their Premises during heavy Floods, or when Rivers are cumbered with Ice, or while necessary Repairs are being executed on any Emergency; provided that nothing be omitted or done unnecessarily to defeat the Objects of this Byelaw. Furthermore, in all Cases when the Intake Sluice is more than 300 Yards from the Water Wheel, it shall not be imperative to shut the Intake Sluice, or to keep the Bye-wash Sluice shut, during ordinary Meal Hours, or during any Stoppage of the Wheel not exceeding an Hour at a Time.

3. At the Intake of every Lade there shall be placed and constantly kept a Heck or Grating for each Opening, or one embracing the whole Openings, the Bars to be not more than Three Inches apart, if horizontal, and not more than Two Inches if vertical.

4. A similar Heck or Grating shall be placed and constantly kept across the Lade or Troughs immediately above the Entrance to each Mill Wheel.

5. A similar Heck or Grating shall be placed and constantly kept across the lower End of each Tail Lade at its Entrance into the Main River.

NOTE.—To prevent any Obstruction to the Flow of the Water by the Hecks or Gratings in the Lades, it is recommended that the Lade should be increased in Width where the Hecks are placed, and that the Heck, instead of being in a straight Line across, should be curved or pointed up or down Stream, and thereby increased in Length, so that the aggregate of the Openings between the Bars shall exceed the Sectional Area (or Waterway) of the Lade, and thus compensate for the Space occupied by the Bars.

6. There shall be a Bye-wash Sluice placed as near as practicable above each Water Wheel in the Embankment of the Lade of not less than Three Feet in Width, with its Sill as low as the Bottom of the Lade, and the said Sluice shall be raised to a Height sufficient to allow the Smelts to descend for at least Five but not exceeding Eight Hours each Week from the 15th March to the 1st July, not more than Six Days intervening between each Time of opening.

There shall be a Salmon pass or Ladder on the Down Stream Face of every Dam, Weir, or Cauld, capable of affording a free Passage for the ascending Fish at all Times when there is Water enough in the River to supply the Ladder. The Width shall not be less than Four Feet in the Clear in Rivers of less than 100 Feet in Breadth at the Site of the Dam, nor less than Five Feet in Breadth in Rivers of less than 200 Feet and more than 100 Feet in Breadth as aforesaid, nor less than Six Feet in Breadth in Rivers of more than 200 Feet in Breadth as aforesaid; the Upper Sill shall be not less than Six Inches below the lowest Part of the Crest of the Dam for the whole Width of

the Ladder; the Inclination shall in no Case be steeper than Five horizontal to One perpendicular, but, wherever practicable, shall be Seven or Eight horizontal to One perpendicular, and in all Cases shall be provided with Breaks or Stops placed at suitable Intervals, so as to lessen the Velocity of the Current sufficiently to allow the Fish to ascend without Difficulty.

The Foot of the Ladder shall be placed where there is most running Water, and with the best Lead for the Fish to approach it; and if the Ladder should project beyond the Toe of the Dam, there shall be an Apron of Stone formed to the Dam, extending as far down the River as the Entrance to the Pass or Ladder, and extending throughout the whole Length of the Dam at either Side of the Ladder, and on a high enough Level to prevent there being any Pool in the River, or sufficient Depth of Water farther up than the Entrance to the said Pass or Ladder, by which the Fish might be induced to remain there obstructed in their Ascent, and not be led to the Ladder.

NOTE.—The Commissioners would recommend the following Details to be adopted in the Construction of Salmon Ladders, in addition to those given in the foregoing Byelaw, but do not insist on them, provided some other perfectly efficient Arrangement be substituted,—viz., the Side Walls to be not less than Twenty-two Inches in Height: the Breaks to be not less than Eighteen Inches in Height, with Openings of Ten Inches in Breadth at the alternate Ends of each Break, and Five Feet apart in Cases where the Gradient of the Ladder is One in Five and of a greater Distance, but the same Proportions being maintained where the Gradient is easier than One in Five.

7. No Dam shall be so altered as to create a greater Obstruction to the free Passage of Fish than at present exists.

WM. J. FFENNELL,
FRED. EDEN,
JAMES LESLIE, } Commissioners.

Fisheries Department, Home Office,
29th Day of April 1865.

Approved,
G. GREY.

Whitehall, 19th July 1865.

(This Byelaw to take effect from the 28th July 1865.)

CAP. CXXIV.

Inland Revenue.

ABSTRACT OF THE ENACTMENTS.

1. *Penalties under Inland Revenue Acts to belong to Her Majesty.*
2. *Expenses of Prosecutions to be paid out of Supplies provided by Parliament.*
3. *Condition in Distillers Bond, specifying Time for using Duty-free Sugar, &c., may be dispensed with or altered. In such Cases Duty to be paid on Deficiency in Quantity of Sugar, &c. in Stock.*
4. *Methylated Spirit may be sold by the Maker in Vessels of Five Gallons Content.*
5. *Retailer of Methylated Spirit may receive such Spirit from another Retailer in a Quantity not exceeding a Gallon at One Time.*
6. *Defining the Meaning of the Word "Spirits" in Sects. 17 & 18 of 1 & 2 W. 4. c. 55.*
7. *Mortgage Debts on Leaseholds may be deducted from the Value thereof before Probate, &c.*
8. *Affidavit of Value for Probate, &c. in England or Ireland to be in the Form in the Schedule.*
9. *Arrears of Legacy Duty or Succession Duty to be paid with Interest.*
10. *Reduction of Duty on Foreign and Colonial Bonds, &c. for Money not exceeding 25l.*
11. *The Exemption from Stamp Duty in favour of Building Societies restricted in the Case of Mortgages.*
12. *As to Stamp Duty on Transfers of Debenture Stock.*

Schedule.

An Act to amend the Laws relating to the Inland Revenue.

(31st July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. All Fines, Penalties, and Forfeitures incurred under any Act relating to the Inland Revenue, and recovered after the First Day of October One thousand eight hundred and sixty-eight, shall go and be applied to the Use of Her Majesty, Her Heirs or Successors, anything in any Act to the contrary notwithstanding ; and all such Fines and Penalties, and all such Forfeitures or the Proceeds thereof, and all Costs, Charges, and Expenses payable in respect thereof or in relation thereto respectively, shall, without any Deduction therefrom, be paid to the Commissioners of Inland Revenue, or to such Officer or Person as the said Commissioners shall appoint to receive the same.

2. All Costs, Charges, and Expenses attending Proceedings for Recovery of Penalties and Forfeitures incurred under any Act relating to the Inland Revenue, and all Sums of Money allowed as Rewards, shall be deemed to be Charges of Collection and Management, and shall be paid by the Commissioners of Inland Revenue out of such Aids or Supplies as may be from Time to Time provided and appropriated by Parliament for the Purpose.

3. In any Case in which a Bond is to be given by a Distiller under the Provisions of the Fifty-fourth Section of the Act of the Twenty-third and Twenty-fourth Years of Her Majesty, Chapter One hundred and fourteen, it shall be lawful for the Commissioners of Inland Revenue, or the Commissioners of Customs, in their Discretion, to dispense with the Stipulation required to be inserted in the Condition of the Bond specifying the Time within which Sugar and Molasses shall be used and consumed in the distilling of Spirits, or to cause to be inserted in the Condition of the Bond, in lieu of the required Stipulation, such Stipulation allowing further Time for the Use and Consumption of Sugar and Molasses as aforesaid as to the said Commissioners respectively shall seem fit ; and in the event of the said Commissioners dispensing with the required Stipulation, or causing to be inserted any other Stipulation as aforesaid, the Distiller entering into the Bond shall be chargeable with and shall pay the full Duties of Customs or Excise, as the Case may be, upon any Deficiency in the Quantity of Sugar, Molasses, or Treacle that may be

found at any Time in his Storehouse or Room, as in Section Sixty of the said Act is mentioned, in addition to the Penalty of Twenty Pounds imposed by such Section ; and for the more convenient Recovery of the said Duties they shall be deemed to be Duties of Excise, and recoverable as any other Excise Duties.

4. Whereas it is provided by the Eighth Section of the Act passed in the Eighteenth and Nineteenth Years of Her Majesty's Reign, Chapter Thirty-eight, that no Methylated Spirit shall be sold, sent out, or delivered under the Provisions of the said Act otherwise than in Vessels containing not less than Ten Gallons ; and it is expedient to allow such Spirit to be sent out in less Quantity : Be it enacted, That the Penalty imposed by the said Section shall not be incurred by any Person who shall sell, send out, or deliver any Methylated Spirit in Vessels containing not less than Five Gallons of such Spirit, and shall in so doing have complied with all the Provisions of the said Act which are consistent with this Act, and with the Orders and Regulations of the Commissioners of Inland Revenue in that Behalf.

5. Whereas it is provided by the Third Section of the Act passed in the Twenty-fourth and Twenty-fifth Years of Her Majesty's Reign, Chapter Ninety-one, that no Person licensed under that Act for the Sale of Methylated Spirit shall receive into his Stock, Custody, or Possession any such Spirit otherwise than from a Distiller or Rectifier of Spirits, or licensed Person specially authorized to make Methylated Spirit under the Provisions of the said Act of the Eighteenth and Nineteenth Years of Her Majesty, and it is expedient to allow the Receipt of such Spirit as herein-after mentioned : Be it enacted, That the Penalty imposed by the said Section shall not be incurred by any Person licensed to sell Methylated Spirit as aforesaid by reason of his receiving from any other Person so licensed any Methylated Spirit in a Quantity not exceeding One Gallon at any One Time.

6. Whereas under the Seventeenth and Eighteenth Sections of the Act of the First and Second Years of the Reign of King William the Fourth, Chapter Fifty-five, Power is given to any Officer of Excise to seize in Ireland, as therein provided, any Spirits, Low Wines, Wort, Wash, and other Materials preparing or prepared for Distillation, and Doubts have arisen whether, under the Provisions in the said Sections contained, Spirits completely distilled can be lawfully seized : Be it declared, That the Word Spirits, wherever such Word is used in the said Sections respectively, shall be taken to include all Spirits whatsoever, whether completely distilled or otherwise.

7. From and after the First Day of September One thousand eight hundred and sixty-eight, where any Leasehold Estates form Part of the Estate and Effects of a deceased Person for or in respect of which Probate or Letters of Administration is or are to be granted in England or Ireland, and such Leasehold Estates are the sole Security by way of Mortgage for any Debts due and owing from the Deceased, the Amount of such Mortgage Debts may be deducted from the Value of the said Leasehold Estates, and the Stamp Duty shall be chargeable on the Value of the Estate and Effects for or in respect of which the Probate or Letters of Administration shall be granted, after deducting therefrom the Amount of such Mortgage Debts.

8. In any Case in which any such Deduction as is authorized by the last preceding Section is made, the Affidavit to be required and received from the Person applying for Probate of the Will or Letters of Administration of an Estate and Effects of a deceased Person under the Provisions of the Thirty-eighth Section of the Act of the Fifty-fifth Year of King George the Third, Chapter One hundred and eighty-four, or under the Provisions of the One hundred and seventeenth Section of the Act of the Fifty-sixth Year of King George the Third, Chapter Fifty-six, shall be in the Form contained in the Schedule to this Act; and every such Affidavit, with the Account thereto annexed, if any, shall be transmitted in original to the Commissioners of Inland Revenue in like Manner as is directed by the Ninety-third Section of the Act of the Twentieth and Twenty-first Years of Her Majesty, Chapter Seventy-seven, and by the One hundredth Section of the Act of the Twentieth and Twenty-first Years of Her Majesty, Chapter Seventy-nine, with reference to the original Affidavit in such Sections respectively mentioned.

9. Whereas it is expedient to make express Provision as to the Payment of Interest on Arrears of Legacy Duty and Succession Duty: Be it enacted, That in any Case in which Duty payable in respect of any Legacy or Residue under the Legacy Duty Acts now in force, or in

respect of any Succession under the Succession Duty Act, 1853, is or shall be in arrear, the Person by whom the Arrears of Duty may be payable shall be liable to pay Interest thereon at the Rate of Four Pounds per Centum per Annum; and such Interest shall be recoverable by the Commissioners of Inland Revenue in the same Manner as the Arrears of Duty, and as Part thereof: Provided always, that the Acceptance or Recovery by the said Commissioners of Arrears of Duty, with Interest thereon as aforesaid, shall be an absolute Waiver of the Penalties (if any) which may have been incurred under the Legacy Duty Acts or the Succession Duty Act.

10. In lieu of the Stamp Duty payable by virtue of the Act of the Twenty-fifth Year of Her Majesty, Chapter Twenty-two, upon or in respect of any Foreign or Colonial Bond, Debenture, or other Security for Money not exceeding Twenty-five Pounds, there shall be payable from and after the passing of this Act the Stamp Duty of Eightpence.

11. The Exemption from Stamp Duty conferred by the Act of the Sixth and Seventh Years of King William the Fourth, Chapter Thirty-two, for the Regulation of Benefit Building Societies, shall not extend to any Mortgage to be made after the passing of this Act, except a Mortgage to be made by a Member of a Benefit Building Society for securing the Repayment to the Society of Money, and not exceeding Five hundred Pounds: Provided always, that nothing herein contained shall render any Receipt given under the Provisions of the Fifth Section of the said Act liable to any Stamp Duty.

12. In lieu of the Duties now payable under the Provisions of any Act or Acts of Parliament upon Transfers of Debenture Stock of any Company, there shall be charged and paid upon every such Transfer a Stamp Duty of Two Shillings and Sixpence for every full Sum of One hundred Pounds, and also for any fractional Part of One hundred Pounds of the nominal Amount of the Stock transferred.

The SCHEDULE.

FORM OF AFFIDAVIT required and to be received from Persons applying for Probates of Wills and Letters of Administration, in Cases in which Mortgage Debts may be deducted from the Value of Leaseholds.

No. 1.—For Executors.

A.E. of _____, an Executor [or A.E. of _____ and B.E. of _____,

Executors, as the Case may be] named in the last Will and Testament [or in a Codicil annexed to the last Will and Testament] of C.T. [the Testator], late of _____, who died on the _____ Day of _____ 18____, maketh Oath and saith [or make Oath and say, or, in the Case of Affirmations, do or doth solemnly affirm and declare], that he [she or they] hath [or have] made diligent Search and

due Inquiry after and in respect of the Personal Estate and Effects of the said Deceased, in order to ascertain the full Amount and Value thereof, and that to the best of his [her or their] Knowledge, Information, and Belief the whole of the Goods and Chattels, Rights and Credits, of which the said Deceased died possessed (including any Personal Estate and Effects which the Deceased had disposed of under his Will aforesaid under any Authority enabling him to dispose of the same as he should think fit), *consisted of the Property, Monies, Securities, Matters, and Things specified in the Account annexed to this Affidavit,* and are under the Value of _____ Pounds, exclusive of what the Deceased may have been possessed of or entitled to as a Trustee for any other Person or Persons, and not beneficially, and without deducting anything on account of the Debts due and owing from the Deceased, except in respect of Leaseholds in Mortgage, and further that the Particulars of the Debts so deducted are as follows (that is to say), [here state briefly the Date and Particulars of the Mortgage Security in respect of every Debt

deducted,] and that the said Leaseholds are the sole Security by way of Mortgage for the said Debts.

Sworn on the _____ Day }
of _____ 18 _____ }
[To be signed by the A.E.
Deponents.] B.E.

Before me,

[NOTE.—The Words printed in *Italics* are to be used in Ireland only, and the Account is to be in the Form contained in Schedule 3. to 56 Geo. 3 c. 56.]

No. 2.—For Administrators.

B.A. _____ of _____ [C.A.
of _____], in order to the due Admini-
stration of the Personal Estate and Effects
of D.I. [the Intestate], late of _____, who
died on the _____ Day of _____
intestate, maketh Oath and saith, &c. [as in the
preceding Form, according or so far as the same
may be applicable to Administration with or with-
out the Will annexed].

CAR. CXXV.

The Parliamentary Elections Act, 1868.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short Title of Act.*
2. *Definition and Jurisdiction of Court.*
3. *Interpretation of Terms.*
4. *Provision as to Speaker.*

Presentation and Service of Petition.

5. *To whom and by whom Election Petition may be presented.*
6. *Regulations as to Presentation of Election Petition.*
7. *Copy of Petition after Presentation to be sent to Returning Officer.*
8. *Recognizance may be objected to.*
9. *Determination of Objection to Recognizance.*
10. *List of Petitions at issue to be made.*

Trial of a Petition.

11. *Mode of Trial of Election Petitions.*
12. *Applications to the Court respecting Trials.*
13. *House of Commons to carry out Report.*
14. *House of Commons may make Order on special Report.*
15. *Report of the Judge as to corrupt Practices.*
16. *Report of Judge equivalent to Report of Election Committee.*
17. *Evidence of corrupt Practices how received.*
18. *Acceptance of Office not to stop Petition.*
19. *Prorogation of Parliament.*

Proceedings.

- 10. *Form of Petition.*
- 11. *Service of Petition.*
- 12. *Joint Respondents to Petition.*
- 13. *Provision in Cases where more than One Petition is presented.*
- 14. *Shorthand Writer to attend Trial of Election Petition.*

Jurisdiction and Rules of Court.

- 15. *Rules to be made by Court.*
- 16. *Practice of House of Commons to be observed.*
- 17. *Performance of Duties by prescribed Officer.*

Reception, Expenses, and Jurisdiction of Judge.

- 18. *Reception of Judge.*
- 19. *Power of Judge.*
- 20. *Attendance on Judge.*

Witnesses.

- 21. *Summons of Witnesses.*
- 22. *Judge may summon and examine Witnesses.*
- 23. *Indemnity to Witnesses.*
- 24. *Expenses of Witnesses.*

Withdrawal and Abatement of Election Petitions.

- 25. *Withdrawal of Petition and Substitution of new Petitioners.*
- 26. *Court to report to the Speaker Circumstances of Withdrawal.*
- 27. *Abatement of Petition.*
- 28. *Admission in certain Cases of Voters to be Respondents.*
- 29. *Respondent not opposing not to appear as Party or to sit.*
- 30. *Provisions for Cases of double Return where the Member complained of declines to defend his Return.*

Costs.

- 31. *General Costs of Petition.*
- 32. *Recognizance, when to be estreated, &c.*

Punishment of corrupt Practices.

- 33. *Punishment of Candidate guilty of Bribery.*
- 34. *Penalty for employing corrupt Agent.*
- 35. *Disqualification of Persons found guilty of Bribery.*
- 36. *Amendment of the Law relating to the Disqualification of Candidates for corrupt Practices.*
- 37. *Removal of Disqualification on Proof that Disqualification was procured by Perjury.*

Miscellaneous.

- 38. *Returning Officer may be sued for neglecting to return any Person duly elected.*
- 39. *Calculation of Time.*
- 40. *Controverted Elections to be tried under Act.*
- 41. *Returning Officer if complained of to be Respondent.*
- 42. *Petition complaining of no Return.*
- 43. *Recrimination when Petition for undue Return.*
- 44. *Repeal of Acts.*
- 45. *Provision as to Payment of additional Judges and Remuneration of Judges for Duties to be performed under this Act.*
- 46. *Commissions of Inquiry into corrupt Practices.*
- 47. *Rules as to Agents practising in Cases of Election Petitions.*
- 48. *Application of Act to Scotland.*
- 49. *Duration of Act.*

Schedule.

An Act for amending the Laws relating to Election Petitions, and providing more effectually for the Prevention of corrupt Practices at Parliamentary Elections. (31st July 1868.)

WHEREAS it is expedient to amend the Laws relating to Election Petitions, and to provide more effectually for the Prevention of corrupt Practices at Parliamentary Elections:

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Preliminary.

1. This Act may be cited for all Purposes as "The Parliamentary Elections Act, 1868."

2. The Expression "the Court" shall, for the Purposes of this Act, in its Application to England mean the Court of Common Pleas at Westminster, and in its Application to Ireland the Court of Common Pleas at Dublin, and such Court shall, subject to the Provisions of this Act, have the same Powers, Jurisdiction, and Authority with reference to an Election Petition and the Proceedings thereon as it would have if such Petition were an ordinary Cause within their Jurisdiction.

3. The following Terms shall in this Act have the Meanings herein-after assigned to them, unless there is something in the Context repugnant to such Construction; (that is to say,)

"Metropolitan District" shall mean the City of London and the Liberties thereof, and any Parish or Place subject to the Jurisdiction of the Metropolitan Board of Works:

"Election" shall mean an Election of a Member or Members to serve in Parliament:

"County" shall not include a County of a City or County of a Town, but shall mean any County, Riding, Parts, or Division of a County returning a Member or Members to serve in Parliament:

"Borough" shall mean any Borough, University, City, Place, or Combination of Places, not being a County as herein-before defined, returning a Member or Members to serve in Parliament:

"Candidate" shall mean any Person elected to serve in Parliament at an Election, and any Person who has been nominated as or declared himself a Candidate at an Election:

"Corrupt Practices" or "Corrupt Practice" shall mean Bribery, Treating, and undue Influence, or any of such Offences, as de-

fined by Act of Parliament, or recognized by the Common Law of Parliament:

"Rules of Court" shall mean Rules to be made as herein-after mentioned:

"Prescribed" shall mean "prescribed by the Rules of Court."

4. For the Purposes of this Act, "Speaker" shall be deemed to include Deputy Speaker; and when the Office of Speaker is vacant, the Clerk of the House of Commons, or any other Officer for the Time being performing the Duties of the Clerk of the House of Commons, shall be deemed to be substituted for and to be included in the Expression "the Speaker."

Presentation and Service of Petition.

5. From and after the next Dissolution of Parliament, a Petition complaining of an undue Return or undue Election of a Member to serve in Parliament for a County or Borough may be presented to the Court of Common Pleas at Westminster, if such County or Borough is situate in England, or to the Court of Common Pleas at Dublin, if such County or Borough is situate in Ireland, by any One or more of the following Persons:

1. Some Person who voted or who had a Right to vote at the Election to which the Petition relates; or,

2. Some Person claiming to have had a Right to be returned or elected at such Election; or,

3. Some Person alleging himself to have been a Candidate at such Election:

And such Petition is herein-after referred to as an Election Petition.

6. The following Enactments shall be made with respect to the Presentation of an Election Petition under this Act:

1. The Petition shall be signed by the Petitioner, or all the Petitioners if more than One:

2. The Petition shall be presented within Twenty-one Days after the Return has been made to the Clerk of the Crown in Chancery in England, or to the Clerk of the Crown and Hanaper in Ireland, as the Case may be, of the Member to whose Election the Petition relates, unless it question the Return or Election upon an Allegation of corrupt Practices, and specifically alleges a Payment of Money or other Reward to have been made by any Member, or on his Account, or with his Privy, since the Time of such Return, in pursuance or in furtherance of such corrupt Practices, in which Case the Petition may be presented at any Time

within Twenty-eight Days after the Date of such Payment :

3. Presentation of a Petition shall be made by delivering it to the prescribed Officer or otherwise dealing with the same in manner prescribed :

4. At the Time of the Presentation of the Petition, or within Three Days afterwards, Security for the Payment of all Costs, Charges, and Expenses that may become payable by the Petitioner—

(a.) to any Person summoned as a Witness on his Behalf, or,

(b.) to the Member whose Election or Return is complained of (who is herein-after referred to as the Respondent),

shall be given on behalf of the Petitioner :

5. The Security shall be to an Amount of One thousand Pounds; it shall be given either by Recognizance to be entered into by any Number of Sureties not exceeding Four, or by a Deposit of Money in manner prescribed, or partly in one Way and partly in the other.

7. On Presentation of the Petition, the prescribed Officer shall send a Copy thereof to the Returning Officer of the County or Borough to which the Petition relates, who shall forthwith publish the same in the County or Borough, as the Case may be.

8. Notice of the Presentation of a Petition under this Act, and of the Nature of the proposed Security, accompanied with a Copy of the Petition, shall, within the prescribed Time, not exceeding Five Days after the Presentation of the Petition, be served by the Petitioner on the Respondent; and it shall be lawful for the Respondent, where the Security is given wholly or partially by Recognizance, within a further prescribed Time, not exceeding Five Days from the Date of the Service on him of the Notice, to object in Writing to such Recognizance, on the Ground that the Sureties, or any of them, are insufficient, or that a Surety is dead, or that he cannot be found or ascertained from the Want of a sufficient Description in the Recognizance, or that a Person named in the Recognizance has not duly acknowledged the same.

9. Any Objection made to the Security given shall be heard and decided on in the prescribed Manner. If an Objection to the Security is allowed it shall be lawful for the Petitioner, within a further prescribed Time, not exceeding Five Days, to remove such Objection, by a Deposit in the prescribed Manner of such Sum of Money as may be deemed by the Court or

Officer having Cognizance of the Matter to make the Security sufficient.

If on Objection made the Security is decided to be insufficient, and such Objection is not removed in manner herein-before mentioned, no further Proceedings shall be had on the Petition; otherwise, on the Expiration of the Time limited for making Objections, or, after Objection made, on the Sufficiency of the Security being established, the Petition shall be deemed to be at issue.

10. The prescribed Officer shall, as soon as may be, make out a List of all Petitions under this Act presented to the Court of which he is such Officer, and which are at issue, placing them in the Order in which they were presented, and shall keep at his Office a Copy of such List, herein-after referred to as the Election List, open to the Inspection in the prescribed Manner of any Person making Application.

Such Petitions, as far as conveniently may be, shall be tried in the Order in which they stand in such List.

Trial of a Petition.

11. The following Enactments shall be made with respect to the Trial of Election Petitions under this Act :

1. The Trial of every Election Petition shall be conducted before a Puisne Judge of One of Her Majesty's Superior Courts of Common Law at Westminster or Dublin, according as the same shall have been presented to the Court at Westminster or Dublin, to be selected from a Rota to be formed as herein-after mentioned.

2. The Members of each of the Courts of Queen's Bench, Common Pleas, and Exchequer in England and Ireland shall respectively, on or before the Third Day of Michaelmas Term in every Year, select, by a Majority of Votes, One of the Puisne Judges of such Court, not being a Member of the House of Lords, to be placed on the Rota for the Trial of Election Petitions during the ensuing Year.

3. If in any Case the Members of the said Court are equally divided in their Choice of a Puisne Judge to be placed on the Rota, the Chief Justice of such Court (including under that Expression the Chief Baron of the Exchequer) shall have a Second or Casting Vote.

4. Any Judge placed on the Rota shall be re-eligible in the succeeding or any subsequent Year.

5. In the event of the Death or the Illness of any Judge for the Time being on the Rota, or his Inability to act for any reasonable Cause, the Court to which he belongs

- shall fill up the Vacancy by placing on the Rota another Puisne Judge of the same Court.
6. The Judges for the Time being on the Rota shall, according to their Seniority, respectively try the Election Petitions standing for Trial under this Act, unless they otherwise agree among themselves, in which Case the Trial of each Election Petition shall be taken in manner provided by such Agreement.
 7. Where it appears to the Judges on the Rota, after due Consideration of the List of Petitions under this Act for the Time being at issue, that the Trial of such Election Petitions will be inconveniently delayed unless an additional Judge or Judges be appointed to assist the Judges on the Rota, each of the said Courts (that is to say), the Court of Exchequer, the Court of Common Pleas, and Court of Queen's Bench, in the Order named, shall, on and according to the Requisition of such Judges on the Rota, select, in manner herein-before provided, One of the Puisne Judges of the Court to try Election Petitions for the ensuing Year; and any Judge so selected shall, during that Year, be deemed to be on the Rota for the Trial of Election Petitions:
 8. Her Majesty may, in manner heretofore in use, appoint an additional Puisne Judge to each of the Courts, of Queen's Bench, the Common Pleas, and the Exchequer in England:
 9. Every Election Petition shall, except where it raises a Question of Law for the Determination of the Court, as herein-after mentioned, be tried by One of the Judges herein-before in that Behalf mentioned, herein-after referred to as the Judge sitting in open Court without a Jury.
 10. Notice of the Time and Place at which an Election Petition will be tried shall be given, not less than Fourteen Days before the Day on which the Trial is held, in the prescribed Manner.
 11. The Trial of an Election Petition in the Case of a Petition relating to a Borough Election shall take place in the Borough, and in the Case of a Petition relating to a County Election in the County: Provided always, that if it shall appear to the Court that special Circumstances exist which render it desirable that the Petition should be tried elsewhere than in the Borough or County, it shall be lawful for the Court to appoint such other Place for the Trial as shall appear most convenient: Provided also, that in the Case of a Petition relating to any of the Boroughs within the Metropolitan District, the Petition may be heard at such Place within the District as the Court may appoint.
 12. The Judge presiding at the Trial may adjourn the same from Time to Time and from any one Place to any other Place within the County or Borough, as to him may seem expedient.
 13. At the Conclusion of the Trial the Judge who tried the Petition shall determine whether the Member whose Return or Election is complained of, or any and what other Person, was duly returned or elected, or whether the Election was void, and shall forthwith certify in Writing such Determination to the Speaker, and upon such Certificate being given such Determination shall be final to all Intents and Purposes.
 14. Where any Charge is made in an Election Petition of any corrupt Practice having been committed at the Election to which the Petition refers, the Judge shall, in addition to such Certificate, and at the same Time, report in Writing to the Speaker as follows:
 - (a.) Whether any corrupt Practice has or has not been proved to have been committed by or with the Knowledge and Consent of any Candidate at such Election, and the Nature of such corrupt Practice:
 - (b.) The Names of all Persons (if any) who have been proved at the Trial to have been guilty of any corrupt Practice:
 - (c.) Whether corrupt Practices have, or whether there is Reason to believe that corrupt Practices have, extensively prevailed at the Election to which the Petition relates.
 15. The Judge may at the same Time make a special Report to the Speaker as to any Matters arising in the course of the Trial an Account of which in his Judgment ought to be submitted to the House of Commons.
 16. Where, upon the Application of any Party to a Petition made in the prescribed Manner to the Court, it appears to the Court that the Case raised by the Petition can be conveniently stated as a Special Case, the Court may direct the same to be stated accordingly, and any such Special Case shall, as far as may be, be heard before the Court, and the Decision of the Court shall be final; and the Court shall certify to the Speaker its Determination in reference to such Special Case.

12. Provided always, That if it shall appear to the Judge on the Trial of the said Petition that any Question or Questions of Law as to the Admissibility of Evidence or otherwise require further Consideration by the Court of Common Pleas, then it shall be lawful for the said Judge to postpone the granting of the said Certificate until the Determination of such Question or Questions by the Court, and for this Purpose to reserve any such Question or Questions in like Manner as Questions are usually reserved by a Judge on a Trial at Nisi Prius.

13. The House of Commons, on being informed by the Speaker of such Certificate and Report or Reports, if any, shall order the same to be entered in their Journals; and shall give the necessary Directions for confirming or altering the Return, or for issuing a Writ for a new Election, or for carrying the Determination into execution, as Circumstances may require.

14. Where the Judge makes a special Report the House of Commons may make such Order in respect of such special Report as they think proper.

15. If the Judge states in his Report on the Trial of an Election Petition under this Act that corrupt Practices have, or that there is Reason to believe that corrupt Practices have, extensively prevailed in any County or Borough at the Election to which the Petition relates, such Statement shall for all the Purposes of the Act of the Session of the Fifteenth and Sixteenth Years of the Reign of Her present Majesty, Chapter Fifty-seven, intituled "An Act to provide for more effectual Inquiry into the Existence of corrupt Practices at Elections of Members to serve in Parliament," have the same Effect and may be dealt with in the same Manner as if it were a Report of a Committee of the House of Commons appointed to try an Election Petition, and the Expenses of any Commission of Inquiry which may be issued in accordance with the Provisions of the said Act shall be defrayed as if they were Expenses incurred in the Registration of Voters for such County or Borough.

16. The Report of the Judge in respect of Persons guilty of corrupt Practices shall for the Purpose of the Prosecution of such Persons in pursuance of Section Nine of the Act of the Twenty-sixth Year of the Reign of Her present Majesty, Chapter Twenty-nine, have the same Effect as the Report of the Election Committee therein mentioned that certain Persons have been guilty of Bribery and Treating.

17. On the Trial of an Election Petition under this Act, unless the Judge otherwise directs, any

Charge of a corrupt Practice may be gone into and Evidence in relation thereto received before any Proof has been given of Agency on the Part of any Candidate in respect of such corrupt Practice.

18. The Trial of an Election Petition under this Act shall be proceeded with notwithstanding the Acceptance by the Respondent of an Office of Profit under the Crown.

19. The Trial of an Election Petition under this Act shall be proceeded with notwithstanding the Prorogation of Parliament.

Proceedings.

20. An Election Petition under this Act shall be in such Form and state such Matters as may be prescribed.

21. An Election Petition under this Act shall be served as nearly as may be in the Manner in which a Writ or Summons is served, or in such other Manner as may be prescribed.

22. Two or more Candidates may be made Respondents to the same Petition, and their Case may for the sake of Convenience be tried at the same Time, but for all the Purposes of this Act such Petition shall be deemed to be a separate Petition against each Respondent.

23. Where, under this Act, more Petitions than One are presented relating to the same Election or Return, all such Petitions shall in the Election List be bracketed together, and shall be dealt with as One Petition, but such Petitions shall stand in the Election List in the Place where the last of such Petitions would have stood if it had been the only Petition presented, unless the Court shall otherwise direct.

24. On the Trial of an Election Petition under this Act the Shorthand Writer of the House of Commons or his Deputy shall attend and shall be sworn by the Judge faithfully and truly to take down the Evidence given at the Trial, and from Time to Time as Occasion requires to write or cause the same to be written in Words at Length; and it shall be the Duty of such Shorthand Writer to take down such Evidence, and from Time to Time to write or cause the same to be written at Length, and a Copy of such Evidence shall accompany the Certificate made by the Judge to the Speaker; and the Expenses of the Shorthand Writer shall be deemed to be Part of the Expenses incurred in receiving the Judge.

Jurisdiction and Rules of Court.

25. The Judges for the Time being on the Rota for the Trial of Election Petitions in

England and Ireland may respectively from Time to Time make, and may from Time to Time revoke and alter, General Rules and Orders (in this Act referred to as the Rules of Court), for the effectual Execution of this Act, and of the Intention and Object thereof, and the Regulation of the Practice, Procedure, and Costs of Election Petitions, and the Trial thereof, and the certifying and reporting thereon.

Any General Rules and Orders made as aforesaid shall be deemed to be within the Powers conferred by this Act, and shall be of the same Force as if they were enacted in the Body of this Act.

Any General Rules and Orders made in pursuance of this Section shall be laid before Parliament within Three Weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within Three Weeks, after the Beginning of the then next Session of Parliament.

26. Until Rules of Court have been made in pursuance of this Act, and so far as such Rules do not extend, the Principles, Practice, and Rules on which Committees of the House of Commons have heretofore acted in dealing with Election Petitions shall be observed so far as may be by the Court and Judge in the Case of Election Petitions under this Act.

27. The Duties to be performed by the prescribed Officer under this Act shall be performed by such One or more of the Masters of the Court of Common Pleas at Westminster as may be determined by the Chief Justice of the said Court of Common Pleas, and by the Master of the Court of Common Pleas at Dublin, and there shall be awarded to such Masters respectively, in addition to their existing Salaries, such Remuneration for the Performance of the Duties imposed on them in pursuance of this Act as the Chief Justices of the said Courts of Common Pleas at Westminster and Dublin may respectively, with the Consent of the Commissioners of the Treasury, determine.

Reception, Expenses, and Jurisdiction of Judge.

28. The Judge shall be received at the Place where he is about to try an Election Petition under this Act with the same State, so far as Circumstances admit, as a Judge of Assize is received at an Assize Town; he shall be received by the Sheriff in the Case of a Petition relating to a County Election, and in any other Case by the Mayor, in the Case of a Borough having a Mayor, and in the Case of a Borough not having a Mayor by the Sheriff of the County in which the Borough is situate, or by some Person named by such Sheriff.

The travelling and other Expenses of the

Judge, and all Expenses properly incurred by the Sheriff or by such Mayor or Person named as aforesaid in receiving the Judge and providing him with necessary Accommodation and with a proper Court, shall be defrayed by the Commissioners of the Treasury out of Money to be provided by Parliament.

29. On the Trial of an Election Petition under this Act the Judge shall, subject to the Provisions of this Act, have the same Powers, Jurisdiction, and Authority as a Judge of One of the Superior Courts and as a Judge of Assize and Nisi Prius, and the Court held by him shall be a Court of Record.

30. The Judge shall be attended on the Trial of an Election Petition under this Act in the same Manner as if he were a Judge sitting at Nisi Prius, and the Expenses of such Attendance shall be deemed to be Part of the Expenses of providing a Court.

Witnesses.

31. Witnesses shall be subpoenaed and sworn in the same Manner as nearly as Circumstances admit as in a Trial at Nisi Prius, and shall be subject to the same Penalties for Perjury.

32. On the Trial of an Election Petition under this Act the Judge may, by Order under his Hand, compel the Attendance of any Person as a Witness who appears to him to have been concerned in the Election to which the Petition refers, and any Person refusing to obey such Order shall be guilty of Contempt of Court. The Judge may examine any Witness so compelled to attend or any Person in Court although such Witness is not called and examined by any Party to the Petition. After the Examination of a Witness as aforesaid by a Judge such Witness may be cross-examined by or on behalf of the Petitioner and Respondent, or either of them.

33. The Provisions of the Seventh Section of the Act of the Session of the Twenty-sixth and Twenty-seventh Years of the Reign of Her present Majesty, Chapter Twenty-nine, relating to the Examination and Indemnity of Witnesses, shall apply to any Witness appearing before a Judge on the Trial of an Election Petition under this Act, in the same Manner as in the Case of a Trial before a Committee of the House of Commons before the passing of this Act, and the Certificate shall be given under the Hand of the Judge.

34. The reasonable Expenses incurred by any Person in appearing to give Evidence at the Trial of an Election Petition under this Act, according to the Scale allowed to Witnesses on

the Trial of Civil Actions at the Assizes, may be allowed to such Person by a Certificate under the Hand of the Judge or of the prescribed Officer, and such Expenses if the Witness was called and examined by the Judge shall be deemed Part of the Expenses of providing a Court, and in other Cases shall be deemed to be Costs of the Petition.

Withdrawal and Abatement of Election Petitions.

35. An Election Petition under this Act shall not be withdrawn without the Leave of the Court or Judge upon special Application, to be made in and at the prescribed Manner, Time, and Place.

No such Application shall be made for the Withdrawal of a Petition until the prescribed Notice has been given in the County or Borough to which the Petition relates of the Intention of the Petitioner to make an Application for the Withdrawal of his Petition.

On the Hearing of the Application for Withdrawal any Person who might have been a Petitioner in respect of the Election to which the Petition relates may apply to the Court or Judge to be substituted as a Petitioner for the Petitioner so desirous of withdrawing the Petition.

The Court or Judge may, if it or he think fit, substitute as a Petitioner any such Applicant as aforesaid; and may further, if the proposed Withdrawal is in the Opinion of the Court or Judge induced by any corrupt Bargain or Consideration, by Order direct that the Security given on behalf of the original Petitioner shall remain as Security for any Costs that may be incurred by the substituted Petitioner, and that to the Extent of the Sum named in such Security the original Petitioner shall be liable to pay the Costs of the substituted Petitioner.

If no such Order is made with respect to the Security given on behalf of the original Petitioner, Security to the same Amount as would be required in the Case of a new Petition, and subject to the like Conditions, shall be given on behalf of the substituted Petitioner before he proceeds with his Petition, and within the prescribed Time after the Order of Substitution.

Subject as aforesaid, a substituted Petitioner shall stand in the same Position as nearly as may be, and be subject to the same Liabilities as the original Petitioner.

If a Petition is withdrawn, the Petitioner shall be liable to pay the Costs of the Respondent.

Where there are more Petitioners than One, no Application to withdraw a Petition shall be made except with the Consent of all the Petitioners.

36. In every Case of the Withdrawal of an Election Petition under this Act the Court or Judge shall report to the Speaker whether in its or his Opinion the Withdrawal of such Petition was the Result of any corrupt Arrangement, or in consideration of the Withdrawal of any other

Petition, and if so the Circumstances attending the Withdrawal.

37. An Election Petition under this Act shall be abated by the Death of a sole Petitioner or of the Survivor of several Petitioners.

The Abatement of a Petition shall not affect the Liability of the Petitioner to the Payment of Costs previously incurred.

On the Abatement of a Petition the prescribed Notice of such Abatement having taken place shall be given in the County or Borough to which the Petition relates, and within the prescribed Time after the Notice is given, any Person who might have been a Petitioner in respect of the Election to which the Petition relates may apply to the Court or Judge, in and at the prescribed Manner, Time, and Place, to be substituted as a Petitioner.

The Court or Judge may, if it or he think fit, substitute as a Petitioner any such Applicant who is desirous of being substituted and on whose Behalf Security to the same Amount is given as is required in the Case of a new Petition.

38. If before the Trial of any Election Petition under this Act any of the following Events happen in the Case of the Respondent; (that is to say,)

- (1.) If he dies:
- (2.) If he is summoned to Parliament as a Peer of Great Britain by a Writ issued under the Great Seal of Great Britain:
- (3.) If the House of Commons have resolved that his Seat is vacant:
- (4.) If he gives in and at the prescribed Manner and Time Notice to the Court that he does not intend to oppose the Petition:

Notice of such Event having taken place shall be given in the County or Borough to which the Petition relates, and within the prescribed Time after the Notice is given any Person who might have been a Petitioner in respect of the Election to which the Petition relates may apply to the Court or Judge to be admitted as a Respondent to oppose the Petition, and such Person shall on such Application be admitted accordingly, either with the Respondent, if there be a Respondent, or in place of the Respondent; and any Number of Persons not exceeding Three may be so admitted.

39. A Respondent who has given the prescribed Notice that he does not intend to oppose the Petition shall not be allowed to appear or act as a Party against such Petition in any Proceedings thereon, and shall not sit or vote in the House of Commons until the House of Commons has been informed of the Report on the Petition, and the Court or Judge shall in all Cases in which such

Notice has been given in the prescribed Time and Manner report the same to the Speaker of the House of Commons.

40. Where an Election Petition under this Act complains of a double Return, and the Respondent has given Notice to the prescribed Officer that it is not his Intention to oppose the Petition, and no Party has been admitted in pursuance of this Act to defend such Return, then the Petitioner, if there be no Petition complaining of the other Member returned on such double Return, may withdraw his Petition by Notice addressed to the prescribed Officer, and upon the Receipt of such Notice the prescribed Officer shall report the Fact of the Withdrawal of such Petition to the Speaker, and the House of Commons shall thereupon give the necessary Directions for amending the said double Return by taking off the File the Indenture by which the Respondent so declining to oppose the Petition was returned, or otherwise as the Case may require: Provided always, that this Section shall not apply to Ireland.

Costs.

41. All Costs, Charges, and Expenses of and incidental to the Presentation of a Petition under this Act, and to the Proceedings consequent thereon, with the Exception of such Costs, Charges, and Expenses as are by this Act otherwise provided for, shall be defrayed by the Parties to the Petition in such Manner and in such Proportions as the Court or Judge may determine, regard being had to the Disallowance of any Costs, Charges, or Expenses which may, in the Opinion of the Court or Judge, have been caused by vexatious Conduct, unfounded Allegations, or unfounded Objections on the Part either of the Petitioner or the Respondent, and regard being had to the Discouragement of any needless Expense by throwing the Burden of defraying the same on the Parties by whom it has been caused, whether such Parties are or not on the whole successful.

The Costs may be taxed in the prescribed Manner but according to the same Principles as Costs between Attorney and Client are taxed in a Suit in the High Court of Chancery, and such Costs may be recovered in the same Manner as the Costs of an Action at Law, or in such other Manner as may be prescribed.

42. If any Petitioner in an Election Petition presented under this Act neglect or refuse for the Space of Six Months after Demand to pay to any Person summoned as a Witness on his Behalf, or to the Respondent, any Sum certified to be due to him for his Costs, Charges, and Expenses, and if such Neglect or Refusal be,

within One Year after such Demand, proved to the Satisfaction of the Court of Elections, in every such Case every Person who has entered into a Recognizance relating to such Petition under the Provisions of this Act shall be held to have made default in his said Recognizance, and the prescribed Officer shall thereupon certify such Recognizance to be forfeited, and the same shall be dealt with in England in manner provided by the Act of the Third Year of the Reign of King George the Fourth, Chapter Forty-six, and in Ireland in manner provided by "The Fines Act (Ireland), 1851."

Punishment of corrupt Practices.

43. Where it is found, by the Report of the Judge upon an Election Petition under this Act, that Bribery has been committed by or with the Knowledge and Consent of any Candidate at an Election, such Candidate shall be deemed to have been personally guilty of Bribery at such Election, and his Election, if he has been elected, shall be void, and he shall be incapable of being elected to and of sitting in the House of Commons during the Seven Years next after the Date of his being found guilty; and he shall further be incapable during the said Period of Seven Years—

- (1.) Of being registered as a Voter and voting at any Election in the United Kingdom; and
- (2.) Of holding any Office under the Act of the Session of the Fifth and Sixth Years of the Reign of His Majesty King William the Fourth, Chapter Seventy-six, or of the Session of the Third and Fourth Years of the Reign of Her present Majesty, Chapter One hundred and eight, or any Municipal Office; and
- (3.) Of holding any Judicial Office, and of being appointed and of acting as a Justice of the Peace.

44. If on the Trial of any Election Petition under this Act any Candidate is proved to have personally engaged at the Election to which such Petition relates as a Canvasser or Agent for the Management of the Election, any Person knowing that such Person has within Seven Years previous to such Engagement been found guilty of any corrupt Practice by any competent Legal Tribunal, or been reported guilty of any corrupt Practice by a Committee of the House of Commons, or by the Report of the Judge upon an Election Petition under this Act, or by the Report of Commissioners appointed in pursuance of the Act of the Session of the Fifteenth and Sixteenth Years of the Reign of Her present Majesty, Chapter Fifty-seven, the Election of such Candidate shall be void.

45. Any Person, other than a Candidate, found guilty of Bribery in any Proceeding in which after Notice of the Charge he has had an Opportunity of being heard, shall, during the Seven Years next after the Time at which he is so found guilty, be incapable of being elected to and sitting in Parliament; and also be incapable—

- (1.) Of being registered as a Voter and voting at any Election in the United Kingdom; and
- (2.) Of holding any Office under the Act of the Session of the Fifth and Sixth Years of the Reign of His Majesty King William the Fourth, Chapter Seventy-six, or of the Session of the Third and Fourth Years of the Reign of Her present Majesty, Chapter One hundred and eight, or any Municipal Office; and
- (3.) Of holding any Judicial Office, and of being appointed and of acting as a Justice of the Peace.

46. For the Purpose of disqualifying, in pursuance of the Thirty-sixth Section of "The Corrupt Practices Prevention Act, 1854," a Member guilty of corrupt Practices, other than personal Bribery within the Forty-third Section of this Act, the Report of the Judge on the Trial of an Election Petition shall be deemed to be substituted for the Declaration of an Election Committee, and the said Section shall be construed as if the Words "reported by a Judge on the Trial of an Election Petition" were inserted therein in the Place of the Words "declared by an Election Committee."

47. If at any Time after any Person has become disqualified by virtue of this Act, the Witnesses, or any of them, on whose Testimony such Person shall have so become disqualified, shall, upon the Prosecution of such Person, be convicted of Perjury in respect of such Testimony, it shall be lawful for such Person to move the Court to order, and the Court shall, upon being satisfied that such Disqualification was procured by reason of Perjury, order, that such Disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

Miscellaneous.

48. If any Returning Officer wilfully delays, neglects, or refuses, duly to return any Person who ought to be returned to serve in Parliament for any County or Borough, such Person may, in case it has been determined on the Hearing of an Election Petition under this Act that such Person was entitled to have been returned, sue the Officer having so wilfully delayed, neglected, or refused duly to make such Return at his Election in any of Her Majesty's Courts of

Record at Westminster, and shall recover double the Damages he has sustained by reason thereof, together with full Costs of Suit; provided such Action be commenced within One Year after the Commission of the Act on which it is grounded, or within Six Months after the Conclusion of the Trial relating to such Election.

49. In reckoning Time for the Purposes of this Act, Sunday, Christmas Day, Good Friday, and any Day set apart for a Public Fast or Public Thanksgiving shall be excluded.

50. From and after the next Dissolution of Parliament, no Election or Return to Parliament shall be questioned except in accordance with the Provisions of this Act, but until such Dissolution Elections and Returns to Parliament may be questioned in manner heretofore in use.

51. Where an Election Petition under this Act complains of the Conduct of a Returning Officer, such Returning Officer shall for all the Purposes of this Act, except the Admission of Respondents in his Place, be deemed to be a Respondent.

52. A Petition under this Act complaining of no Return may be presented to the Court, and shall be deemed to be an Election Petition within the Meaning of this Act, and the Court may make such Order thereon as they think expedient for compelling a Return to be made, or may allow such Petition to be heard by the Judge in manner herein-before provided with respect to ordinary Election Petitions.

53. On the Trial of a Petition under this Act complaining of an undue Return and claiming the Seat for some Person, the Respondent may give Evidence to prove that the Election of such Person was undue in the same Manner as if he had presented a Petition complaining of such Election.

54. From and after the next Dissolution of Parliament, the Acts contained in the Schedule hereto are repealed so far as relates to Elections and Petitions to the Extent therein mentioned; provided that such Repeal shall not affect the Validity or Invalidity of anything already done or suffered, or any Offence already committed, or any Remedy or Proceeding in respect thereof, or the Proof of any past Act or Thing.

55. The additional Puisse Judges appointed under this Act to each of the Courts of Queen's Bench, the Common Pleas, and the Exchequer in England shall, as to Rank, Salary, Pension, Attendant Officers, Jurisdiction, and all other Privileges and Duties of a Judge, stand in the

same Position as the other Puisne Judges of the Court to which he is attached.

Any Puisne Judge of the said Courts appointed in pursuance of or after the passing of this Act shall be authorized to sit, and shall, when requested by the Lord Chancellor, sit as Judge of the Court of Probate and Court of Marriage and Divorce or of the Admiralty Court.

56. If upon a Petition to the House of Commons, presented within Twenty-one Days after the Return to the Clerk of the Crown in Chancery in England, or to the Clerk of the Crown and Hanaper in Ireland, of a Member to serve in Parliament for any Borough or County, or within Fourteen Days after the meeting of Parliament, and signed by any Two or more Electors of such Borough or County, and alleging that corrupt Practices have extensively prevailed at the then last Election for such Borough or County, or that there is Reason to believe that corrupt Practices have there so prevailed, an Address be presented by both Houses of Parliament, praying that such Allegation may be inquired into, the Crown may appoint Commissioners to inquire into the same, and if such Commissioners in such Case be appointed they shall inquire in the same Manner and with the same Powers and subject to all the Provisions of the Statute of the Fifteenth and Sixteenth of Victoria, Chapter Fifty-seven.

57. Any Person who at the Time of the passing of this Act was entitled to practise as Agent, according to the Principles, Practice, and Rules of the House of Commons, in Cases of Election Petitions and Matters relating to Election of Members of the House of Commons, shall be entitled to practise as an Attorney or Agent in Cases of Election Petitions and all Matters relating to Elections before the Court and Judges prescribed by this Act: Provided that every such Person so practising as aforesaid shall, in respect of such Practice and everything relating thereto, be subject to the Jurisdiction and Orders of the Court as if he were an Attorney of the said Court: And further, provided that no such Person shall practise as aforesaid until his Name shall have been entered on a Roll to be made and kept, and which is hereby authorized to be made and kept, by the prescribed Officer in the prescribed Manner.

58. The Provisions of this Act shall apply to Scotland, subject to the following Modifications:

1. The Expression "the Court" shall mean either Division of the Inner House of the Court of Session, and either of such Divisions shall have the same Powers, Jurisdiction, and Authority with reference to an Election Petition in Scotland and the

Proceedings thereon, which by this Act are conferred on the Court of Common Pleas at Westminster with respect to Election Petitions in England:

2. The Expression "County" shall not include a County of a City, but shall mean any County or Division of a County, or any Combination of Counties, or of Counties and Portions of Counties, returning a Member to serve in Parliament:
3. The Expression "Borough" shall mean any University or Universities, or any City, Town, Burgh, or District of Cities, Towns, or Burghs, returning a Member or Members to serve in Parliament:
4. "Recognizance" shall mean a Bond of Caution with usual and necessary Clauses:
5. The Trial of every Election Petition in Scotland shall be conducted before a Judge of the Court of Session, to be selected from a Rota to be formed as herein-after mentioned:
6. The Judges of the Court of Session shall, on or before the First Day of the Winter Session in every Year, select, by a Majority of Votes, Two of the Judges of such Court, not being Members of the House of Lords, to be placed on the Rota for the Trial of Election Petitions during the ensuing Year:
7. If in any Case the Judges of the said Court are equally divided in their Choice of a Judge to be placed on the Rota, the Lord President shall have a Second or Casting Vote:
8. Any Judge placed on the Rota shall be re-eligible in the succeeding or any subsequent Year:
9. In the event of the Death or Illness of any Judge for the Time being on the Rota, or his Inability to act for any reasonable Cause, the Judges shall fill up the Vacancy by placing on the Rota another Judge:
10. The Judges for the Time being on the Rota shall, according to their Seniority, respectively try the Election Petitions standing for Trial under this Act, unless they otherwise agree among themselves, in which Case the Trial of each Election Petition shall be taken in manner provided by such Agreement.
11. Where it appears to the Judges on the Rota, after due Consideration of the List of Petitions under this Act for the Time being at issue, that the Trial of such Election Petitions will be inconveniently delayed unless an additional Judge or Judges be appointed to assist the Judges on the Rota, the Judges of the Court of Session shall, on and according to the Requisition of such Judges on the Rota,

- select in manner herein-before provided a Judge to try Election Petitions for the ensuing Year, and any Judge so selected shall during that Year be deemed to be on the Rota for the Trial of Election Petitions :
12. The Duties to be performed by the prescribed Officer under this Act with reference to Election Petitions in Scotland shall be performed by such One or more of the Principal Clerks of Session as may be determined by the Lord President of the Court of Session ; and there shall be awarded to such Principal Clerk or Clerks, in addition to their existing Salaries, such Remuneration for the Performance of the Duties imposed on them in pursuance of this Act as the said Lord President may, with the Consent of the Commissioners of the Treasury, determine :
13. The Judge shall be received at the Place where he is about to try an Election Petition under this Act in the same Manner and by the same Authorities, as far as Circumstances admit, as a Judge of the Court of Justiciary is received at a Circuit Town, and he shall be attended by such Officer or Officers as shall be necessary :
14. The travelling and other Expenses of the Judge, and of the Officer or Officers in attendance upon him, and all Expenses properly incurred in providing the Judge with a proper Court, shall be defrayed by

- the Commissioners of the Treasury out of Money to be provided by Parliament :
15. On the Trial of an Election Petition under this Act, the Judge shall, subject to the Provisions of this Act, have the same Powers, Jurisdictions, and Authority as a Judge of the Court of Session presiding at the Trial of a Civil Cause without a Jury :
16. The Principles of Taxation of Costs as between Attorney and Client in a Suit in the High Court of Chancery shall in Scotland mean the Principles of Taxation of Expenses as between Agent and Client in the Court of Session :
17. Any of Her Majesty's Courts of Record at Westminster shall in Scotland mean the Court of Session in Scotland :
18. In lieu of the Provisions for the estreating of a Recognizance under an Election Petition, the prescribed Officer shall, when otherwise competent, under the Provisions of this Act, certify that the Conditions contained in the Bond of Caution have not been fulfilled, and it shall then be competent for the Party or Parties interested to register the said Bond, and do Diligence upon it as accords of Law.
59. This Act shall be in force until the Expiration of Three Years from the passing of such Act, and to the End of the then next Session of Parliament.



SCHEDULE.

Date of Act.	Title of Act.	Extent of Repeal.
4 & 5 Vict. c. 57. -	An Act for the Prevention of Bribery at Elections.	The whole Act.
5 & 6 Vict. c. 102. -	An Act for the better Discovery and Prevention of Bribery and Treating at the Election of Members of Parliament.	The whole Act.
11 & 12 Vict. c. 98.	An Act to amend the Law for the Trial of Election Petitions.	The whole Act.
26 Vict. c. 29. -	An Act to amend and continue the Law relating to corrupt Practices at Elections of Members of Parliament.	Section 8.
28 Vict. c. 8. - -	An Act to amend "The Election Petitions Act, 1848," in certain Particulars.	The whole Act.



CAP. CXXXVI.

The Danube Works Loan Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Power for Queen to guarantee Interest and Sinking Fund.*
2. *Issue out of Consolidated Fund of Sums requisite.*
3. *Repayment to Consolidated Fund.*
4. *Accounts to be laid before both Houses of Parliament.*
5. *Short Title.*

An Act to enable Her Majesty the Queen to carry into effect a Convention made between Her Majesty and other Powers relative to a Loan for the Completion of Works for the Improvement of the Navigation of the Danube. (31st July 1868.)

WHEREAS Her Majesty the Queen and Their Majesties the Emperor of Austria, the Emperor of the French, the King of Italy, the King of Prussia in the Name of the North German Confederation, and the Emperor of the Ottomans, having recognized the Necessity of putting the European Commission of the Danube appointed under the Treaty of Paris of the 30th Day of March 1856 in a Position to contract a Loan on advantageous Terms, and by this Means to complete the Works of Improvement undertaken or to be undertaken at the Mouth and in the Branch of the Sulina, without imposing too heavy Burdens on the Vessels of all Nations which frequent the Lower Danube, have entered into a Convention in that Behalf, which was made and signed at Galatz on the 30th Day of April 1868, and has been duly ratified by Her Majesty :

And whereas the said Convention comprised Articles to the following Effect; namely,

"Article I.—Their Majesties—

"The Emperor of Austria, King of Hungary and Bohemia, engages, subject to the Assent of the competent Representative Bodies, to guarantee the Interest and Sinking Fund of a Loan of Three millions three hundred and seventy-five thousand Francs, or One hundred and thirty-five thousand Pounds Sterling, to be contracted by the European Commission of the Danube :

"The Emperor of the French engages, subject to the Ratification of the Legislative Body of France, to guarantee the Interest and Sinking Fund of the same Loan :

"The Queen of the United Kingdom of Great Britain and Ireland engages to recommend to Her Parliament to enable Her to

guarantee the Interest and Sinking Fund of the same Loan :

"The King of Italy engages, subject to the Approbation of the Italian Parliament, to guarantee the Interest and Sinking Fund of the same Loan :

"The King of Prussia engages in the Name of the North German Confederation, subject to the Assent of the Reichstag and of the Federal Council, to guarantee the Interest and Sinking Fund of the same Loan :

"The Emperor of the Ottomans engages to guarantee the Interest and Sinking Fund of the same Loan :

"And it is understood that this Guarantee shall be joint and several between all the High Contracting Parties.

"Article II.—The Interest payable on the said Loan shall not be higher than Five per Cent., and the Duration of the Redemption shall not exceed a Period of Thirteen Years, reckoning from the First of January One thousand eight hundred and seventy-one, the Date at which the Payment of the Loan will have been completed by the Lenders.

"Reckoning from the First Instalment, and until the First of January One thousand eight hundred and seventy-one, the joint and several Guarantee shall bear upon the Interest of the Sums paid; and during the following Years, upon the Annuities comprising both Interest and Repayment of the Capital, and not exceeding the total Sum of Three hundred and sixty thousand Francs, or Fourteen thousand four hundred Pounds Sterling per Annum.

"Article III.—If the net Produce of the Tolls levied by the European Commission at the Sulina Mouth, in virtue of the XVth Article of the Treaty of Paris, after Deduction of a Sum not exceeding Four hundred thousand Francs, or Sixteen thousand Pounds Sterling, for the Expenses of maintaining the Works and of Administration, should happen to be insufficient to provide completely for the Payment of the Interest and Sinking Fund of the Loan, His Imperial

" Royal Apostolic Majesty, His Majesty the Emperor of the French, Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the King of Italy, His Majesty the King of Prussia in the Name of the North German Confederation, and His Majesty the Emperor of the Ottomans, upon Notice of the Amount of the Deficit, which shall be given to them One Month before it becomes due, either by the European Commission, or by the Authority which shall succeed it, or by the Parties interested themselves, engage to furnish as an Advance, before the Expiration of that Time, their Share in the said Guarantee.

" Article IV.—In the event contemplated by the preceding Article, and in order to avoid all Delay, the British Government engages to deposit at the Bank of England the whole Sum necessary for the integral Payment of the Interest and Sinking Fund at the precise Time of their falling due.

" On their Part, the other Contracting Powers engage to remit immediately their said Share to the British Government.

" Article V.—Article XIV. of the Public Act of the 2d November 1865, having stipulated that the Revenue produced by the above-mentioned Tolls should be appropriated by Priority and Preference to the Repayment of the Loans contracted by the European Commission, and of those which it might contract in future for the Completion of the Works of Improvement of the Mouths of the Danube, the High Contracting Parties reserve the Right to make use for themselves of the Privilege of such Right of Priority and Preference, by Right of Substitution, in the event of their having been obliged to provide from their own Funds for the Service of the guaranteed Loan.

" It is understood, however, that such Right of Priority will be exercised by the Powers without Prejudice either to the Rights of the Holders of the Scrip of this Loan or to the anterior Rights of the Creditors for whose Benefit the European Commission has pledged its Revenues for the Amount of the partial Loans, amounting to One hundred and eleven thousand and one hundred Ducats, issued on the 12th of May 1866, the 25th of April, and 4th of November 1867, in order to begin the permanent Works, and repayable at short Terms from the Produce of the Loan to be contracted.

" Article VI.—As soon as the present Convention shall have become definitive for Four at least of the High Contracting Parties the joint and several Guarantee shall have its full and entire Effect in respect of these latter."

And whereas it is expedient that Her Majesty be enabled to carry into effect the Articles aforesaid:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. It shall be lawful for Her Majesty, Her Heirs and Successors, to guarantee, jointly with their Majesties the Emperor of Austria, the Emperor of the French, the King of Italy, the King of Prussia in the Name of the North German Confederation, and the Emperor of the Ottomans, or any Three or more of those Powers, and severally, on the Terms and Conditions set forth in the said Convention, Interest at a Rate not exceeding Five per Centum per Annum on a Loan not exceeding One hundred and thirty-five thousand Pounds Sterling, to be contracted by the European Commission of the Danube in pursuance of the said Convention, and the Sinking Fund of the same Loan as provided for in the said Convention.

2. The Commissioners of Her Majesty's Treasury may from Time to Time cause to be issued out of the Consolidated Fund of the United Kingdom or the growing Produce thereof any Money for the Time being requisite for giving Effect to the Guarantee authorized by this Act.

3. The Commissioners of Her Majesty's Treasury shall cause any Money at any Time paid in or towards Repayment of Money issued under this Act to be carried to, and the same shall form Part of, the Consolidated Fund of the United Kingdom.

4. The Commissioners of Her Majesty's Treasury shall lay before both Houses of Parliament yearly, on the First of February in each Year, or within Fourteen Days after the Meeting of Parliament, an Account up to the Thirty-first Day of December then next preceding of the Issues and Repayments (if any) under this Act.

5. This Act may be cited as The Danube Works Loan Act, 1868.

CAP. CXXVII.

Saint Mary Somerset's Church, London.

ABSTRACT OF THE ENACTMENTS.

Order made under 23 & 24 Vict. c. 142. recited.

1. *Recited Order not to authorize Demolition of Tower of the said Church.*
2. *Vesting Tower and Site thereof in Corporation of London.*
3. *Portion of Churchyard to be appropriated to widening Upper Thames Street.*
4. *The Remains of any Persons in Graves disturbed by such widening of Thames Street to be re-interred.*

An Act to prevent the Removal of the Tower of the Church of Saint Mary Somerset in the City of London, and for vesting the said Tower and the Site thereof, and a Portion of the Burial Ground attached to the said Church, in the Corporation of the said City.
(31st July 1868.)

WHEREAS by an Order of Her Majesty in Council, bearing Date the Tenth Day of November in the Year One thousand eight hundred and sixty-six, which Order was duly published in the *London Gazette* on the Thirteenth Day of the same Month, Provision is made in pursuance of the Act of the Twenty-third and Twenty-fourth Years of Her Majesty, Chapter One hundred and forty-two, for the Union of the Benefice (being a Rectory) of Saint Nicholas Cole Abbey with Saint Nicholas Olave in the City of London with the Benefice (being a Rectory) of Saint Mary Somerset with Saint Mary Mounthaw in the said City of London, and Provision is by the said Order made for the Demolition and Sale by the Ecclesiastical Commissioners for England of the Materials of the Church of Saint Mary Somerset (including the Tower thereof), and for the Sale of the Site of the said Church:

And whereas it is expedient that the Tower of the said Church should be preserved and maintained as a Feature of Architectural Interest:

And whereas it is expedient, in order to promote the Objects towards which the Funds to arise from the Sale of the said Site will be applicable in pursuance of the Provisions of the said Order in Council, and also for the Improvement of the City of London, that the Portion of the Churchyard and Burial Ground attached to the said Church and herein-after mentioned should be appropriated to the widening of Upper Thames Street in the said City in manner herein-after mentioned:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and

Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows; that is to say,

1. The Provisions of the said Order of Her Majesty in Council shall not be held to authorize the Demolition or Sale by the said Commissioners of the said Tower, or of the Site thereof, comprising therewith a Space of Six Feet in Depth on the Northern and Eastern Sides of such Tower.

2. The Fabric and Site of the said Tower, together with a Space of Six Feet in Depth on the Northern and Eastern Sides of such Tower, shall be and the same are hereby vested in the Mayor and Commonalty and Citizens of the City of London, and their Successors for ever, and shall be under their Control and Management, and be by them preserved and maintained, and may be used by them for such Purposes as they may think fit, with the Approval of the Lord Bishop of London for the Time being.

3. That Portion of the Churchyard and Burial Ground heretofore attached to the said Church which is situated between Upper Thames Street on the South Side and the Body of the said Church and Part of the Churchyard on the North Side, and which abuts upon the said Street for a Distance of Eighty-eight Feet measured from the Western Angle of the Wall and Railing, which now encloses such Churchyard and separates the same from the said Street, and which Portion comprises an Area of Two hundred and sixteen Square Yards, more or less, shall be and the same is hereby vested in the said Corporation for the Purpose of the same being by them dedicated to the widening of Upper Thames Street, and the same shall, when so dedicated, be under the Care and Management of the Commissioners of Sewers of the said City.

4. The Corporation shall cause the Remains of any Persons in any Graves or Vaults in the Portion of the Churchyard to be thrown into

in the public Way to be re-interred in a decent manner, either in the remaining Portion of the Churchyard or in some public Cemetery, with the Approval of the Lord Bishop of London

for the Time being, and the Ecclesiastical Commissioners for England shall repay to the Corporation One Half of the Costs of such Removal.

CAP. CXXVIII.

Colonial Governors Pensions Act Amendment.

ABSTRACT OF THE ENACTMENTS.

1. *Provisions of 28 & 29 Vict. c. 113. extended to Lord High Commissioners of the Ionian Islands.*

An Act to extend the Provisions of the Act Twenty-eighth and Twenty-ninth Victoria, Chapter One hundred and thirteen, to Persons who have held the Office of Lord High Commissioner of the Ionian Islands.

(31st July 1868.)

WHEREAS an Act was passed in the Session of Parliament of the Twenty-eighth and Twenty-ninth year of Her Majesty, Chapter One hundred and thirteen, to authorize the Payment of Retiring Pensions to Colonial Governors; and it is expedient that the Powers and Provisions of the said Act should be extended and be applicable to Persons who have held the Office or exercised the

Functions of Lord High Commissioner of the Ionian Islands:

Be it hereby enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. That all the Provisions of the said Act shall extend and apply to any Person who has held the Office or exercised the Functions of Lord High Commissioner of the Ionian Islands, as if such Person had been an Officer or Person who had administered, or might be deemed by the Provisions of the said Act to have administered, the Government of a Colony according to the true Intent of the said recited Act.

CAP. CXXIX.

The Colonial Shipping Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. *Grant of terminable Certificates of Registry, subject to Conditions, in Colonies.*
2. *Ship to be deemed registered.*
3. *Governors abroad may appoint Surveyors.*
4. *Construction of Act.*
5. *Short Title.*

An Act to amend the Law relating to the Registration of Ships in British Possessions.

(31st July 1868.)

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. The Governor or Officer lawfully administering the Government of any British Possession may from Time to Time, with the Approval of One of Her Majesty's Principal Secretaries of State, make Regulations providing that on an Application for Registration under the Merchant Shipping Act, 1854, in that Possession of any Ship not exceeding Sixty Tons Burden, the Registrar may grant, in lieu of a Certificate of Registry as required by that Act, a Certificate of

Registry to be terminable at the End of Six Months from the granting thereof, or of any longer Period; and all Certificates of Registry granted under any such Regulations shall be in such Form and shall have Effect subject to such Conditions as the Regulations prescribe.

2. Notwithstanding anything in the Merchant Shipping Act, 1854, or in any other Act, any Ship to which a Certificate is granted under any such Regulations shall, while such Certificate is in force, and in relation to all Things done or omitted during that Period, be deemed a registered British Ship.

3. The Governor of any British Possession

abroad may from Time to Time appoint fit and proper Persons to be Surveyors, who shall have and exercise within such Possession all the Powers with respect to the Inspection of Crew Spaces that are conferred upon the Board of Trade Surveyors in the United Kingdom by Section Nine of the Merchant Shipping Act, 1867.

4. This Act shall be read as One Act with the Merchant Shipping Act, 1854, and the Acts amending the same.

5. This Act may be cited as The Colonial Shipping Act, 1868.

CAP. CXXX.

The Artizans and Labourers Dwellings Act, 1868.

ABSTRACT OF THE ENACTMENTS.

1. Short Title.
2. Application of Act, and Definition of "Local Authority," "Local Rate," and "Clerk of Local Authority."
3. Interpretation of Terms.
4. As to Appointment of Officers of Health and Payment of Salaries.
5. Officer of Health to report as to Condition of Streets.
6. Officer of Health to deliver Copies of Report to Clerk of Local Authority, who shall refer the same to a Surveyor, &c.
7. Local Authority to cause Copies of Reports to be given to Owner, who may object to the same, and to prepare Plan and Specification of required Works.
8. Clerk of Local Authority to give Notice to Owner of Plan, &c. of required Works having been prepared.
9. Persons aggrieved by Order of Local Authority may appeal against the same.
10. Owner may appeal where Decision of Local Authority is against him.
11. Where Local Authority decide in favour of Owner, Reports and Notices to be sent to Parties liable.
12. On Representation by Householders that Disease exists in any House, Officer of Health to inspect and report.
13. If Local Authority neglect to enforce Act, Secretary of State may compel it to proceed.
14. Owner to signify to Clerk of Local Authority whether he is willing to execute specified Works.
15. Service of Notice on Owner whose Name and Residence are known.
16. Service of Notice on Owner whose Name or Residence is not known.
17. Notices to be signed by the Local Authority.
18. Local Authority to require Owners to execute Works as in Specification. Proceedings of Local Authority in case Owners neglect.
19. Provision in case Local Authority themselves execute the Works.
20. Local Authority to pay Compensation when total Demolition required.
21. Determination of Tenancies.
22. Remedies of Owner for Breach of Covenant, &c. not to be prejudiced.
23. Owner instead of effecting Improvements may take down Premises.
24. Application may be made to Justices where more than One Owner of Premises included in Order under Act, and any One Owner neglects to comply with such Order.
25. Grant of Annuity to Owner on Completion of Works.
26. Incidence of Charge.
27. Charges recoverable as Rentcharges in lieu of Tithes.

8. *An Order to be Evidence of Compliance with Act.*
 9. *Registry of Charging Order on Premises in Middlesex and Yorkshire.*
 10. *Assignment of Charge.*
 11. *As to Expenses of Local Authority.*
 12. *Power to Public Works Loan Commissioners to advance Monies to Local Authority.*
 13. *Service of Notice on the Local Authority.*
 14. *Notices served by Local Authority to be signed by the Clerk.*
 15. *Penalty for obstructing Officer of Health, &c. in Execution of Act.*
 16. *Penalty for preventing Execution of Act.*
 17. *Appearance of Local Authority.*
 18. *Recovery of Penalties.*
 19. *Application of Act to Scotland.*
 20. *Application of Act to Ireland.*
 21. *Jurisdiction of certain Magistrates.*
- Schedules.*

An Act to provide better Dwellings for Artizans and Labourers.

(31st July 1868.)

WHEREAS it is expedient to make Provision for taking down or improving Dwellings occupied by Working Men and their Families which are unfit for Human Habitation, and for the building and Maintenance of better Dwellings for such Persons instead thereof: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. In citing this Act it shall be sufficient to use the Words "The Artizans and Labourers Dwellings Act, 1868."

2. This Act shall apply only to the Places named in the First Column of Table (A.) in the first Schedule annexed hereto; and "Local Authority," "Local Rate," and "Clerk of Local Authority" shall mean "the Bodies of Persons," "Rate," and "Officer" in that Table in that behalf mentioned; and the said Table shall be of the same Force as if it were enacted in the Body of this Act: Provided always, that this Act shall not apply to any City, Borough, Town, or Place that would otherwise be included within the said Table, the Population whereof does not according to the Census for the Time being in force amount to the Number of Ten thousand Persons.

3. The following Words and Expressions have in this Act the following Meanings, unless excluded by the Subject or Context; (that is to say.)

The Word "Street" includes any Court, Alley, Street, Square, or Row of Houses:

The Word "Premises" means any Dwelling or Habited Building, and the Site of the same, with the Yard, Garden, Outhouses, and other Places belonging thereto or herewith:

The Expression "Owner," in addition to the Definition given by the Lands Clauses Act, shall include all Leases or Mortgagees of any Premises required to be dealt with under this Act, except Persons holding or entitled to the Rents and Profits of such Premises for a Term of Years, of which Twenty-one Years do not remain unexpired:

"Person" shall include a Body of Persons, corporate or unincorporate:

"Quarter Sessions" shall include General Sessions, and in Ireland shall mean, in Towns and Boroughs where there are separate Quarter Sessions, the Quarter Sessions of said Boroughs and Towns, and in Boroughs where there are no separate Quarter Sessions, the Quarter Sessions of the Divisions of the Courts in which such Towns or Boroughs shall be situate:

"Officer of Health" shall mean and include Medical Officer of Health, Sanitary Inspector, or any Statutory Officer performing the Duties which a Medical Officer or Sanitary Inspector performs under or by virtue of any Act of Parliament:

In all Cases in which the Name of a Local Authority, Local Court, Magistrate, or Officer having any Local Jurisdiction in respect of their or his Office is referred to, without Mention of the Locality to which the Jurisdiction extends, such Reference is to be understood to indicate the Local Authority, Local Court, Magistrate, or Officer having Jurisdiction in that Place within which are situate the Premises or other Subject Matter or any Part thereof to which such Reference applies:

"The Metropolis" shall not include the City of London or the Liberties thereof, but shall include all other Parishes or Places within the Jurisdiction of the Metropolitan Board of Works:

"Borough" in England shall mean any Place for the Time being subject to the Act passed in the Session holden in the Fifth and Sixth

Years of the Reign of King William the Fourth, Chapter Seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales:" "Burgh" in Scotland shall mean any Place returning or contributing to return Members to Parliament, or any Place subject to the Jurisdiction of a Town Council: "Borough" in Ireland shall mean any Place for the Time being subject to the Act passed in the Session of the Third and Fourth Years of the Reign of Her present Majesty, Chapter One hundred and eight, and intituled "An Act for the Regulation of Municipal Corporations in Ireland."

4. If in any Place to which this Act applies there is no Officer of Health within the Meaning of this Act, the Local Authority, with the Approval of One of Her Majesty's Principal Secretaries of State, shall forthwith appoint such an Officer for such Period as shall be necessary, shall assign him his Duties, and pay him such Salary or Emolument out of the Local Rate as they, with such Approval as aforesaid, shall think fit. The Local Authority, with the like Approval, may from Time to Time remove any Officer appointed under this Section, and in manner aforesaid appoint another Officer in his Place.

5. If in any Place to which this Act applies the Officer of Health find that any Premises therein are in a Condition or State dangerous to Health so as to be unfit for Human Habitation, he shall report the same in manner herein-after provided to the Local Authority.

6. Every Report made under this Act by the Officer of Health shall be made in Writing and delivered to the Clerk of the Local Authority, and the Local Authority shall refer such Report to a Surveyor or Engineer, who shall thereupon consider the Report so furnished to him, and report to the Local Authority what is the Cause of the Evil so reported on, and the Remedy thereof, and if such Evil is occasioned by Defects in any Premises, whether the same can be remedied by structural Alterations and Improvements or otherwise, or whether such Premises, or any and what Part thereof, ought to be demolished.

7. Upon Receipt of the Report of the Surveyor and Engineer the Local Authority shall cause Copies of both the Reports to be given to the Owner, with Notice of the Time and Place appointed by the Local Authority for the Consideration thereof, and such Owner shall be at liberty to attend and to state his Objections (if any) to such Reports, or either of them, including therein any Objection that the necessary Works ought to be done by or at the Expense of some

other Person or Persons, or at the Expense of the Parish or District in which the Premises are situate; and on such Objections the Local Authority shall make an Order in Writing, signed by the Clerk of such Local Authority, which shall be subject to Appeal in manner herein-after mentioned; and if such Objections are overruled, the Local Authority, if they deem it necessary, shall cause to be prepared a Plan and Specification of the Works (if any), and an Estimate of the Cost of such Works, required to be executed.

8. The Clerk of the Local Authority shall thereupon forthwith give Notice to the Owner of the Premises, informing him that a Plan and Specification and Estimate of the Cost of such Works as are required in reference thereto have been prepared, and that such Plan and Specification and Estimate may, if such Owner think fit, be inspected and transcribed by him or his Agent at the Office of the Clerk of the Local Authority without Charge; and any such Owner may at any Time within Three Weeks after the Receipt of such Notice state in Writing to the Clerk of the Local Authority any Objection which he may entertain to the said Plan, Specification, and Estimate, or any of them, and may attend at a Time and Place to be appointed for such Purpose by the Local Authority to support such Objections; and the Local Authority shall thereupon make such Order in relation thereto as they may think fit; and if they decide that any Alteration is to be made in the said Plan, Specification, and Estimate, the Local Authority shall cause such Alteration to be made accordingly, and the Plan and Specification and Estimate so amended shall be the Plan and Specification and Estimate according to which the Works shall be executed.

9. Any Person aggrieved by any Order of the Local Authority or his Agent may appeal against the same to the Court of Quarter Sessions held next after the making of the said Order, but the Appellant shall not be heard in support of the Appeal unless, within One Calendar Month after the making of the Order appealed against, he give to the Clerk of the Local Authority Notice in Writing stating his Intention to appeal, together with a Statement in Writing of the Grounds of Appeal, and shall, within Two Days after giving such Notice, enter into a Recognizance before some Justice of the Peace, with sufficient Securities, conditioned to try such Appeal at the said Court, and to abide the Order of and pay such Costs as may be awarded by the Court or any Adjournment thereof; and the Court, upon the appearing of the Parties, or upon their making default, shall have full Power and Jurisdiction to make such Order and give such Directions as under the Circumstances shall

seem just, and may, according to its Discretion, award such Costs to the Party appealing or appealed against as they think proper, and the Determination of the Court in or concerning the Premises shall be conclusive and binding on all Persons to all Intents or Purposes whatsoever: Provided,—

First, that if there be not Time to give such Notice and enter into such Recognizance as aforesaid, then such Appeal may be made to and such Notice, Statement, and Recognizance be given and entered into for the next Sessions at which the Appeal can be heard :

Secondly, that on the Hearing of the Appeal no Grounds of Appeal shall be gone into or entertained other than those set forth in such Statement as aforesaid :

Thirdly, that in any Case of Appeal the Court shall, at the Request of either Party, state the Facts specially for the Determination, in England or Ireland, of Her Majesty's Court of Queen's Bench, or in Scotland of either Division of the Court of Session, in which Case it shall be lawful to remove the Proceedings, by Writ of Certiorari or by Petition, into the said Courts of Queen's Bench or to the Court of Session respectively :

Fourthly, that pending any Appeal no Work shall be done nor Proceedings taken under any Order until after the Determination of such Appeal, or it shall cease to be prosecuted.

10. If the Owner appeal from the Decision of the Local Authority upon the Objection that he is not responsible for the State and Condition of his Premises, he shall be bound to give Notice of his Appeal, and a Statement in Writing of the Ground thereof, to the Person or Persons, or to the Parish or District, alleged by him to be the Occasion of his Premises being in such a State or Condition as to render them liable to be reported upon under the Provisions of the Act, and such Person or Persons, or Parish or District, may appear before the Court, and be heard against his or their alleged Liability.

11. If the Local Authority shall decide in favour of the Objection of the Owner of the Premises that some other Person or Persons, or that the Parish or District in which the Premises are situate, is or are responsible for the State and Condition of his Premises, the Local Authority shall forthwith send Copies of the Reports of the Officer of Health and of the Surveyor or Engineer to such Person or Persons, or to the Officer of such Parish or District, together with Notice of his or their alleged Liability, and shall appoint a Time and Place for hearing the Parties so alleged to be liable, and give Notice thereof to the said Parties and also to the Owner of the Premises, and the Local Authority shall make

such Order thereupon as to them shall seem just, and the same shall be subject to Appeal in manner aforesaid.

12. If and whenever any Four or more Householders living in or near to any Street by Writing under their Hands represent to the Officer of Health that in or near that Street any Premises are in a Condition or State dangerous to Health so as to be unfit for Human Habitation, he shall forthwith inspect the Premises, and report thereon ; but the Absence of any such Representation shall not excuse him from inspecting any Premises, and reporting thereon.

13. In the event of the Local Authority declining or neglecting for the Space of Three Calendar Months after receiving such Report to take any Proceedings to put this Act in force, the Householders who signed such Representation may address a Memorial to the Secretary of State stating the Circumstances, and asking that an Inquiry be made, and upon Receipt of such Memorial the said Secretary of State may direct the Local Authority to proceed under the Provisions of the Act, and such Direction shall be binding on the Local Authority.

14. Within Three Calendar Months after the Service on the Owner of the Order by the Clerk of the Local Authority, or, in the Case of Appeal, within One Calendar Month after the Order of Quarter Sessions, or, in the event of a further Appeal, within One Calendar Month after the Order of the Court of Final Appeal, the Persons so served with the Order of the Local Authority shall each of them signify in Writing to the Clerk of the Local Authority whether he is willing to effect the Works required to be executed ; and where Two or more Persons shall so signify, the Right of effecting the Works shall be given first to the Person whose Ownership is first or earliest in Title.

15. Where the Owner of the Premises and his Residence or Place of Business are known to the Local Authority, it shall be the Duty of the Clerk of the Local Authority, if the Owner be residing or have a Place of Business within the District of such Local Authority, to give any Notice by this Act required to be served on him to the Owner, or for him, to some Inmate of his Place of Residence or Business within the Place ; and if he be not residing within such District, or has no Place of Business therein, then to send the Notice by Post in a registered Letter addressed to the Owner at his Place of Residence or Business ; provided that the Notice served upon the Agent of the Owner shall be deemed Notice to the Owner.

16. Where the Owner of the Premises or his Residence or Place of Business is not known to,

or after diligent Inquiry cannot be found by the Local Authority, then the Clerk of the Local Authority may serve the Notice by leaving it, addressed to the Owner, with some Occupier of the Premises, or if there be not an Occupier, then by causing it to be put up on some conspicuous Part of the Premises.

17. Every Notice required to be given by the Clerk of the Local Authority by this Act shall be in Writing or Print, or partly in Writing and partly in Print, and shall be signed by the Clerk of the Local Authority or Deputy appointed by him.

18. The Owner on whom the Local Authority shall have imposed in the first instance the Duty of executing the Work shall, within Two Calendar Months thereafter, commence the Works as shown on the Plan and described in the Specification, and shall diligently proceed with and complete the same in conformity with the Specification to the Satisfaction of the Surveyor or Engineer appointed by the Local Authority; and if such Owner shall fail therein, the Local Authority shall require the Owner next in order as aforesaid to execute the said Works, and in case of his Default shall require the remaining Owners in their Order as aforesaid; and if all such Owners shall make default, the Local Authority shall, as the Case may seem to them to require, either order the Premises to be shut up or to be demolished, or may themselves execute the required Works in conformity with the Specification.

19. Where the Local Authority themselves execute the Works, they may apply to the Court of Quarter Sessions having Jurisdiction over the Place of which they are the Local Authority for an Order charging on the Premises on which the Works have been executed the Amount of all Costs, Charges, and Expenses that have been incurred by such Authority in or about the Execution of such Works, including the Costs of obtaining the Order; and the Court of Quarter Sessions, when satisfied of the Amount so expended, shall make an Order accordingly, charging on the Premises the Amount of such Costs, Charges, and Expenses, together with Interest at the Rate of Four Pounds per Cent. per Annum, and such Order shall be filed and recorded in manner herein-after mentioned, and thereupon the Amount of Principal and Interest thereby secured shall be a Charge on the House, bearing Interest at Four per Centum, and having Priority over all other Estates, Incumbrances, and Interests whatsoever, and the Local Authority shall, for the Purpose of obtaining Satisfaction of the Monies so charged, or of any Interest thereon, be deemed to be a Mortgagee of an absolute Estate in the House, and shall be invested with

all the Powers conferred on Mortgagees by Part II. of the Act of the Session of the Twenty-third and Twenty-fourth Years of the Reign of Her present Majesty, Chapter One hundred and forty-five, and in Scotland such Order shall be recorded in the appropriate Register of Sasines.

20. If the Requirements of the Order involve the total Demolition and not the Improvement of the Premises specified therein, the Owner shall, within Three Months after Service of the Order, proceed to take down and remove the Premises, and if such Owner fail therein, then the Local Authority shall proceed to take down and remove the same; and the Local Authority shall sell the Materials, and, after deducting the Expenses incident to such taking down and Removal, pay over the Balance of Monies, if any, to the Owner.

21. Where at the Time of making the Order the Premises specified therein, or any Part thereof, are or is subject to any Tenancy from Year to Year, or for a Year or for any less Term, the Local Authority shall give Notice to every such Tenant, stating the Time at which such Tenancy will be determined.

22. Provided always, That nothing in this Act contained shall prejudice or interfere with the Rights or Remedies of any Owner for the Breach, Nonobservance, or Nonperformance of any Covenant or Contract entered into by a Tenant or Lessee in reference to any Premises in respect of which any Order shall be made by a Local Authority; and if any Owner shall be obliged to take possession of any Premises in order to comply with any Order made under the Provisions of this Act, such Entry or taking possession shall not affect his Right to avail himself of any such Breach, Nonobservance, or Nonperformance that may have occurred prior to his so taking possession.

23. If the Order be that the Premises require Improvement, the Owner, including therein the Owner of the First Estate of Inheritance, if he think fit, may, instead of effecting the Works required by the Plan and Specification, take down the Premises; but in every such Case, and also in the event of the Owner desiring to retain the Site of the Premises required by the Order to be totally demolished, no House or other Building or Erection shall be erected on all or any Part of the Site of the Premises so taken down which shall be injurious to Health; and the Local Authority may at any Time make an Order upon the Owner to abate or alter the said House, Building, or Erection, as the Case may require; and in the event of Noncompliance with such Order the Local Authority may, at the

Expense of the Owner thereof, abate or alter any House or other Building or Erection at any Time wholly or partly erected contrary to the Provisions of this Section.

24. When there are Two or more Owners of any Premises, and it appears to any Two Justices in Petty Sessions, on Application of any Owner of such Premises, that the Interest of the Applicant in the Premises will be prejudiced by the Neglect and Default of any other Owner to deal with the Premises in conformity with the Order so made, it shall be lawful for such Justices, if the Applicant undertake to their Satisfaction to bring the Premises into conformity with such Order, to make an Order empowering the Applicant forthwith to take possession of the Premises, and to do all such Works as may be necessary for bringing the same into conformity with such Order, and within such Time as shall be fixed by such Justices, and on Non-compliance by such last-mentioned Applicant with his Undertaking it shall be lawful for the Justices to make a like Order in favour of any other Owner.

25. Where any Owner has completed any Works required to be executed by a Local Authority in pursuance of this Act, he may on the Completion thereof apply to the Local Authority for a Charging Order charging on the Premises on which the Works have been executed an Annuity as Compensation to the Owner for the Expenditure incurred by him in executing such Works, and shall produce to the Local Authority the Certificate of their Surveyor or Engineer that the Works have been executed to his Satisfaction, and also the Accounts and Vouchers for such Works, and the Local Authority, when satisfied that the Owner has duly executed such Works, shall make a Charging Order accordingly.

The Annuity charged shall be a Sum of Six Pounds for every 100*l.* of such Expenditure, and so in proportion for any less Sum, to commence from the Date of the Order, and to be payable for a Term of Thirty Years to the Owner named in such Order, his Executors, Administrators, or Assigns.

Charging Orders made under this Act shall be made according to the Form marked A. in the Second Schedule hereto annexed, or as near thereto as the Circumstances of the Case will admit.

The Costs of obtaining the Order to be allowed by the Local Authority shall be deemed to be Part of the Expenditure incurred by the Owner.

26. Every Annuity created by a Charging Order under this Act shall be a Charge on the Premises comprised in the Order, having Priority over all existing and future Estates, Interests,

and Incumbrances, with the Exception of Quit-rents and other Charges incident to Tenure, Tithe Commutation Rentcharges, and any Charges created under any Act authorizing Advances of Public Money; and where more Annuities than One are chargeable under this Act on any Premises, such Annuities shall, as between themselves, take Order according to their respective Dates.

27. Every Annuity charged on any Premises by a Charging Order under this Act may be recovered by the Persons for the Time being entitled to the same by the same Means and in the like Manner in all respects as if it were a Rentcharge granted by Deed out of the Premises by the Owner thereof.

28. An Order made in pursuance of this Act charging an Annuity on any Premises shall be, both at Law and in Equity, conclusive Evidence that all Notices, Acts, and Proceedings by this Act directed with reference to or consequent on the obtaining such Order, or the making such Charge, have been duly served, done, and taken, and that such Charge has been duly created, and that it is a valid Charge on the Premises declared to be subject thereto.

29. Every Charging Order made in pursuance of this Act relating to Premises in Middlesex or Yorkshire shall be registered in the same Manner respectively as if such Charge were made by Deed by the absolute Owner of such Lands without the Aid of this Act; and a Copy of every such Charging Order of the Certificate of such Surveyor or Engineer as aforesaid, together with a Copy of the Accounts as passed by the Local Authority, and which Copies shall be certified to be true Copies by the Clerk of such Local Authority, shall, within Six Months after the Date of such Charging Order, be deposited with the Clerk of the Peace of the County in which the Premises are situate, who shall be entitled to a Fee of Ten Shillings for filing and recording the same; and every Charging Order made in pursuance of this Act relating to Premises in Scotland shall be recorded in the appropriate Register of Sasines.

30. The Proprietor of any Charge may, by Deed under Seal, stamped with the same ad valorem Stamp as if it were an Assignment of a Charge created by Deed, assign the Benefit of the Charging Order, or of any Portion of the Charge comprised therein, to any other Person; and on such Assignment being executed the Assignee shall have the same Rights under the Order as the Proprietor would have had if no such Assignment had been executed; and any Assignee of a Charging Order may, by Deed

stamped in manner aforesaid, assign the Charge to any other Person. Any Assignment of a Charging Order may be in the Form marked B. in the Schedule hereto, or in any other convenient Form.

31. All Expenses incurred by the Local Authority in pursuance of this Act shall be defrayed by them out of a special Local Rate, not exceeding Twopence in the Pound in any Year, which they are hereby empowered to assess and levy for the Purposes of this Act.

32. The Public Works Loan Commissioners, as defined by the Public Works Loan Act, 1853, may, if they think fit, lend to any Local Authority, and any Local Authority may borrow from the said Commissioners, such Sums as the said Authority may require for the Purposes of this Act, but the Amount of every Loan shall be sanctioned by the Lords Commissioners of the Treasury.

33. Any Summons, Notice, Writ, or other Proceeding at Law or in Equity, or otherwise, in relation to carrying into effect the Objects and Purposes of this Act, required to be served upon the Local Authority, may be lawfully served by delivering the same to the Clerk of the Local Authority, or leaving the same at his Office with some Person employed there by him.

34. Any Notice, Demand, or other written Document served by the Local Authority for the Purposes of this Act shall be signed by the Clerk of the Local Authority.

35. Where any Person at any Time obstructs the Officer of Health or other Person acting in the Performance of anything which the Local Authority or their Officers respectively are by this Act required or authorized to do, every Person so offending shall for every such Offence forfeit not exceeding Twenty Pounds.

36. If the Occupier of any Premises prevents the Owner thereof, or if the Owner or Occupier of any Premises prevents the Officer of Health, or their Officers, Agents, Servants, or Workmen, from carrying into effect with respect to the Premises any of the Provisions of this Act, after Notice of the Intention so to do has been given to the Occupier, or, as the Case shall be, to the Owner, any Justice on Proof thereof may make an Order in Writing requiring the Occupier to permit the Owner, or, as the Case shall be, requiring the Owner or Occupier, or both, to permit the Officer of Health, or the Local Authority, and their Officers, Agents, Servants, and Workmen, to do all things requisite for carrying into effect with respect to the Premises the Pro-

visions of this Act; and if at the Expiration of Ten Days after the Service of such Order of the Justice the Occupier or Owner fails to comply therewith, every Person so offending shall for every Day during which the Failure continues forfeit not exceeding Twenty Pounds: Provided that during any such Failure by the Occupier the Owner, unless assenting thereto, shall not be liable to the Forfeiture.

37. The Local Authority may appear before any Judge, Justices, Borough Magistrates, Sheriff, or Sheriff Substitute, by their Clerk, and any Company or Body Corporate may appear before the said Magistrate or Magistrates by any Member of their Board of Management.

38. Penalties under this Act may be recovered before Two Justices in manner directed by an Act passed in the Session holden in the Eleventh and Twelfth Years of the Reign of Her Majesty Queen Victoria, Chapter Forty-three, intitled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders," or any Act amending the same, and in Scotland by summary Complaint before the Sheriff, Sheriff Substitute, or Two Justices, or in Boroughs before the Magistrates, in manner provided by "The Summary Procedure Act, 1864," and in Ireland in manner directed by "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

39. For the Purpose of adapting this Act to Scotland the following Alteration shall be made; that is to say,

1. "The Lands Clauses Consolidation Act (Scotland), 1845," shall be substituted for "The Lands Clauses Consolidation Act, 1845:"
2. All the Judicial Powers given to Justices in Quarter Sessions by this Act shall be exercised by Sheriffs of Counties or Sheriff Substitutes; and wherever by this Act an Appeal is given to the Court of Quarter Sessions, and thence to the Court of Queen's Bench, such Appeal shall be to the Sheriff of the County, and from him to the Court of Session in the usual Manner.

40. For the Purpose of adapting this Act to Ireland, the Words "The Lands Clauses Consolidation Act, 1845," shall mean "The Railways Act, Ireland, 1851," and the several Acts amending the same.

41. Any Act, Power, or Jurisdiction hereby authorized to be done or exercised by Two Justices may be done or exercised by the following

Magistrates within their respective Jurisdictions; that is to say: As to England, by any Metropolitan Police Magistrate or other Stipendiary Magistrate sitting alone at a Police Court or other appointed Place, or by the Lord Mayor of the City of London, or any Alderman of the said City, sitting alone or with others, at the

Mansion House or Guildhall; as to Scotland, by the Sheriff or Sheriff Substitute, or by any Two Magistrates of a Burgh; and as to Ireland, by any One or more Divisional Magistrates of Police in the Police District of Dublin, and elsewhere by Two or more Justices of the Peace in Petty Sessions.

SCHEDULES.

FIRST SCHEDULE.

TABLE A.
ENGLAND AND WALES.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
The City of London and the Liberties thereof. Local Acts { 11 & 12 Vict. c. 163. 14 & 15 Vict. c. 91.	Commissioners of Sewers of the City of London. Local Act 11 & 12 Vict. c. 163.	The Consolidated Rate - 11 & 12 Vict. c. 163. s. 158.	The Clerk to the Commissioners. 11 & 12 Vict. c. 163. s. 25.
The Metropolis - -	The Vestries and District Boards under the Act 18 & 19 Vict. c. 120. within their respective Parishes and Districts.	Rate to be levied for defraying the Expenses of the Act 18 & 19 Vict. c. 120.	Clerk of the Vestries or District Boards.
Boroughs not within the Jurisdiction of such Local Board as aforesaid.	The Mayor, Aldermen, and Burgesses, acting by the Council.	The Borough Fund or other Property applicable to the Purposes of a Borough Rate or the Borough Rate.	The Town Clerk.
Any Town not included in the above Descriptions, and under the Jurisdiction of Commissioners, Trustees, or other Persons entrusted by any Local Act with Powers of improving, cleansing, or paving any Town.	The Commissioners, Trustees, or other Persons entrusted by the Local Act with Powers of improving, cleansing, or paving the Town.	Any Rate leviable by such Commissioners, Trustees, or other Persons, or other Funds applicable by them to the Purposes of improving, cleansing, or paving the Town.	The Clerk of the Commissioners or Trustees or other Persons or other Officer performing the Duties of Clerk.
Places within the Jurisdiction of Local Boards, constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or One of such Acts.	The Local Board -	General District Rate - 11 & 12 Vict. c. 63. s. 87.	Clerk of the Local Board or other Officer performing Duties of Clerk. 11 & 12 Vict. c. 63. s. 37.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
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SCOTLAND.

Burghs - - -	The Magistrates and Town Council.	The Revenue of the Burgh or the Local Rate leviable for Prison Purposes under 23 & 24 Vict. c. 105., or any other Local Rate leviable by the Town Council.	Town Clerk.
Places where Police Commissioners or Trustees exercise the Functions of Police Commissioners acting under "The General Police and Improvement (Scotland) Act," or Trustees or Commissioners acting under any General or Local Act.	The Police or other Commissioners or Trustees.	Property or Rate belonging to or leviable by the Commissioners or Trustees.	Clerk of the Commissioners or Trustees or any other Officer performing the Duties of Clerk.

IRELAND.

The City of Dublin - -	The Right Honourable the Lord Mayor, Aldermen, and Burgesses, acting by the Council.	The Borough Fund or Borough or Improvement Rate.	The Town Clerk.
Towns Corporate or Boroughs (with the Exception of the City of Dublin).	The Mayor, Aldermen, and Burgesses, acting by the Council.	The Borough Fund, or Town Fund or Borough Rate.	The Town Clerk.
Towns having Town Commissioners under 9 G. 4. c. 82. or 17 & 18 Vict. c. 103., or any Acts amending the same, or having Commissioners or other Governing Body under any Local Act.	The Town Commissioners or other Governing Body.	Any Rate leviable by these Bodies, or any Fund belonging to them applicable in the whole or in part to the making or repairing of Sewers within their Jurisdiction.	The Clerk of the Commissioners or other Governing Body.

SECOND SCHEDULE.

FORM MARKED A.

The Artizans and Labourers Dwellings Act, 1868.

County of
Parish of
No.

Charging Order.

The being the Local Authority under the above-mentioned Act, do, by this Order under their Hands and Seal, charge the Inheritance or Fee of the Premises mentioned in the Schedule hereto with the Payment to of the Sum of Pounds, payable yearly on the of for the Term of Years, and being in consideration of an Expenditure of Pounds incurred by him in respect of the said Premises.

SCHEDULE.

Insert Description of Premises charged.

FORM MARKED B.

Form of Assignment of Charge.

To be endorsed on Charging Order.

Dated the Day of .
I, the within-named in
pursuance of the Artizans and Labourers Dwellings Act, 1868, and in consideration of Pounds this Day paid to me, hereby assign to the within-mentioned Charge.

(Signed)

THIRD SCHEDULE.

I. *Form of Order by Court of Quarter Sessions or Petty Sessions, or Court of Burgh Magistrates in Scotland.*

Be it remembered, That on the Day of 18 upon the Report hereinafter mentioned, we, the undersigned Justices, assembled at the Court of Quarter Sessions holden in and for the County of , or assembled in Petty Sessions for the Division or District of the Borough or County of , or Members of the Court of Burgh Magistrates for [as the Case may be], do hereby order and determine that One or more House or Houses or Buildings situate in a certain Court or Alley within the Borough or Burgh, known or designated as Court or Alley [or otherwise distinguishing the Premises], and specified in the Report of the Officer of Health for the dated the Day of 18 , is or are unfit for Human Habitation, and ought to be improved or demolished [as the Case may be], in pursuance of "The Artizans and Labourers Dwellings Act, 1868."

II. *Form of Notice by Clerk of the Peace, Clerk of the Justices, or Clerk of the Court of Burgh Magistrates in Scotland to Clerk of Local Authority.*

Artizans and Labourers Dwellings Act, 1868.

I, A.B., Clerk of the Peace or Clerk of the Justices [or Clerk of the Court of Burgh Magistrates] for the , do hereby certify, That on the Day of 18 the Justices assembled at the Court of Quarter Sessions, or assembled at the Petty Sessions for the [or Court of the Burgh Magistrates] [as the Case may be], made an Order, of which the following is a true Copy :

[Here give a Copy of the Presentment, Form I.]

As witness my Hand, this Day of in the Year of our Lord 18 .

(Signed) (A.B.)

Clerk of the Peace or Clerk of the Justices for [or Clerk of the Court of Burgh Magistrates.]

To the Clerk of the of .

A

T A B L E

OF

All the STATUTES passed in the Third Session of the Nineteenth Parliament of the United Kingdom of Great Britain and Ireland.

31 & 32 VICTORIÆ,

PUBLIC GENERAL ACTS.

- | | |
|--|--|
| i. An Act to apply the Sum of Two million Pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first Day of March One thousand eight hundred and sixty-eight - - - Page 3 | viii. An Act to provide for the Acquisition of a Site for a Museum in the East of London - - - - - 10 |
| ii. An Act to grant to Her Majesty additional Rates of Income Tax - - - - - 4 | ix. An Act to regulate the Disposal of extra Receipts of Public Departments - - - 11 |
| iii. An Act to confirm a Provisional Order under "The Drainage and Improvement of " Lands (Ireland) Act, 1863," and the Acts amending the same - - - - - 5 | x. An Act to apply the Sum of Three hundred and sixty-two thousand three hundred and ninety-eight Pounds Nineteen Shillings and Ninepence out of the Consolidated Fund to the Service of the Years ending the Thirty-first Day of March One thousand eight hundred and sixty-seven and the Thirty-first Day of March One thousand eight hundred and sixty-eight - - - - - 11 |
| iv. An Act to amend the Law relating to Sales of Reversions - - - - - 7 | xi. An Act to amend an Act to make further Provision for the Despatch of Business in the Court of Appeal in Chancery - - - 12 |
| v. An Act for the Amendment of "The Metropolitan Streets Act, 1867." - - - 8 | xii. An Act to facilitate the Alteration of Days upon which, and of Places at which, Fairs are now held in Ireland - - - - - 13 |
| vi. An Act to forbid the Issue of Writs for Members to serve in this present Parliament for the Boroughs of Totnes, Reigate, Great Yarmouth, and Lancaster - - - 8 | xiii. An Act to apply the Sum of Six million Pounds out of the Consolidated Fund to the Service of the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine - - - - - 14 |
| vii. An Act to further continue the Act of the Twenty-ninth Year of the Reign of Her present Majesty, Chapter One, intituled "An Act to " empower the Lord Lieutenant or other Chief " Governor or Governors of Ireland to apprehend, and detain for a limited Time, such " Persons as he or they shall suspect of conspiring against Her Majesty's Person and " Government" - - - - - 9 | xiv. An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters - - - - - 15 |

- v. An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore - 52
- vi. An Act to apply the Sum of Seventeen million Pounds out of the Consolidated Fund to the Service of the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine - 86
- vii. An Act to further continue and appropriate the London Coal and Wine Duties - 87
- viii. An Act to give further Time for making certain Railways - 88
- x. An Act for declaring valid certain Orders of Her Majesty in Council relating to the Ecclesiastical Commissioners for England and to the Deans and Chapters of certain Churches - 90
- . An Act to enable Persons in Ireland to establish Legitimacy and the Validity of Marriages, and the Right to be deemed Natural-born Subjects - 92
- i. An Act to provide Compensation to Officers of certain discontinued Prisons - 93
- ii. An Act to amend the Law relating to Places for holding Petty Sessions and to Lock-up Houses for the temporary Confinement of Persons taken into Custody and not yet committed for Trial - 94
- iii. An Act to render valid Marriages heretofore solemnized in the Chapel of Ease of Frampton Mansel in the Parish of Sapperton in the County of Gloucester - 96
- iv. An Act to provide for carrying out of Capital Punishment within Prisons - 97
- v. An Act to extend the Industrial Schools Act to Ireland - 99
- vi. An Act to enable certain guaranteed Indian Railway Companies to raise Money on Debenture Stock - 107
- vii. An Act for raising the Sum of One million six hundred thousand Pounds by Exchequer Bonds for the Service of the Year ending on the Thirty-first Day of March One thousand eight hundred and sixty-nine - 109
- viii. An Act to grant certain Duties of Customs and Income Tax - 110
- x. An Act to amend the Law relating to Medical Practitioners in the Colonies - 112
- . An Act to amend the Act of the Seventh and Eighth Years of the Reign of Victoria, Chapter Forty-four, relating to the Formation of quoad sacra Parishes in Scotland, and to repeal the Act of the Twenty-ninth and Thirtieth Years of the Reign of Victoria, Chapter twenty-seven - 113
- i. An Act to amend the Act passed in the Session of Parliament held in Ireland in the thirty-ninth Year of the Reign of His Majesty King George the Third, intituled "An Act for the better Regulation of Stockbrokers" - 114
- xxxii. An Act for annexing Conditions to the Appointment of Persons to Offices in certain Schools - 116
- xxxiii. An Act for the Collection and Publication of Cotton Statistics - 116
- xxxiv. An Act to alter some Provisions in the existing Acts as to Registration of Writs in certain Registers in Scotland - 117
- xxxv. An Act to extend the Provision in "The Duchy of Cornwall Management Act, 1863," relating to permanent Improvements - 118
- xxxvi. An Act to make perpetual the Alkali Act, 1863 - 119
- xxxvii. An Act to amend the Law relating to Documentary Evidence in certain Cases - 120
- xxxviii. An Act for the Appropriation of certain unclaimed Shares of Prize Money acquired by Soldiers and Seamen in India - 121
- xxxix. An Act to give Relief to Jurors who may refuse or be unwilling from alleged conscientious Motives to be sworn in Civil or Criminal Proceedings in Scotland - 123
- xl. An Act to amend the Law relating to Partition - 123
- xli. An Act to make Provision in the Case of Boroughs ceasing to return Members to serve in Parliament respecting Rights of Election which have been vested in Persons entitled to vote for such Members - 125
- xliv. An Act to amend the Act of the Twenty-third and Twenty-fourth Years of the Reign of Her Majesty, Chapter Fifty, by abolishing the Rate imposed by the said Act on all Occupiers of Premises within the extended Municipal Boundaries of the City of Edinburgh - 126
- xlvi. An Act for extending the Provisions of The Thames Embankment and Metropolis Improvement (Loans) Act, 1864, and for amending the Powers of the Metropolitan Board of Works in relation to Loans under that Act - 127
- xliv. An Act for facilitating the Acquisition and Enjoyment of Sites for Buildings for Religious, Educational, Literary, Scientific, and other Charitable Purposes - 129
- xlvi. An Act to carry into effect a Convention between Her Majesty and the Emperor of the French concerning the Fisheries in the Seas adjoining the British Islands and France, and to amend the Laws relating to British Sea Fisheries - 130
- xlvi. An Act to settle and describe the Limits of certain Boroughs and the Divisions of certain Counties in England and Wales, in so

- far as respects the Election of Members to serve in Parliament - - - 156
- XLVII. An Act to amend "The Consecration of " Churchyards Act, 1867 " - - - 183
- XLVIII. An Act for the Amendment of the Representation of the People in Scotland - - - 184
- XLIX. An Act to amend the Representation of the People in Ireland - - - 207
- L. An Act to amend the Acts for the Administration of Prisons in Scotland in so far as regards the County of Lanark; and for other Purposes - - - 213
- LI. An Act to amend the Law relating to Fairs in England and Wales - - - 215
- LII. An Act to amend the Act for punishing idle and disorderly Persons, and Rogues and Vagabonds, so far as relates to the Use of Instruments of Gaming - - - 216
- LIII. An Act to continue in force an Act of the Second Year of King George the Second, Chapter Nineteen, for the better Regulation of the Oyster Fishery in the River Medway - - - 217
- LIV. An Act to render Judgments or Decrees obtained in certain Courts in England, Scotland, and Ireland respectively effectual in any other Part of the United Kingdom - - - 218
- LV. An Act to provide for the Collection by means of Stamps of Fees payable in the Supreme and Inferior Courts of Law in Scotland, and in the Offices belonging thereto; and for other Purposes relative thereto - - - 220
- LVI. An Act to amend the Act Twenty-fifth and Twenty-sixth Victoria, Chapter Sixty-six, for the safe keeping of Petroleum - - - 222
- LVII. An Act to make Provision for the Appointment of Members of the Legislative Council of New Zealand, and to remove Doubts in respect of past Appointments - - - 224
- LVIII. An Act to amend the Law of Registration so far as relates to the Year One thousand eight hundred and sixty-eight, and for other Purposes relating thereto - - - 225
- LIX. An Act to amend the Law relating to Reformatory Schools in Ireland - - - 232
- LX. An Act to make better Provision for the Management and Use of the Curragh of Kildare - - - 242
- LXI. An Act for removing Doubts as to the Validity of certain Marriages between British Subjects in China and elsewhere, and for amending the Law relating to the Marriage of British Subjects in Foreign Countries - - - 254
- LXII. An Act to extend the Provisions of "The Renewable Leasehold Conversion (Ireland) Act" to certain Leasehold Tenures in Ireland - - - 255
- LXIII. An Act to enable Commissioners appointed to inquire into the Failure of the Bank of Bombay to examine Witnesses on Oath in the United Kingdom - - - 258
- LXIV. An Act to improve the System of Registration of Writs relating to Heritable Property in Scotland - - - 259
- LXV. An Act to amend the Law relating to the Use of Voting Papers in Elections for the Universities - - - 266
- LXVI. An Act to confirm certain Provisional Orders made under an Act of the Fifteenth Year of the Reign of Her present Majesty, to facilitate Arrangements for the Relief of Turnpike Trusts - - - 267
- LXVII. An Act to amend the Law relating to the Funds provided for defraying the Expenses of the Metropolitan Police - - - 268
- LXVIII. An Act to facilitate Liquidation in certain Cases of Bankruptcy Arrangement and Winding-up - - - 269
- LXIX. An Act to assimilate the Law in Ireland to the Law in England as to Costs in Actions of Libel - - - 272
- LXX. An Act to amend "The Railways (Ireland) Act, 1851," "The Railways (Ireland) Act, 1860," and "The Railways (Ireland) Act, 1864," as to the Trial of Traverses - - - 272
- LXXI. An Act for conferring Admiralty Jurisdiction on the County Courts - - - 274
- LXXII. An Act to amend the Law relating to Promissory Oaths - - - 278
- LXXIII. An Act to relieve certain Officers employed in the Collection and Management of Her Majesty's Revenues from any legal Disability to vote at the Election of Members to serve in Parliament - - - 283
- LXXIV. An Act to extend the Powers of Poor Law Inspectors and Medical Inspectors in Ireland - - - 284
- LXXV. An Act to amend the Law relating to Petit Juries in Ireland - - - 285
- LXXVI. An Act to defray the Charge of the Pay, Clothing, and contingent and other Expenses of the Disembodied Militia in Great Britain and Ireland; to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, and Surgeons Mates of the Militia; and to authorize the Employment of the Non-commissioned Officers - - - 286
- LXXVII. An Act to amend the Law relating to Appeals from the Court of Divorce and Matrimonial Causes in England - - - 296
- LXXVIII. An Act to amend the Law relating to Proceedings instituted by the Admiralty; and for other Purposes connected therewith - - - 297

- LXXXIX. An Act to further amend the Law relating to Railway Companies - - 298
- LXXX. An Act to amend the Contagious Diseases Act, 1866 - - - 299
- LXXXI. An Act to authorize Loans of Public Money to the Portpatrick and the Belfast and County Down Railway Companies, and a Payment to the Portpatrick Company in consequence of the Abandonment of the Communication between Donaghadee and Portpatrick - - - 299
- LXXXII. An Act to abolish the Power of levying the Assessment known as "Rogue Money," and in lieu thereof to confer on the Commissioners of Supply of Counties in Scotland the Power of levying a "County General Assessment" - - - 303
- LXXXIII. An Act to afford greater Facilities for the Ministrations of Army Chaplains - 305
- LXXXIV. An Act to amend in several Particulars the Law of Entail in Scotland - - 307
- LXXXV. An Act to apply a Sum out of the Consolidated Fund and the Surplus of Ways and Means to the Service of the Year ending the Thirty-first Day of March One thousand eight hundred and sixty-nine, and to appropriate the Supplies granted in this Session of Parliament - - - 312
- LXXXVI. An Act to enable Assignees of Marine Policies to sue thereon in their own Names - - - 328
- LXXXVII. An Act to amend the Act of the Twenty-sixth and Twenty-seventh Years of the Reign of Her present Majesty, Chapter Fifty-two, intituled "An Act to further extend " and make compulsory the Practice of Vaccination in Ireland " - - - 329
- LXXXVIII. An Act for transferring the Fee and other Funds of the Courts of Chancery and Exchequer in Ireland to the Consolidated Fund - - - 330
- LXXXIX. An Act to alter certain Provisions in the Acts for the Commutation of Tithes, the Copyhold Acts, and the Acts for the Inclosure, Exchange, and Improvement of Land; and to make Provision towards defraying the Expense of the Copyhold, Inclosure, and Tithe Office 331
- xc. An Act to empower certain Public Departments to pay otherwise than to Executors or Administrators small Sums due on account of Pay or Allowances to Persons deceased - 333
- xcI. An Act to settle an Annuity upon Lieutenant General Sir Robert Napier, G.C.B., G.C.S.I., and the next surviving Heir Male of his Body, in consideration of his eminent Services - - - 334
- xcII. An Act to declare the Powers of the General Assembly of New Zealand to abolish any Province in that Colony, or to withdraw from any such Province any Part of the Territory thereof - - - 334
- xcIII. An Act to remove Doubts respecting the Operation of the New Zealand Company's Act of the Ninth and Tenth Years of Victoria, Chapter Three hundred and eighty-two (Local and Personal) - - - 335
- xcIV. An Act to authorize the further Extension of the Period for Repayment of Advances made under the Railway Companies (Ireland) Temporary Advances Act, 1866 - - 336
- xcv. An Act to amend the Procedure in the Court of Justiciary and other Criminal Courts in Scotland - - - 337
- xcvi. An Act to amend the Procedure in regard to Ecclesiastical Buildings and Glebes in Scotland - - - 343
- xcvII. An Act to make Provision for the Audit of Accounts of District Lunatic Asylums in Ireland - - - 347
- xcvIII. An Act to make Provision for the Payment of Salaries to Clerks of the Peace and Clerks of the Crown in certain Boroughs in Ireland - - - 350
- xcIX. An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further Provision concerning Turnpike Roads - - - 351
- c. An Act to amend the Procedure in the Court of Session and the Judicial Arrangements in the Superior Courts of Scotland, and to make certain Changes in the other Courts thereof - - - 372
- cI. An Act to consolidate the Statutes relating to the Constitution and Completion of Titles to Heritable Property in Scotland, and to make certain Changes in the Law of Scotland relating to Heritable Rights - - 390
- cII. An Act to alter the Qualifications of the Electors in Places in Scotland under the "General Police and Improvement (Scotland) Act, 1862," or under the Act Thirteen and Fourteen Victoria, Chapter Thirty-three, and to amend the said Acts in certain other respects - - - 461
- cIII. An Act to amend the Law which regulates the Burials of Persons in Ireland not belonging to the Established Church - - 463
- cIV. An Act to amend the Bankruptcy Act, 1861 - - - 464
- cv. An Act for enabling Her Majesty to accept a Surrender upon Terms of the Lands, Privileges, and Rights of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and for admitting the same into the Dominion of Canada - - 467

- cvi. An Act for the Prevention of the holding of unlawful Fairs within the Limits of the Metropolitan Police District - - - 468
 cvii. An Act to amend the Law relating to the indorsing of Warrants in Scotland, Ireland, and the Channel Islands - - - 469
 cviii. An Act to amend the Laws for the Election of the Magistrates and Councils of Royal and Parliamentary Burghs in Scotland - - - 470
 cix. An Act for the Abolition of compulsory Church Rates - - - 476
 cx. An Act to enable Her Majesty's Postmaster General to acquire, work, and maintain Electric Telegraphs - - - 478
 cx. An Act to continue various expiring Laws - - - 487
 cxii. An Act to amend the Law of Registration in Ireland - - - 490
 cxiii. An Act to render valid Marriages heretofore solemnized in the Chapel of Ease called Saint James-the-Greater Chapel, Blakedown, in the Parish of Hagley in the County of Worcester - - - 508
 cxiv. An Act to amend the Law relating to the Ecclesiastical Commissioners for England 509
 cxv. An Act to amend "The Sanitary Act, 1866" - - - 511
 cxvi. An Act to amend the Law relating to Larceny and Embezzlement - - - 514
 cxvii. An Act to amend the District Church Tithes Act, 1865, and to secure Uniformity of Designation amongst Incumbents in certain Cases - - - 514
 cxviii. An Act to make further Provision for the good Government and Extension of certain Public Schools in England - - - 515
 cxix. An Act to amend the Law relating to Railways - - - 524
 cxx. An Act to relieve the Consolidated Fund from the Charge of the Salaries of future Bishops, Archdeacons, Ministers, and other Persons in the West Indies - - - 541
 cxxi. An Act to regulate the Sale of Poisons, and alter and amend the Pharmacy Act, 1852 - - - 542
 cxxii. An Act to make further Amendments in the Laws for the Relief of the Poor in England and Wales - - - 549
 cxxiii. An Act to amend the Law relating to Salmon Fisheries in Scotland - - - 556
 cxxiv. An Act to amend the Laws relating to the Inland Revenue - - - 617
 cxxv. An Act for amending the Laws relating to Election Petitions, and providing more effectually for the Prevention of corrupt Practices at Parliamentary Elections - - - 620
 cxxvi. An Act to enable Her Majesty the Queen to carry into effect a Convention made between Her Majesty and other Powers relative to a Loan for the Completion of Works for the Improvement of the Navigation of the Danube - - - 632
 cxxvii. An Act to prevent the Removal of the Tower of the Church of Saint Mary Somerset in the City of London, and for vesting the said Tower and the Site thereof, and a Portion of the Burial Ground attached to the said Church, in the Corporation of the said City - - - 634
 cxxviii. An Act to extend the Provisions of the Act Twenty-eighth and Twenty-ninth Victoria, Chapter One hundred and thirteen, to Persons who have held the Office of Lord High Commissioner of the Ionian Islands - - - 635
 cxxix. An Act to amend the Law relating to the Registration of Ships in British Possessions - - - 635
 cxxx. An Act to provide better Dwellings for Artizans and Labourers - - - 637
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- The Acts contained in the following List, being PUBLIC Acts of a Local Character, are placed amongst the LOCAL AND PERSONAL ACTS.
- ix. An Act to confirm certain Orders made by the Board of Trade under the Oyster and Mussel Fisheries Act, 1866, relating to the Rivers Blackwater (Essex) and Hamble.
 x. An Act to confirm certain Provisional Orders under "The Local Government Act, 1858," relating to the Districts of Workington, Walton-on-the-Hill, West Derby, Eton, Lilanely, Oxenhope, and Stanbury and Keighley, and for other Purposes relative to certain Districts under the said Act.
 xi. An Act to confirm certain Provisional Orders under "The General Police and Improvement (Scotland) Act, 1862," relating to the Burghs of Perth and Brechin.
 xii. An Act to confirm a Provisional Order under the "General Police and Improvement (Scotland) Act, 1862," relating to the Burgh of Broughty Ferry.
 xxi. An Act to authorize the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales.
 xli. An Act for confirming certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Brightlingsea, Clevedon, Morecambe, Mousehole, Instow, Saltburn-by-the-Sea, and

Southport; and for amending the General Pier and Harbour Act, 1861.

xlvii. An Act for confirming certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Carlingford Lough, Elgin and Lossiemouth, Greenock, Hunstanton, Tenby, and Torquay.

lxxx. An Act to make Provision respecting the Use of Subways constructed by the Metropolitan Board of Works in the Metropolis.

lxxxii. An Act to authorize the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales.

lxxxiii. An Act to confirm a Provisional Order under "The Drainage Act, 1861."

lxxxiv. An Act to confirm certain Provisional Orders under "The Local Government Act, 1858," relating to the Districts of Southampton, Bradford, Whitchurch and Dodington, Royton, Kendal, and Sunderland.

lxxxv. An Act to confirm a certain Provisional Order under "The Local Government Act, 1858," relating to the District of Tormoham (Devonshire).

lxxxvi. An Act to confirm certain Provisional Orders under "The Local Government Act, 1858," relating to the Districts of Malvern, Cowpen, Bristol, Sheffield, Margate, Bognor, and Otley; and for other Purposes relative to certain Districts under the said Act.

cl. An Act to confirm a Provisional Order made by the Poor Law Board under the Poor Law Amendment Act, 1867, with reference to the City of Salisbury.

cli. An Act to confirm a Provisional Order under "The Drainage and Improvement of Lands (Ireland) Act, 1863," and the Acts amending the same.

clii. An Act to confirm a certain Provisional Order under "The Local Government Act, 1858," relating to the District of Tunbridge Wells.

cliii. An Act to confirm certain Provisional Orders under "The Local Government Act, 1858," relating to the Districts of Harrogate, Layton with Warbrick, Bury, Lower Brixham, Hexham, Tipton, Gainsborough, Worthing, Aberystwith, Cockermouth, Burnham, Wednesbury, Burton-upon-Trent, Hornsey, and Keswick, and for other Purposes relative to certain Districts under the said Act.

cliv. An Act to make better Provision for the Preservation and Improvement of the River Lee and its Tributaries; and for other Purposes.

clv. An Act to confirm a Provisional Order under "The Public Health (Scotland) Act, 1867," relating to the Burgh of Tain.

clvi. An Act to confirm a Provisional Order under "The Land Drainage Act, 1861."

clvii. An Act to confirm a Provisional Order under "The Drainage and Improvement of Lands (Ireland) Act, 1863," and the Acts amending the same.

clviii. An Act to confirm a Provisional Order under The Drainage and Improvement of Lands (Ireland) Act, and the Acts amending the same.

LOCAL AND PERSONAL ACTS.

The Titles to which the Letter P. is prefixed are Public Acts of a Local Character.

- i. AN Act for granting further Powers to the Burry Port and Gwendreath Valley Railway Company.
- ii. An Act to authorize a Diversion of the Line and Alteration of the Levels of the Devon Valley Railway; and for other Purposes.
- iii. An Act to make further Provision for lighting with Gas the Town and Parish of Loughborough in the County of Leicester; to incorporate the Loughborough Gas and Coke Company; and for other Purposes.
- iv. An Act to confer certain additional Powers upon the North London Railway Company.
- v. An Act to empower the Grand Junction Waterworks Company to raise further Money; to acquire additional Land; and for other Purposes.
- vi. An Act for authorizing a Deviation of the Newquay and Cornwall Junction Railway, and for extending the Time for the Completion of that Railway; and for conferring further Powers on the Newquay and Cornwall Junction Railway Company, and on Treffry's Trustees, with reference to the Newquay Railway; and for other Purposes.
- vii. An Act to enable the Metropolitan Board of Works to make Improvements in the Parish of Saint Marylebone in the County of Middlesex by forming a new Street in lieu of Stingo Lane from the Marylebone Road to Upper York Street.
- viii. An Act to authorize the Construction of a Subway under the Thames from Tower Hill to the opposite Side of the River.
- P. ix. An Act to confirm certain Orders made by the Board of Trade under The Oyster and Mussel Fisheries Act, 1866, relating to the Rivers Blackwater (Essex) and Hamble.
- P. x. An Act to confirm certain Provisional Orders under "The Local Government Act, 1858," relating to the Districts of Workington, Walton-on-the-Hill, West Derby, Eton, Llanelly, Oxenhope and Stanbury, and Keighley, and for other Purposes relative to certain Districts under the said Act.
- P. xi. An Act to confirm certain Provisional Orders under "The General Police and Improvement (Scotland) Act, 1862," relating to the Burghs of Perth and Brechin.
- P. xii. An Act to confirm a Provisional Order under the "General Police and Improvement (Scotland) Act, 1862," relating to the Burgh of Broughty Ferry.
- xiii. An Act to authorize the Company of Proprietors of the Lewes Waterworks to raise more Money; and for other Purposes.
- xiv. An Act to extend the Time for the compulsory Purchase of Lands, and for the Completion of the Buckfastleigh, Totnes, and South Devon Railway.
- xv. An Act to provide for the finding and maintaining of One Chaplain in lieu of Two in the Parish of Saint Saviour, Southwark; and for other Purposes.
- xvi. An Act for enabling the Local Board of Health for the District of Loughborough in the County of Leicester to construct and maintain Waterworks and supply Water within the District; to hold and regulate Fairs and Markets; and for other Purposes.
- xvii. An Act for the altering, widening, and rebuilding a Bridge across the River Severn at Stourport in the County of Worcester, and for making further Provisions with respect to the said Bridge.
- xviii. An Act for facilitating Arrangements with respect to the new Parish of Saint Luke, King's Cross, and other new Parishes and Districts, with a view to better Provision for the Cure of Souls within the original Limits of the Parish of Saint Pancras in the County of Middlesex; and for other Purposes.
- xix. An Act to enable the Dingwall and Skye Railway Company to make Deviations of their

authorized Line of Railway; and for other Purposes.

xx. An Act to authorize the Brompton, Chatham, Gillingham, and Rochester Waterworks Company to raise further Capital; and for other Purposes.

xxi. An Act to confer further Powers upon the Carnarvon and Llanberis Railway Company, and upon the London and North-western Railway Company, with respect to the Carnarvon and Llanberis Railway.

xxii. An Act for authorizing the Purchase by the Corporation of Lincoln of certain Common Rights, and the Diversion of a Road in Canwick Common, and the Sale of Portions of the said Common; and for other Purposes.

xxiii. An Act for incorporating the Hythe and Sandgate Gas and Coke Company (Limited), and defining the Limits of Supply of Gas by them, and regulating their Capital; and for other Purposes.

xxiv. An Act for empowering the Corporation of the Borough of Leicester to execute Works for Prevention of Floods on the River Soar, and other Waters within the Borough, and additional Sewerage and Drainage Works, to make new Streets and Improvements, to establish a Vegetable Market, and to make Arrangements with the Visitors of the Leicestershire and Rutland Lunatic Asylum, and for establishing Sanitary and other Regulations for the Borough; and for other Purposes.

xxv. An Act for enabling the Company of Proprietors of the Undertaking for recovering and preserving the Navigation of the River Dee to raise further Monies; and for other Purposes.

xxvi. An Act to extend the Time for the Purchase of Lands for the Construction of the Chester and West Cheshire Junction Railway.

xxvii. An Act to enable the Local Board of Health for the District of Leamington Priors in the County of Warwick to purchase the Property of the Leamington Royal Pump Room Company (Limited) at Leamington Priors, and to maintain a Pump Room and Baths and Public Gardens and Pleasure Grounds in Leamington Priors for the Use and Enjoyment of the Inhabitants thereof; and for other Purposes.

xxviii. An Act for supplying with Water the Parishes, Townships, and Places of Slough, Upton-cum-Chalvey, Stoke Poges, Langley, Datchet, and Farnham Royal, in the County of Buckingham; and for other Purposes.

xxix. An Act to authorize the Borough of Portsmouth Waterworks Company to make and maintain Works in connexion with their present Waterworks, and to raise more Money; and for other Purposes.

xxx. An Act to authorize "The City of Dublin Steam Packet Company" to make further

Arrangements for the Investment of their Contingency Fund; and for other Purposes.

P. xxxi. An Act to authorize the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales.

xxxii. An Act to dissolve and re-incorporate the Cork Gas Consumers Company, Limited, and to provide for lighting the City of Cork with Gas; and for other Purposes.

xxxiii. An Act to enable the Mayor, Aldermen, and Burgesses of the Borough of Cork to make a Diversion in the Line of the Cork, Blackrock, and Passage Railway; to authorize Agreements with the Harbour Commissioners; to define and extend the Powers of the Corporation in reference to Water Supply and Matters of local Government; to raise further Monies; to alter and amend the existing Acts relating to the Borough; and for other Purposes.

xxxiv. An Act for improving the Supply of Water to the Borough of Haverfordwest, for facilitating the Recovery of Market and other Tolls and Dues leviable in the Borough, for improving the Recreation Ground of the Borough; and for other Purposes.

xxxv. An Act to authorize the Farnworth and Kearsley Gas Company to raise additional Capital; and for other Purposes.

xxxvi. An Act to extend the Limits of the Act for appointing a Stipendiary Justice of the Peace for the Parish of Merthyr Tydfil and adjoining Places; and for other Purposes.

xxxvii. An Act to enable the Knighton, the Central Wales, and the Central Wales Extension Railway Companies to take a Lease of the Vale of Towry Railway jointly with the Llanelly Railway and Dock Company; and for other Purposes.

xxxviii. An Act for vesting the several Undertakings of the Knighton, the Central Wales, and the Central Wales Extension Railway Companies in the London and North-western Railway Company; and for other Purposes.

xxxix. An Act to extend the Time for the Purchase of Lands for and for the Completion of certain of the Railways of the Glasgow and South-western Railway Company; and for other Purposes.

xl. An Act for enabling the Brentford Gas Company to raise additional Capital; to construct new Works; to vary and extend the Limits of Supply; and for other Purposes.

xli. An Act to authorize the Burslem and Tunstall Gas Company to raise further Capital; and for other Purposes.

xlii. An Act to incorporate the Clevedon Gas Company, and to make further Provision for lighting with Gas the Parish of Clevedon and

- certain Parishes and Places in the Neighbourhood thereof, in the County of Somerset.
- xl. An Act for conferring additional Powers on the Midland Railway Company for the raising of further Capital and the Construction of new Works; and for other Purposes.
- xli. An Act for making and maintaining a Market in the Parish of St. Mary, Lambeth, in the County of Surrey.
- xlii. An Act for authorizing the Leeds New Gas Company to raise further Money, and acquire additional Lands; and for other Purposes.
- P. xlii. An Act for confirming certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Brightlingsea, Clevedon, Morecambe, Mousehole, Instow, Saltburn-by-the-Sea, and Southport; and for amending the General Pier and Harbour Act, 1861.
- P. xliii. An Act for confirming certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Carlingford Lough, Elgin and Lossiemouth, Greenock, Hunstanton, Tenby, and Torquay.
- xliiii. An Act for dissolving and re-incorporating the Proprietors of the Yeadon and Guiseley Gaslight and Coke Company; and for other Purposes.
- xliii. An Act to confer further Powers on the Midland and London and North-western Railway Companies for the Construction of Works in connexion with their Ashby and Nuneaton Railway; and for other Purposes.
- l. An Act for authorizing the North and South Western Junction Railway Company to make a Deviation or Alteration in their Main Line of Railway; to raise further Monies; and for other Purposes.
- li. An Act to extend the Time for the Purchase of Lands, and for the Completion of the Uxbridge and Rickmansworth Railway.
- lii. An Act to extend the Time for the Purchase of Lands, and for the Completion of the Acton and Brentford Railway.
- liii. An Act to authorize the Construction by the Great Northern Railway Company of a new Road in the Town of Leeds; and for other Purposes.
- liv. An Act to confirm the Issue of Stocks and Shares of the Great Western Railway Company in Payment of Dividends to the Holders of Stocks or Shares in the Company.
- lv. An Act to repeal "The West Riding and Grimsby Railway (Extension) Act, 1865."
- lvi. An Act to incorporate the Ystrad Gas and Water Company, Limited, and to make Provisions for the Supply of Gas and Water in the Parish of Ystradfydwg in the County of Glamorgan; and for other Purposes.
- lvii. An Act for amending the Provisions of "The Alexandra (Newport) Dock Act, 1865," with respect to the Borrowing Powers of the Alexandra (Newport) Dock Company; and for other Purposes.
- lviii. An Act to incorporate the Humber Conservancy Commissioners, and to make Provision for a Lease to them of Foreshores of the Humber and the Estuary thereof between the Confluence into the same of the Rivers Ouse and Trent and the Sea, and to amend the Enactments relating to the Commissioners; and for other Purposes.
- lix. An Act for the Establishment of a united Constabulary Force in and for the University and City of Oxford.
- lx. An Act to empower the Corporation of Reading to alter and improve or rebuild Caversham Bridge in the Counties of Berks and Oxford; and for other Purposes.
- lxi. An Act to amend and enlarge the Provisions of "The Reading Waterworks Act, 1851;" to make further and better Provision for supplying the Town of Reading and the adjoining Districts with Water; and for other Purposes.
- lxii. An Act to extend the Time for constructing the Wexford Branch and the Kingstown Connecting Branch of the Dublin, Wicklow, and Wexford Railway Company; to make Arrangements as to the Capital of the Company; and for other Purposes.
- lxiii. An Act to authorize the Abandonment of certain Portions of the Railways authorized by "The North British and Edinburgh and Glasgow (Bridge of Forth) Railways Act, 1865;" also an Extension of Time for the compulsory Purchase of Lands and the Completion of other Portions of the said Railways; and for other Purposes.
- lxiv. An Act to extend the Time for the Purchase of Lands for and the Construction of the Railways authorized by the Lancashire and Yorkshire Railway (Ripponden and Stainland Branches, &c.) Act, 1865; to empower the Lancashire and Yorkshire Railway Company to subscribe to the Hull Docks; and for other Purposes.
- lxv. An Act for further regulating the Capital of the Bristol and Exeter Railway Company, and for authorizing the Abandonment of the Tiverton and North Devon Railway; for extending the Time for making the Brean Railway; and for other Purposes.
- lxvi. An Act for incorporating and granting certain Powers to the Peterborough Gas Company.
- lxvii. An Act to authorize the Corporation of Chichester to remove the present Cattle Market, and to provide a new Cattle Market; and for other Purposes.

- lxviii. An Act to amend the Downpatrick, Dundrum, and Newcastle Railway Act, 1866.
- lxix. An Act to extend the Time for completing certain of the authorized Works of the London and South-western Railway Company; and for other Purposes.
- lxx. An Act for altering and amending "The Maryport Improvement and Harbour Act, 1866;" for authorizing new Works and extending the Powers of the Trustees; and for other Purposes.
- lxxi. An Act for the Abandonment of the Undertaking of the Ilfracombe Railway Company, and for the Dissolution of that Company; and for other Purposes.
- lxxii. An Act for enabling the Sunderland and South Shields Water Company to extend their Works and their Supply of Water, and to raise additional Capital; and for other Purposes.
- lxxiii. An Act to enable the Potteries and Shrewsbury and North Wales Railway Company to make a substituted Line of Railway, and to abandon a Portion of their authorized Railway; and for other Purposes.
- lxxiv. An Act for dissolving the Calverley Gas Company (Limited) and the Horsforth Gas Company, and incorporating a Company for supplying with Gas certain Parts of the Parishes of Calverley, Guiseley, and Addle, in the West Riding of the County of York.
- lxxv. An Act for empowering the Local Board for the District of Wolborough in the County of Devon to acquire Market and Fair Rights and Tolls, and to establish and hold Markets and Fairs; and for other Purposes.
- lxxvi. An Act for better supplying with Gas the City of Chichester and adjoining Places; and for other Purposes.
- lxxvii. An Act to incorporate the Merthyr Tydfil Gas Company, and to confer upon them Powers and make Provisions for more effectually supplying with Gas the Town of Merthyr Tydfil and its Neighbourhood; and for other Purposes.
- lxxviii. An Act for better supplying with Water the Parishes of Topsham, Clyst Saint George, Woodbury, and Lymptone, in the County of Devon.
- lxxix. An Act to amend and enlarge the Provisions of "The Warrington Waterworks Act, 1855;" to extend the Limits of the Company for the Supply of Water; to make further and better Provision for supplying Warrington and the adjoining Districts with Water; and for other Purposes.
- P. lxxx. An Act to make Provision respecting the Use of Subways constructed by the Metropolitan Board of Works in the Metropolis.
- lxxxi. An Act to enable the Local Board of Health in and for the District of the Borough of Reading to acquire the Undertaking of the Reading Waterworks Company; and for other Purposes.
- P. lxxxii. An Act to authorize the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales.
- P. lxxxiii. An Act to confirm a Provisional Order under "The Drainage Act, 1861."
- P. lxxxiv. An Act to confirm certain Provisional Orders under "The Local Government Act, 1858," relating to the Districts of Southampton, Bradford, Whitechurch and Dodington, Royton, Kendal, and Sunderland.
- P. lxxxv. An Act to confirm a certain Provisional Order under "The Local Government Act, 1858," relating to the District of Tormoham (Devonshire).
- P. lxxxvi. An Act to confirm certain Provisional Orders under "The Local Government Act, 1858," relating to the Districts of Malvern, Cowpen, Bristol, Sheffield, Margate, Bognor, and Otley; and for other Purposes relative to certain Districts under the said Act.
- lxxxvii. An Act for authorizing the Morley Gas Company to raise further Monies; and for other Purposes.
- lxxxviii. An Act to enable the Waterford and Limerick Railway Company to raise additional Capital; and for other Purposes.
- lxxxix. An Act for enlarging and improving the Court-houses and Public Buildings of the City of Glasgow and County of Lanark, and erecting additional Court-houses, Halls, and Buildings; and for other Purposes.
- xc. An Act to amend "The Itchen Floating Bridge Act, 1863;" and for other Purposes.
- xc. An Act to extend the Powers of the Stourbridge Railway Company with respect to the Branch Railway to Stourbridge.
- xcii. An Act for incorporating and granting other Powers to the Worthing Gaslight and Coke Company.
- xciii. An Act to extend the Time for the Purchase of Lands and for the Construction of the Works authorized by "The Clonmel, Lismore, and Dungarvan Railway Act, 1865."
- xciv. An Act to authorize and incorporate Commissioners to supply with Gas the Town of Dundee and Districts and Places adjacent, and to transfer to them the Gasworks of the Dundee Gaslight Company and the Dundee New Gaslight Company; and for other Purposes.

- xcv. An Act for supplying with Water Ruthin and Places adjacent in the County of Denbigh.
- xcvi. An Act to authorize "The Commissioners for improving the Port and Harbour of Waterford" to construct a Dry Dock and Road, and other Works connected therewith respectively; and for other Purposes.
- xcvii. An Act for the Extension of Time for the Purchase of Lands and Completion of Works authorized by "The Barry Railway Act, 1865," and "The Barry Railway (Alteration) Act, 1866;" and for other Purposes.
- xcviii. An Act for making a Tramway from the Somerset and Dorset Railway at Glastonbury to Street in the County of Somerset; and for other Purposes.
- xcix. An Act for authorizing the Teign Valley Railway Company to make and maintain a Deviation of their authorized Railway; and for other Purposes.
- c. An Act for making a Railway from the Wycombe Branch of the Great Western Railway to Great Marlow in the County of Buckingham; and for other Purposes.
- ci. An Act for authorizing the Tottenham and Hampstead Junction Railway Company to raise further Monies; and for other Purposes.
- cii. An Act to extend the Time for the compulsory Purchase of Lands for and for the Completion of the Abergavenny and Monmouth Railway.
- ciii. An Act for granting Powers to the Proprietors of the Windsor and Eton Waterworks.
- civ. An Act for authorizing the Corporation of the Borough of Barrow-in-Furness to supply with Gas and Water the Borough and adjacent Districts; to purchase the Undertaking of the Furness Gas and Water Company; for defining and extending the Powers of the Corporation in relation to the Improvement of the Borough, and to Police, and other Matters of Local Government; and for other Purposes.
- cv. An Act for enabling the Caledonian Railway Company to abandon certain authorized Branches; for extending the Periods limited for the Acquisition of Lands and Construction of Works as respects their Muirkirk Branch; for raising additional Money; and for other Purposes.
- cvi. An Act for consolidating the Acts relating to the Gaslight and Coke Company, for regulating their Capital, and for authorizing them to erect new Gasworks, and to construct other Works in connexion therewith, and to raise further Monies; and for other Purposes.
- cvi. An Act to enable the Kington and Eardisley Railway Company to make Deviations of their authorized Railways; to abandon Portions of their Railways; to revive and extend the Powers of compulsory Purchase of Lands; and to use a Portion of the Leominster and King-ton Railway; and for other Purposes.
- cvi. An Act to grant further Powers to the Metropolitan District Railway Company.
- cix. An Act for enabling the Metropolitan Railway Company to make a Junction Line in the Parish of Saint Sepulchre in the City of London; for giving Effect to Arrangements with other Companies; for extending the Time limited for the Purchase of certain Lands; for amending the Acts relating to the Company; and for other Purposes.
- cx. An Act for the Improvement of the Township and District of New Kilmainham in the Barony of Upper Cross and County of Dublin.
- cx. An Act for altering the Streets in communication with the Embankment on the North Side of the Thames; for giving Effect to an Arrangement with the South-eastern Railway Company with respect to the Pier at Hungerford, and to an Arrangement with the Metropolitan District Railway Company; and for amending some of the Provisions of the Acts relating to the Embankment on the South Side of the Thames; and for other Purposes.
- cxii. An Act to authorize the Provost, Magistrates, and Town Council of the Royal Burgh of Dundee to construct a Sea Wall so as to enclose a Portion of the Alveus of the Frith of Tay opposite to the Burgh, and to form an Esplanade and a Road or Street on and within such Sea Wall; and for other Purposes.
- cxiii. An Act for repealing the Gun Barrel Proof Act, 1855, and for making other Provisions in lieu thereof; and for altering the Constitution of the Guardians of the Birmingham Proof House; and for better ensuring the due Proof of Gun Barrels; and for other Purposes.
- cxiv. An Act to confer further Powers on the Lancashire and Yorkshire Railway Company and on the Lancashire Union Railways Company, with respect to certain Railways in Lancashire authorized to be constructed by them severally or jointly.
- cxv. An Act for authorizing the Abandonment of a Portion of the Undertaking of the Lancashire Union Railways Company, and for extending the Time for the Completion of other Portions thereof; and for other Purposes.
- cxvi. An Act to confer further Powers on the Wolverhampton and Walsall Railway Company.
- cxvii. An Act to separate for certain Purposes Portions of the Borough of Belfast from the County of Down, and for other Purposes relating to the Improvement and Regulation of the Borough.

- cxviii. An Act for conferring additional Powers on the London and North-western Railway Company for the Construction of new Works, and in relation to their own Undertaking and the Undertakings of other Companies; and for other Purposes.
- cxix. An Act for transferring the Waterworks of the Dartford Local Board of Health to the Company of Proprietors of the Kent Waterworks Company; and for other Purposes.
- cxx. An Act for extending the Time limited for the compulsory Purchase of Lands authorized to be taken by the London, Blackwall, and Millwall Extension Railway Act, 1865, and also the Time limited for completing the Railways and Works under such Act; for authorizing Arrangements with other Companies; and for other Purposes in relation to the London and Blackwall Railway Company.
- cxxi. An Act for granting further Powers to the Saint Ives and West Cornwall Junction Railway Company.
- cxxi. An Act to authorize the Holywell Railway Company to divert and relinquish their authorized Railway, and to construct other Railways in substitution thereof; and for other Purposes.
- cxixiii. An Act for the Abandonment of the Railways authorized by the South-eastern and London, Chatham, and Dover (London, Lewes, and Brighton) Railways Act, 1866.
- cxixiv. An Act to authorize the Trustees of the Clyde Navigation to construct a Graving Dock, Quays or Wharfs, and other Works at the Harbour of Glasgow, and to borrow additional Money; and for other Purposes.
- cxixv. An Act to amend the Metropolis Gas Act, 1860, and to make further Provision for regulating the Supply of Gas to the City of London; and for other Purposes connected therewith.
- cxixvi. An Act for incorporating the Eastbourne Gas Company, and for conferring upon them further Powers for the Supply of Gas to the Town and Parish of Eastbourne and the Parish of Willington in the County of Sussex; and for other Purposes.
- cxixvii. An Act to enable the Mayor, Aldermen, and Burgesses of the Borough of Halifax to construct new Works in extension of their Waterworks; to extend their Limits of Supply; to acquire the Manufacturers' Hall; to improve the Borough of Halifax; and for other Purposes.
- cxixviii. An Act for enabling the Corporation of the Borough of Portsmouth to construct a new Wharf or Quay in the Camber; for extending their Powers to levy Rates and Dues; and for other Purposes.
- cxixix. An Act for authorizing the Local Board for the District of Saint Mary Church in the County of Devon to supply their District with Gas, to erect a Town Hall and other Buildings, and to raise Monies; and for other Purposes.
- cxixx. An Act to amalgamate the Court of Record for the Hundred of Salford in the County of Lancaster and the Court of Record for the Trial of Civil Actions within the City of Manchester, and to constitute the said amalgamated Court the Court of Record for the Hundred of Salford in the County of Lancaster, with extended Powers, and to regulate the Practice and Procedure therein; and for other Purposes.
- cxixxi. An Act to extend the Limits within which the Staffordshire Potteries Waterworks Company may supply Water, and to empower them to construct additional Works, and to raise additional Capital; and for other Purposes.
- cxixxii. An Act for extending the Time allowed for the Completion by the Llanelly Harbour and Burry Navigation Commissioners of certain Works; and for other Purposes.
- cxixxiii. An Act for incorporating a Company for supplying with Gas the Parish of Llangonoyd and other Places in the County of Glamorgan.
- cxixxiv. An Act to authorize the London, Brighton, and South Coast Railway Company to abandon certain Works; and for other Purposes.
- cxixxv. An Act to enable the Metropolitan Board of Works to embank the River Thames between the Royal Hospital at Chelsea and Battersea Bridge in the County of Middlesex, and to make a Roadway and other Works connected therewith; and for other Purposes.
- cxixxvi. An Act to authorize the Greenock and Ayrshire Railway Company to make and maintain certain Railways and Works; and for other Purposes.
- cxixxvii. An Act to extend the Powers of the Pontypool, Caerleon, and Newport Railway Company.
- cxixxviii. An Act for improving and maintaining the Harbour of Aberdeen.
- cxixxix. An Act to authorize the North British Railway Company to execute various Railways and Works, and to abandon certain Railways and Works; and to extend the Time for the compulsory Purchase of Lands and Completion of Works with reference to several Railways and Works; and to amend in various Particulars the Acts relating to the Company passed in the last Session of Parliament; and for other Purposes.
- cxl. An Act for authorizing the Mayor, Aldermen, and Burgesses of the Borough of Bradford to make and maintain additional Waterworks, and for making additional Provision

for Improvement of the Borough; and for other Purposes.

cxli. An Act to change the Name of the Waterford and Kilkenny Railway Company; to confer upon them further Powers; and for other Purposes.

cxlii. An Act for suspending legal Proceedings with reference to the Brecon and Merthyr Tydfil Junction Railway Company; for converting the Mortgage and other Debts into Debenture Stock; for authorizing the Completion of certain Lines of Railway; for regulating the Capital and future Management of the Company; and for other Purposes.

cxliii. An Act for conferring further Powers upon the Derby Waterworks Company.

cxliv. An Act to enable the Athenry and Ennis Junction Railway Company to make Arrangements with other Companies; and for other Purposes.

cxlv. An Act for conferring further Powers on the Great Western Railway Company for the Construction of Works and in relation to their own Undertaking and the Undertakings of other Companies; and for other Purposes.

cxlvi. An Act for making the Acts of Parliament relating to the Ecclesiastical Commission applicable to the reputed Parishes of Saint Leonard and Saint Mary Magdalen in the Diocese of Chichester; and for other Purposes connected therewith.

cxlvii. An Act to extend the Time for the Purchase of Lands and Completion of Works of the Ardmore Harbour; and to confer further Powers on the Ardmore Harbour Company.

cxlviii. An Act to make Alterations in the Deed of Settlement of the Norwich Union Life Insurance Society; and for other Purposes.

cxlix. An Act for granting further Powers to "The Metropolitan and Saint John's Wood Railway Company."

P. cl. An Act to confirm a Provisional Order made by the Poor Law Board under the Poor Law Amendment Act, 1867, with reference to the City of Salisbury.

P. cli. An Act to confirm a Provisional Order under "The Drainage and Improvement of Lands (Ireland) Act, 1863," and the Acts amending the same.

P. clii. An Act to confirm a certain Provisional Order under "The Local Government Act, 1858," relating to the District of Tunbridge Wells.

P. cliii. An Act to confirm certain Provisional Orders under "The Local Government Act, 1858," relating to the Districts of Harrogate, Layton with Warbrick, Bury, Lower Brixham, Hexham, Tipton, Gainsborough, Worthing,

Aberystwith, Cockermouth, Burnham, Wednesbury, Burton-upon-Trent, Hornsey, and Keswick, and for other Purposes relative to certain Districts under the said Act.

P. cliv. An Act to make better Provision for the Preservation and Improvement of the River Lee and its Tributaries; and for other Purposes.

P. clv. An Act to confirm a Provisional Order under "The Public Health (Scotland) Act, 1867," relating to the Burgh of Tain.

P. clvi. An Act to confirm a Provisional Order under "The Land Drainage Act, 1861."

P. clvii. An Act to confirm a Provisional Order under "The Drainage and Improvement of Lands (Ireland) Act, 1863," and the Acts amending the same.

P. clviii. An Act to confirm a Provisional Order under The Drainage and Improvement of Lands (Ireland) Act, and the Acts amending the same.

clix. An Act for the Extension of Time and Revival of Powers for the compulsory Purchase of Lands and Completion of Works authorized by "The Fareham and Netley Railway Act, 1865;" and for other Purposes.

clx. An Act for the better Ecclesiastical Regulation of the Parish of Saint Pancras in the Diocese of London and the County of Middlesex.

clxi. An Act to extend the Time for the Purchase of Lands and Completion of the Mersey Railway; and for other Purposes.

clxii. An Act for the Abandonment of the Railway authorized by "The Chichester and Midhurst Railway (Extension) Act, 1865."

clxiii. An Act to confer further Powers on the East London Railway Company for the Execution of Works, and otherwise with reference to their Undertaking; and for other Purposes.

clxiv. An Act to extend the Time for the compulsory Purchase of Lands and Completion of Works authorized by several Acts relating to the Great Eastern Railway; and to alter certain Powers of appointing Directors of the Great Eastern Railway Company; and for other Purposes.

clxv. An Act for enabling the Star Life Assurance Society to sue and be sued in their own Name; and for other Purposes.

clxvi. An Act to empower the Belfast Central Railway Company to construct new Railways and Tramways and a Central Station, and to abandon Portions of their authorized Undertaking; and for other Purposes.

clxvii. An Act for making Street Tramways in Liverpool; and for other Purposes.

- clxviii. An Act for making and maintaining a Market in the Borough of Lambeth in the County of Surrey.
- clxix. An Act to extend the Powers of the Waterloo and Whitehall Railway Company with respect to a Portion of their authorized Undertaking.
- clxx. An Act to provide for the Settlement of the Claims of the Contractors and others with respect to the Construction of the Bishop Stortford Railway, and for vesting the Possession of that Railway in the Great Eastern Railway Company.
- clxxi. An Act to incorporate a Company for making "The Weedon and Daventry Railway;" and for other Purposes.
- clxxii. An Act for granting certain Powers to the South-eastern Railway Company.
- clxxiii. An Act to provide for the closing of the Wey and Arun Junction Canal, and the Sale of the Site thereof; and for other Purposes.
- clxxiv. An Act for authorizing the Devon and Cornwall Railway Company to alter the Line and Levels of Parts of their Railways; and for other Purposes.
- clxxv. An Act to alter and amend the Act relating to the Towns Drainage and Sewage Utilization Company; and for other Purposes.
- clxxvi. An Act to make more effectual Provision for the working of the Cork and Kinsale Junction Railway; and for other Purposes.
- clxxvii. An Act for fusing all the Revenues of the Cambrian Railways Company, and settling the Application thereof; and to confer Rights of Voting on the Preference Shareholders of that Company; and for other Purposes.
- clxxviii. An Act to authorize the Bristol and North Somerset Railway Company to deviate from the authorized Line of their Railway at Bristol; and for other Purposes.
- clxxix. An Act to extend and amend the Borrowing Powers of the Belgravia Road Company; and for other Purposes.
- clxxx. An Act to grant further Powers to the Cork and Macroom (Direct) Railway Company.
- clxxxi. An Act for making Railways in the Isle of Wight to connect Newport and Cowes with Sandown, Ryde, and Ventnor.
- clxxxii. An Act to confer Facilities on the Rathkeale and Newcastle Junction Railway Company for raising Funds under their Borrowing Powers.

PRIVATE ACTS, PRINTED BY THE QUEEN'S PRINTER,

AND WHEREOF THE PRINTED COPIES MAY BE GIVEN IN EVIDENCE.

1. An Act to incorporate the Trustees and Managers of Alexander Scott's Hospital at Huntly in the County of Aberdeen, and to extend the Benefits thereof.
2. An Act to enable William Dunn Gardner, Esquire, upon purchasing the respective Reversions of and in certain Leasehold Estates devised by the Will of William Dunn Gardner, deceased, to charge the said Estates with the Purchase Money and the Expenses incident to such Purchase, and to convey or cause to be conveyed the same Estates by way of Mortgage to secure the Payment of the said Purchase Money and Expenses, without incurring a Forfeiture of his Estate and Interest under the same Will; and for other Purposes.
3. An Act to enable Sir Charles Compton William Domville, Baronet, to borrow upon the Security of his Entailed Estates situate in the County of Dublin a Sum of Money for the Repayment to him of a Portion of the Monies laid out by him in the Improvement of the said Estates.
4. An Act for authorizing the Trustees under an Act passed in the Thirty-ninth and Fortieth Years of His Majesty King George the Third, for enabling the Duke of Richmond for the Time being to grant Jointures as therein mentioned, and for other Purposes, to sell certain Parts of the Duke of Richmond's Settled Estates, and to invest the Money to arise from such Sales in the Purchase of other Estates, to be settled to the same Uses; and also to raise a Sum of Thirty thousand Pounds by Mortgage of the Settled Estates, to be invested in the same Manner; and for other Purposes.
5. An Act to carry into effect an Arrangement approved in the Suits of "Hamp v. Hamp," "Hamp v. Robinson," and "Hamp v. Bolt," now depending in the High Court of Chancery, for the Purpose of compromising certain opposing Claims to the Real Estates of Francis Hamp, late of Bacton Villa in the Parish of Bacton in the County of Hereford, Esquire; and for other Purposes.
6. An Act to extend the Powers contained in the Will of the Right Honorable John Savile Lumley Savile, Earl of Scarborough, deceased, and in the "Savile Estate (Leasing) Act, 1861," with respect to certain Estates in the County of York, Part of the Savile Estates devised by or subject to the Trusts of the said Will, and for other Purposes, and of which the Short Title is "Savile Estate (Extension of Powers) Act, 1868."
7. An Act to extend and amend Ward Jackson's Estate Act, 1853; and for other Purposes.
8. An Act to provide for the vesting and Management of certain Funds held in trust by the Town Council of Aberdeen; and for other Purposes.

PRIVATE ACTS, NOT PRINTED.

9. An Act for rendering valid certain Letters Patent granted to Perry Green Gardiner of the City of New York in the United States of America.
10. An Act to confer upon Henry William Ferdinand Bolckow all the Rights, Privileges, and Capacities of a natural-born Subject of Her Majesty the Queen.
11. An Act to confer upon Christian Allhusen all the Rights, Privileges, and Capacities of a natural-born Subject of Her Majesty the Queen.

INDEX

TO THE

PUBLIC GENERAL ACTS,

31 & 32 VICTORIÆ,

Showing whether they relate to the whole or to any Part of the United Kingdom, viz.

E.	signifies that the Act relates to	England (and Wales, if the Subject extends so far).
S.	- - - - -	Scotland.
I.	- - - - -	Ireland.
E. & I.	- - - - -	England and Ireland.
G.B.	- - - - -	Great Britain.
G.B. & I.	- - - - -	Great Britain and Ireland.
U.K.	- - - - -	The whole of the United Kingdom.

NOTE.—Several Acts hitherto included in the Collection of Public General Statutes will now be found among the Local and Personal Acts. These are, principally, for the Confirmation of Provisional Orders under The Local Government Act, The Land Drainage Act, The Drainage and Improvement of Lands (Ireland) Act, The General Police and Improvement (Scotland) Act, The Public Health (Scotland) Act, and The Poor Law Amendment Act; also the annual Inclosure Acts, and others, which, although technically public, are purely of a local Character. They will be found under their respective Headings in the Index to the Local and Personal Acts.

	Cap. Relating to		Cap. Relating to
Abolition of Church Rates; for the Abolition of compulsory Church Rates - - -	109. E.	of Session. Criminal Law Procedure. Divorce Court. Documentary Evidence. Evidence, Law of. Gaming. Habeas Corpus Suspension. Indorsing of Warrants. Judgments Extension. Juries. Justiciary Courts. Larceny and Embezzlement. Libel. Oaths. Partition. Trial of Traverses. Vagrant Act Amendment.	
Accounts, Audit of. See Lunatic Asylums.		Admiralty Jurisdiction; for conferring Admiralty Jurisdiction on the County Courts - -	71. E.
Actions for Libel; to assimilate the Law in Ireland to the Law in England as to Costs in Actions of Libel - - -	69. I.	Admiralty Suits; to amend the Law relating to Proceedings instituted by the Admiralty; and for other Purposes connected therewith - - -	78. U.K.
Acts Continuance; to continue various expiring Laws - -	111. U.K.		
— See also Turnpike Trusts.			
Administration of Justice. See Actions for Libel. Admiralty Jurisdiction. Admiralty Suits. Affirmations. Bankruptcy. Capital Punishment. Chancery. Corrupt Practices. Court of Justiciary. Court			

	Cap. Relating to		Cap. Relating to
Advances to Railways. <i>See</i> Railways.		Assignees of Marine Policies; to enable Assignees of Marine Policies to sue thereon in their own Names - - -	86. U.K.
Affirmations; to give Relief to Jurors who may refuse or be unwilling from alleged conscientious Motives to be sworn in Civil or Criminal Proceedings in Scotland - - -	39. S.	Assurance, Marine. <i>See</i> Assignees of Marine Policies.	
Alkali Act; to make perpetual the Alkali Act, 1863, (26 & 27 Vict. c. 124.) - - -	36. G.B. & I.	Asylums, Lunatic; to make Provision for the Audit of Accounts of District Lunatic Asylums in Ireland - - -	97. I.
Alteration of Fair Days. <i>See</i> Fairs.		Audit of Accounts. <i>See</i> Lunatic Asylums.	
Annuity to Sir R. Napier; to settle an Annuity upon Lieutenant-General Sir Robert Napier, G.C.B., G.C.S.I., and the next surviving Heir Male of his Body, in consideration of his eminent Services - - -	91. U.K.	Backing of Warrants. <i>See</i> Indorsing of Warrants.	
Appeal in Chancery; to amend the Act 30 & 31 Vict. c. 64., to make further Provision for the Despatch of Business in the Court of Appeal in Chancery - - -	11. E.	Bank of Bombay; to enable Commissioners appointed to inquire into the Failure of the Bank of Bombay to examine Witnesses on Oath in the United Kingdom - - -	63. U.K.
Appeals from Divorce Court. <i>See</i> Divorce, &c. Court.		Bankruptcy; to facilitate Liquidation in certain Cases of Bankruptcy Arrangement and Winding up - - -	68 E.
Application of Aids. <i>See</i> Consolidated Fund.		— to amend the Bankruptcy Act, 1861, (24 & 25 Vict. c. 134.) - - -	104. E.
Appropriation of Supplies; to apply a Sum out of the Consolidated Fund and the Surplus of Ways and Means to the Service of the Year ending 31st March 1869, and to appropriate the Supplies granted in this Session of Parliament - - -	85. U.K.	Belfast and County Down Railway Company. <i>See</i> Railways.	
Archdeacons. <i>See</i> West Indies.		Bishops Salaries. <i>See</i> West Indies.	
Army; for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters - - -	14. U.K.	Blakedown; to render valid Marriages heretofore solemnised in the Chapel of Ease called Saint James - the - Greater Chapel, Blakedown, in the Parish of Hagley (Worcester) - - -	113. E.
— to afford greater Facilities for the Ministrations of Army Chaplains - - -	83. E.&I.,&c.	Bombay, Bank of; to enable Commissioners appointed to inquire into the Failure of the Bank of Bombay to examine Witnesses on Oath in the United Kingdom - - -	63. U.K.
— <i>See also</i> Indian Prize Money.		Boroughs; to make Provision in the Case of Boroughs ceasing to return Members to serve in Parliament respecting Rights of Election which have been vested in Persons entitled to vote for such Members - - -	41. E.
Arrangements in Bankruptcy. <i>See</i> Liquidation.		— <i>See also</i> Boundary. Clerks of the Peace. Elections, Parliamentary.	
Arrangements for Relief of Turnpike Trusts. <i>See</i> Turnpike Trusts.		Boundary; to settle and describe the Limits of certain Boroughs and the Divisions of certain Counties in England and Wales, in so far as respects the	
Artizans and Labourers Dwellings; to provide better Dwellings for Artizans and Labourers - - -	130. G.B. & I.		
Assessed Taxes. <i>See</i> Revenue Officers, &c.			
Assessments. <i>See</i> Rogue Money.			

	Cap. Relating to		Cap. Relating to
Election of Members to serve in Parliament -	46. E.	Uniformity of Designation amongst Incumbents in certain Cases -	117. E. & I.
Bribery at Elections. <i>See</i> Corrupt Practices.		— <i>See also</i> Churchyards, &c. Ecclesiastical Commission. West Indies.	
British Possessions. <i>See</i> Colonial Shipping.		Church in Scotland; to amend the Procedure in regard to Ecclesiastical Buildings and Glebes in Scotland -	96. S.
British Sea Fisheries. <i>See</i> Fisheries.		— <i>See also</i> United Parishes.	
British Subjects in Foreign Countries, Marriages of. <i>See</i> Marriages.		Church in the Colonies. <i>See</i> West Indies.	
Buildings for Religious, &c. Purposes; for facilitating the Acquisition and Enjoyment of Sites for Buildings for Religious, Educational, Literary, Scientific, and other Charitable Purposes -	44. E.	Church Rates, for the Abolition of compulsory -	109. E.
Burghs. <i>See</i> Municipal Elections.		Church Tower of Saint Mary Somerset. <i>See</i> Saint Mary Somerset's Church.	
Burial Grounds. <i>See</i> Churchyards, &c.		Churchyards, Consecration of; to amend "The Consecration of Churchyards Act, 1867," (30 & 31 Vict. c. 133.) -	47. E.
Burials; to amend the Law which regulates the Burials of Persons in Ireland not of the Established Church -	103. I.	Clerks of the Peace and Crown; to make Provision for the Payment of Salaries to Clerks of the Peace and Clerks of the Crown in certain Boroughs in Ireland -	98. I.
Canada. <i>See</i> Hudson's Bay Company.		Coal and Wine Duties; to further continue and appropriate the London Coal and Wine Duties -	17. E.
Capital Punishment; to provide for carrying out of Capital Punishment within Prisons -	24. G.B. & I.	— <i>See also</i> Thames Embankment.	
Chancery, Court of; to amend the Act 30 & 31 Vict. c. 64., to make further Provision for the Despatch of Business in the Court of Appeal in Chancery -	11. E.	Colleges, &c.; to make further Provision for the good Government and Extension of certain Public Schools in England -	118. E.
— for transferring the Fee and other Funds of the Courts of Chancery and Exchequer in Ireland to the Consolidated Fund -	88. U.K.	Colonial Governors Pensions; to extend the Provisions of 28 & 29 Vict. c. 113. to Persons who have held the Office of Lord High Commissioner of the Ionian Islands -	128. U.K.
Chaplains (Army); to afford greater Facilities for the Ministrations of Army Chaplains -	83. E. & I., &c.	Colonial Shipping; to amend the Law relating to the Registration of Ships in British Possessions -	129. U.K.
Charitable Purposes, Buildings for. <i>See</i> Sites of Religious, &c. Buildings.		Colonies (Medical Practitioners); to amend the Law relating to Medical Practitioners in the Colonies -	29. U.K.
Chemists and Druggists; to regulate the Sale of Poisons, and alter and amend the Pharmacy Act, 1852, (15 & 16 Vict. c. 56.) -	121. G.B.	Commutation of Tithes, &c. Commission. <i>See</i> Tithe Commutation, &c. Acts Amendment.	
China. <i>See</i> Consular Marriages.		Compensation to Prison Officers; to provide Compensation to	
Church of England, &c.; for the Abolition of Compulsory Church Rates -	109. E.		
— to amend the District Church Tithes Act, 1865 (28 & 29 Vict. c. 42.), and to secure			

	Cap.	Relating to		Cap.	Relating to
Officers of certain discontinued Prisons - - -	21.	E.	Expense of the Copyhold, Inclosure, and Tithe Office -	89.	E.
Compulsory Church Rates; for the Abolition of - -	109.	E.	Cornwall, Duchy of; to extend the Provision in "The Duchy of Cornwall Management Act, 1863," (26 & 27 Vict. c. 49.) relating to permanent Improvements - - -	35.	E.
Consecration of Churchyards; to amend "The Consecration of Churchyards Act, 1867," (30 & 31 Vict. c. 133.) -	47.	E.	Corrupt Practices; for amending the Laws relating to Election Petitions, and providing more effectually for the Prevention of corrupt Practices at Parliamentary Elections - -	125.	G.B.&I.
Consolidated Fund; to apply the Sum of 2,000,000 <i>l.</i> out of the Consolidated Fund to the Service of the Year ending the 31st March 1868 - -	1.	U.K.	Costs in Libel Cases; to assimilate the Law in Ireland to the Law in England as to Costs in Actions of Libel - -	69.	I.
— to apply the Sum of 362,398 <i>l.</i> 19 <i>s.</i> 9 <i>d.</i> out of the Consolidated Fund to the Service of the Years ending 31st March 1867 and 1868 -	10.	U.K.	Cotton Statistics, for the Collection and Publication of -	33.	G.B.&I.
— to apply the Sum of 6,000,000 <i>l.</i> out of the Consolidated Fund to the Service of the Year ending 31st March 1869 - - -	13.	U.K.	Councils of Burghs. <i>See</i> Municipal Elections.		
— to apply the Sum of 17,000,000 <i>l.</i> out of the Consolidated Fund to the Service of the Year ending 31st March 1869 - - -	16.	U.K.	Counties, Limits of. <i>See</i> Boundary.		
— to apply a Sum out of the Consolidated Fund and the Surplus of Ways and Means to the Service of the Year ending the 31st March 1869, and to appropriate the Supplies granted in this Session of Parliament - - -	85.	U.K.	County Courts Admiralty Jurisdiction; for conferring Admiralty Jurisdiction on the County Courts - - -	71.	E.
— <i>See also</i> Chancery, Court of. West Indies.			County General Assessment; to abolish the Power of levying the Assessment known as "Rogue Money" and in lieu thereof to confer on the Commissioners of Supply of Counties in Scotland the Power of levying a "County General Assessment." - -	82.	S.
Consular Marriages; for removing Doubts as to the Validity of certain Marriages between British Subjects in China and elsewhere, and for amending the Law relating to the Marriage of British Subjects in Foreign Countries -	61.	U.K.	Court of Chancery, &c.; to amend the Act 30 & 31 Vict. c. 64., to make further Provision for the Despatch of Business in the Court of Appeal in Chancery - - -	11.	E.
Contagious Diseases; to amend the Contagious Diseases Act, 1866, (29 & 30 Vict. c. 35.) -	80.	E. & I.	— for transferring the Fee and other Funds of the Courts of Chancery and Exchequer in Ireland to the Consolidated Fund - - -	88.	U.K.
Convention. <i>See</i> Danube Works Loan.			Court of Justiciary; to amend the Procedure in the Court of Justiciary and other Criminal Courts in Scotland - -	95.	S.
Copyhold, &c. Commission; to alter certain Provisions in the Acts for the Commutation of Tithes, the Copyhold Acts, and the Acts for the Inclosure, Exchange, and Improvement of Land; and to make Provision towards defraying the			Court of Session; to amend the Procedure in the Court of Session and the Judicial Arrangements in the Superior Courts of Scotland, and to make certain Changes in the other Courts thereof - - -	100.	S.

	Cap. Relating to		Cap. Relating to
Courts of Law Fees, &c.; to provide for the Collection by means of Stamps of Fees payable in the Supreme and Inferior Courts of Law in Scotland and the Offices belonging thereto; and for other Purposes relative thereto -	55. S.	30 & 31 Vict. c. 64., to make further Provision for the Despatch of Business in the Court of Appeal in Chancery -	11. E.
— See also Chancery.		Disabilities Removal. See Revenue Officers, &c.	
Criminal Law Procedure, &c.; to amend the Law relating to Larceny and Embezzlement -	116. E. & I.	Diseases, Contagious; to amend the Contagious Diseases Act, 1866 (29 & 30 Vict. c. 35.) -	80. E. & I.
— to amend the Procedure in the Court of Justiciary and other Criminal Courts in Scotland -	95. S.	Disembodied Militia. See Militia.	
— See also Indorsing Warrants. Juries.		District Church Tithes; to amend the District Church Tithes Act, 1868 (28 and 29 Vict. c. 42.), and to secure Uniformity of Designation amongst Incumbents in certain Cases -	117. E. & I.
Crown, Clerks of the; to make Provision for the Payment of Salaries to Clerks of the Peace and Clerks of the Crown in certain Boroughs in Ireland -	98. I.	District Lunatic Asylums, to make Provision for the Audit of Accounts of -	97. I.
Curragh of Kildare; to make better Provision for the Management and Use of the Curragh of Kildare -	60. I.	Divisions of Counties. See Boundary.	
Customs; to grant certain Duties of Customs and Income Tax -	28. U.K.	Divorce, &c. Court; to amend the Law relating to Appeals from the Court of Divorce and Matrimonial Causes in England -	77. E.
— See also Revenue Officers, &c.		Documentary Evidence; to amend the Law relating to Documentary Evidence in certain Cases -	37. U.K.
Danube Works Loan; to enable Her Majesty the Queen to carry into effect a Convention made between Her Majesty and other Powers relative to a Loan for the Completion of Works for the Improvement of the Navigation of the Danube	126. U.K.	Donaghadee and Portpatrick, Communication between. See Railways.	
Deans and Chapters. See Orders in Council.		Drainage, &c. of Lands; to confirm a Provisional Order under "The Drainage and Improvement of Lands (Ireland) Act, 1863," (26 & 27 Vict. c. 88.), and the Acts amending the same -	3. I.
Death, Punishment of; to provide for carrying out of Capital Punishment within Prisons -	24. G.B. & I.	Druggists. See Chemists and Druggists.	
Debenture Stock. See Indian Railway Companies.		Duchy of Cornwall; to extend the Provision in "The Duchy of Cornwall Management Act, 1863," (26 & 27 Vict. c. 49.), relating to permanent Improvements -	35. E.
Declaration of Legitimacy, &c.; to enable Persons in Ireland to establish Legitimacy and Validity of Marriages, and the Right to be deemed Natural-born Subjects -	20. I.	Dwellings for Artizans, &c.; to provide better Dwellings for Artizans and Labourers -	130. G.B. & I.
Decrets. See Judgments Extension.		East India. See Indian Prize Money. Indian Railway Debentures.	
Departments (Public). See Public Departments.		East of London Museum; to provide for the Acquisition of a Site for a Museum in the East of London -	8. E.
Desertion. See Mutiny.			
Despatch of Business (Court of Chancery); to amend the Act			

	Cap.	Relating to		Cap.	Relating to
Ecclesiastical Buildings and Glebes; to amend the Procedure in regard to Ecclesiastical Buildings and Glebes in Scotland - - -	96.	S.	Elections, Parliamentary; for amending the Laws relating to Election Petitions, and providing more effectually for the Prevention of corrupt Practices at Parliamentary Elections -	125.	G.B.&I.
Ecclesiastical Commission; to amend the Law relating to the Ecclesiastical Commissioners for England - - -	114.	E.	— to amend the Law relating to the Use of Voting Papers in Elections for the Universities - - -	65.	E. & I.
— for declaring valid certain Orders or Her Majesty in Council relating to the Ecclesiastical Commissioners for England and to the Deans and Chapters of certain Churches -	19.	E.	— to make Provision in the Case of Boroughs ceasing to return Members to serve in Parliament respecting Rights of Election which have been vested in Persons entitled to vote for such Members -	41.	E.
Ecclesiastical Salaries. <i>See</i> West Indies.			— to relieve certain Officers employed in the Collection and Management of Her Majesty's Revenues from any legal Disability to vote at the Election of Members to serve in Parliament - - -	73.	G.B.&I.
Edinburgh Municipal Rate; to amend the Act 23 & 24 Vict. c. 50., by abolishing the Rate imposed by the said Act on all Occupiers of Premises within the extended Municipal Boundaries of the City of Edinburgh	42.	S.	— to forbid the Issue of Writs for Members to serve in Parliament for the Boroughs of Totnes, Reigate, Great Yarmouth, and Lancaster -	6.	E.
Education; to make further Provision for the good Government and Extension of certain Public Schools in England - -	118.	E.	Electric Telegraphs; to enable Her Majesty's Postmaster General to acquire, work, and maintain Electric Telegraphs -	110.	G.B.&I.
— <i>See also</i> Schools, &c.			Embankment of the Thames. <i>See</i> Thames Embankment, &c.		
Educational Purposes, Buildings for. <i>See</i> Sites of Religious, &c. Buildings.			Embezzlement; to amend the Law relating to Larceny and Embezzlement -	116.	E. & I.
Elections, Municipal; to amend the Laws for the Election of the Magistrates and Council of Royal and Parliamentary Burghs in Scotland -	108.	S.	Endowed Schools; for annexing Conditions to the Appointment of Persons to Offices in certain Schools -	32.	E.
— to alter the Qualifications of the Electors in Places in Scotland under the Act 25 & 26 Vict. c. 101., or under the Act 13 & 14 Vict. c. 33., and to amend the said Acts -	102.	S.	Entail, Law of; to amend in several Particulars the Law of Entail in Scotland -	84.	S.
Elections, Parliamentary; to amend the Representation of the People in Ireland -	49.	I.	Established Church. <i>See</i> Church of England, &c.		
— to amend the Representation of the People in Scotland	48.	S.	Evidence, Law of; to amend the Law relating to Documentary Evidence in certain Cases -	37.	U.K.
— to amend the Law of Registration so far as relates to the Year 1868 -	58.	E.	Exchequer Bonds; for raising the Sum of 1,600,000 <i>l.</i> by Exchequer Bonds for the Service of the Year ending 31st March 1869 -	27.	U.K.
— to amend the Law of Registration in Ireland -	112.	I.	Exchequer, Court of; for transferring the Fee and other Funds of the Courts of Chancery and Exchequer in Ireland to the Consolidated Fund -	88.	U.K.
— to settle and describe the Limits of certain Boroughs and the Divisions of certain Counties in England and Wales, in so far as respects the Election of Members to serve in Parliament - - -	46.	E.			

	Cap. Relating to		Cap. Relating to
Excise. <i>See</i> Inland Revenue. Revenue Officers, &c.		Gaming; to amend the Act 5 Geo. 4. c. 83. for punishing idle and disorderly Persons, and Rogues and Vagabonds, so far as relates to the Use of Instruments of Gaming -	52. E.
Expiring Laws; to continue various expiring Laws -	111. U.K.	General Assembly of New Zealand. <i>See</i> New Zealand.	
Extension of Time for Railways; to give further Time for making certain Railways -	18. G.B. & I.	General Police and Improvement (Scotland); to alter the Qualifications of the Electors in Places in Scotland under the Act 25 & 26 Vict. c. 101., or under the Act 13 & 14 Vict. c. 33., and to amend the said Acts in certain other respects -	102. S.
Extra Receipts of Public Departments. <i>See</i> Public Departments.		Glebes; to amend the Procedure in regard to Ecclesiastical Buildings and Glebes in Scotland -	96. S.
Fairs; to amend the Law relating to Fairs in England and Wales -	51. E.	Governors of Colonies; to extend the Provisions of the Act 28 & 29 Vict. c. 113. to Persons who have held the Office of Lord High Commissioner of the Ionian Islands -	128. U.K.
— to facilitate the Alteration of Days upon which, and of Places at which, Fairs are now held in Ireland -	12. I.	Great Yarmouth; to forbid the Issue of a Writ for Members to serve in Parliament for the Borough of -	6. E.
— for the Prevention of the holding of unlawful Fairs within the Limits of the Metropolitan Police District -	106. E.	Habeas Corpus Suspension; to further continue the Act 29 & 30 Vict. c. 1., "to empower the Lord Lieutenant or other Chief Governor or Governors of Ireland to apprehend, and detain for a limited Time, such Persons as he or they shall suspect of conspiring against Her Majesty's Person and Government" -	7. I.
Fees in Courts of Law; to provide for the Collection by means of Stamps of Fees payable in the Supreme and Inferior Courts of Law in Scotland, and in the Offices belonging thereto; and for other Purposes relative thereto -	55. S.	Hagley. <i>See</i> Blakedown.	
— for transferring the Fee and other Funds of the Courts of Chancery and Exchequer in Ireland to the Consolidated Fund -	88. U.K.	Heritable Property; to improve the System of Registration of Writs relating to Heritable Property in Scotland -	64. S.
Fees in Public Departments; to regulate the Disposal of extra Receipts of Public Departments -	9. U.K.	— <i>See also</i> Titles to Land.	
Fisheries; to amend the Law relating to Salmon Fisheries in Scotland -	123. S.	Hudson's Bay Company; for enabling Her Majesty to accept a Surrender upon Terms of the Lands, Privileges, and Rights of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and for admitting the same into the Dominion of Canada -	105. U.K.
— to continue in force the Act 2 Geo. 2. c. 19. for the better Regulation of the Oyster Fishery in the River Medway -	53. E.		
— to carry into effect a Convention between Her Majesty and the Emperor of the French concerning the Fisheries in the Seas adjoining the British Islands and France, and to amend the Laws relating to British Sea Fisheries -	45. U.K.		
Frampton Mansel; to render valid Marriages heretofore solemnized in the Chapel of Ease of Frampton Mansel in the Parish of Sapperton (Gloucester) -	23. E.		
France. <i>See</i> Fisheries.			

	Cap.	Relating to	Cap.	Relating to
Improvement of Lands. <i>See</i> Drainage, &c. of Lands.			Ireland, Acts relating specially to. <i>See</i> Actions for Libel.	
Improvements. <i>See</i> London Coal and Wine Duties. Duchy of Cornwall.			Burials. Chancery, Court of. Clerks of the Peace and Crown. Curragh of Kildare. Decla- ration of Legitimacy, &c. District Lunatic Asylums. Drainage, &c. of Lands. Elections, Parliamentary. Fairs. Habeas Corpus Sus- pension. Industrial Schools. Juries. Leasehold Tenures. Libel. Medical Inspectors. Petit Juries. Portpatrick and Belfast, &c. Railway. Rail- ways. Reformatory Schools. Registration. Renewable Leasehold Conversion. Re- presentation of the People. Stockbrokers. Trial of Tra- versea. Vaccination.	
Inclosure, &c. Commission; to alter certain Provisions in the Acts for the Commutation of Tithes, the Copyhold Acts, and the Acts for the Inclosure, Exchange, and Improvement of Land; and to make Pro- vision towards defraying the Expense of the Copyhold, In- closure, and Tithe Office -	89.	E.	Judgments Extension; to render Judgments or Decrees ob- tained in certain Courts in England, Scotland, and Ire- land respectively effectual in any other Part of the United Kingdom -	54. G.B.&I.
Income Tax; to grant to Her Majesty additional Rates of Income Tax -	2.	U.K.	Juries—Jurors; to amend the Law relating to Petit Juries in Ireland -	75. I.
— to grant certain Duties of Income Tax -	28.	U.K.	— to give Relief to Jurors who may refuse or be un- willing from alleged conscien- tious Motives to be sworn in Civil or Criminal Proceedings in Scotland -	39. S.
Incumbents of Parishes, &c.; to amend the District Church Tithes Act, 1865 (28 & 29 Vict. c. 42.), and to secure Uni- formity of Designation amongst Incumbents in certain Cases -	117.	E. & I.	Justice, Administration of. <i>See</i> Actions for Libel. Admiralty Jurisdiction. Admiralty Suits. Affirmations. Bankruptcy. Capital Punishment. Chan- cery. Corrupt Practices. Court of Justiciary. Court of Session. Criminal Law Procedure. Divorce Court. Documentary Evidence. Habeas Corpus Suspension. Indorsing of Warrants. Judg- ments Extension. Juries. Justiciary Courts. Larceny and Embezzlement. Libel. Oaths. Partition. Trial of Traverses. Vagrant Act Amendment.	
Indian Prize Money; for the Appropriation of certain un- claimed Shares of Prize Money acquired by Soldiers and Sea- men in India -	38.	U.K.	Justiciary, &c. Courts; to amend the Procedure in the Court of Justiciary and other Criminal Courts in Scotland -	95. S.
Indian Railway Companies; to enable certain guaranteed Indian Railway Companies to raise Money on Debenture Stock -	26.	U.K.		
Indictable Offences Act Amend- ment. <i>See</i> Indorsing of Warrants.				
Indorsing of Warrants; to amend the Law relating to, in Scot- land, Ireland, and the Channel Islands -	107.	G.B.&I.		
Industrial Schools; to extend the Industrial Schools Act (29 & 30 Vict. c. 118.) to Ireland -	25.	I.		
Inland Revenue; to amend the Laws relating to the Inland Revenue -	124.	U.K.		
— <i>See also</i> Revenue Officers, &c.				
Inspectors. <i>See</i> Poor Relief, &c.				
Ionian Islands; to extend the Provisions of the Act 28 & 29 Vict. c. 113. to Persons who have held the Office of Lord High Commissioner of the Ionian Islands -	128.	U.K.		

	Cap. Relating to		Cap. Relating to
Juvenile Offenders. <i>See</i> Industrial Schools. Reformatory Schools.		Right to be deemed Natural-born Subjects - - -	20. I.
Kildare (the Curragh); to make better Provision for the Management and Use of the Curragh of Kildare - - -	60. I.	Libel; to assimilate the Law in Ireland to the Law in England as to Costs in Actions of Libel	69. I.
Labourers Dwellings; to provide better Dwellings for Artizans and Labourers - - -	130. G.B. & I.	Limits of Counties and Boroughs. <i>See</i> Boundary.	
Lanarkshire County Prisons; to amend the Acts 23 & 24 Vict. c. 105. and 28 & 29 Vict. c. 84., for the Administration of Prisons in Scotland in so far as regards the County of Lanark, &c. - - -	50. S.	Liquidation; to facilitate Liquidation in certain Cases of Bankruptcy Arrangement and Winding-up - - -	68. E.
Lancaster, to forbid the Issue of a Writ for Members to serve in Parliament for the Borough of - - -	6. E.	Literary Purposes, Buildings for. <i>See</i> Sites of Religious, &c. Buildings.	
Land Registers; to improve the System of Registration of Writs relating to Heritable Property in Scotland - - -	64. S.	Loans. <i>See</i> Danube Works Loan. Metropolis Improvement. Railways.	
Land, Titles to; to consolidate the Statutes relating to the Constitution and Completion of Titles to Heritable Property in Scotland, and to make certain Changes in the Law of Scotland relating to Heritable Rights - - -	101. S.	Lock-up Houses; to amend the Law relating to Places for holding Petty Sessions and to Lock-up Houses for the temporary Confinement of Persons taken into Custody and not yet committed for Trial - - -	22. E.
Lands, Drainage of. <i>See</i> Drainage, &c. of Lands.		London. <i>See</i> Metropolis, &c.	
Larceny and Embezzlement, to amend the Law relating to - - -	116. E. & I.	London Coal and Wine Duties; to further continue and appropriate the London Coal and Wine Duties - - -	17. E.
Law of Evidence. <i>See</i> Documentary Evidence.		— <i>See also</i> Thames Embankment.	
Laws, Expiring; to continue various expiring Laws - - -	111. U.K.	London Museum Site; to provide for the Acquisition of a Site for a Museum in the East of London - - -	8. E.
Leasehold Tenures; to extend the Provisions of "The Renewable Leasehold Conversion (Ireland) Act," (12 & 13 Vict. c. 105.) to certain Leasehold Tenures in Ireland - - -	62. I.	London (St. Mary Somerset); to prevent the Removal of the Tower of the Church of Saint Mary Somerset, and for vesting the said Tower and the Site thereof, and a Portion of the Burial Ground attached to the said Church, in the Corporation of the City of London - - -	127. E.
Legislative Council, New Zealand; to make Provision for the Appointment of Members of the Legislative Council of New Zealand, and to remove Doubts in respect of past Appointments - - -	57. U.K.	Lord High Commissioner of the Ionian Islands. <i>See</i> Colonial Governors Pensions.	
Legitimacy Declaration; to enable Persons in Ireland to establish Legitimacy and the Validity of Marriages, and the		Lunatic Asylums; to make Provision for the Audit of Accounts of District Lunatic Asylums in Ireland - - -	97. I.
		Magistrates, Election of. <i>See</i> Municipal Elections.	
		Marine Assurance, to enable Assignees of Marine Policies to sue thereon in their own Names	86. U.K.
		Marine Mutiny; for the Regulation of Her Majesty's Royal Marine Forces while on shore - - -	15. U.K.

	Cap.	Relating to		Cap.	Relating to
Marriages Validity; to render valid Marriages heretofore solemnized in the Chapel of Ease called Saint James-the-Greater Chapel, Blakedown, in the Parish of Hagley (Worcester) - - -	113.	E.	politan Streets Act, 1867," (30 & 31 Vict. c. 134.) - -	5.	E.
— to render valid Marriages heretofore solemnized in the Chapel of Ease of Frampton Mansel in the Parish of Sapperton (Gloucester) - -	23.	E.	Militia Pay; to defray the Charge of the Pay, Clothing, and contingent and other Expenses of the disembodied Militia in Great Britain and Ireland; to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, and Surgeons Mates of the Militia; and to authorize the Employment of the Non-commissioned Officers -	76.	G.B.&I.
— for removing Doubts as to the Validity of certain Marriages between British Subjects in China and elsewhere, and for amending the Law relating to the Marriage of British Subjects in Foreign Countries -	61.	U.K.	Municipal Elections; to amend the Laws for the Election of the Magistrates and Councils of Royal and Parliamentary Burghs in Scotland - -	108.	S.
— See also Legitimacy Declaration.			— to alter the Qualification of the Electors in Places in Scotland under the Acts 25 & 26 Vict. c. 101. and 13 & 14 Vict. c. 33., and to amend the said Acts - -	102.	S.
Matrimonial Causes. See Divorce, &c. Court.			Municipal Rate (Edinburgh); to amend the Act 23 & 24 Vict. c. 50., by abolishing the Rate imposed by the said Act on all Occupiers of Premises within the extended Municipal Boundaries of the City of Edinburgh -	42.	S.
Medical Act Amendment; to amend the Law (21 & 22 Vict. c. 90.) relating to Medical Practitioners in the Colonies -	29.	U.K.	Museum, Site for. See London Museum Site.		
Medical Inspectors, to extend the Powers of, in Ireland - -	74.	I.	Mutiny; for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters - -	14.	U.K.
Medical Practitioners. See Medical Act Amendment, Pharmacy Act.			— for the Regulation of Her Majesty's Royal Marine Forces while on shore - -	15.	U.K.
Medway Regulation; to continue in force the Act 2 Geo. 2. c. 19., for the better Regulation of the Oyster Fishery in the River Medway - - -	53.	E.	Napier's (Sir Robert) Annuity; to settle an Annuity upon Lieutenant General Sir Robert Napier, G.C.B., G.C.S.I., and the next surviving Heir Male of his Body, in consideration of his eminent Services -	91.	U.K.
Members of Parliament. See Elections, Parliamentary.			Navigation of the Danube. See Danube Works Loan.		
Metropolis Improvement; for extending the Provisions of "The Thames Embankment and Metropolis Improvement (Loans) Act, 1864," (27 & 28 Vict. c. 61.,) and for amending the Powers of the Metropolitan Board of Works in relation to Loans under that Act - -	43.	E.	New Zealand — New Zealand Company; to make Provision for the Appointment of Members of the Legislative Council of New Zealand, and to remove Doubts in respect of past Appointments - -	57.	U.K.
Metropolitan Fairs; for the Prevention of the holding of unlawful Fairs within the Limits of the Metropolitan Police District - - -	106.	E.			
Metropolitan Police Funds; to amend the Law relating to the Funds provided for defraying the Expenses of the Metropolitan Police - - -	67.	E.			
Metropolitan Streets Act; for the Amendment of "The Metro-					

	Cap. Relating to		Cap. Relating to
New Zealand — New Zealand Company; to declare the Powers of the General Assembly of New Zealand to abolish any Province in that Colony or to withdraw from any such Province any Part of the Territory thereof - - -	92. U.K.	in Elections for the Universities - - -	65. E. & I.
— to remove Doubts respecting the Operation of the New Zealand Company's Act, 9 & 10 Vict. c. cccxxxii. - -	93. U.K.	Parliamentary Elections; to make Provision in the Case of Boroughs ceasing to return Members to serve in Parliament respecting Rights of Election which have been vested in Persons entitled to vote for such Members - - -	41. E.
Oaths; to amend the Law relating to Promissory Oaths -	72. G.B. & I.	— to relieve certain Officers employed in the Collection and Management of Her Majesty's Revenues from any legal Disability to vote at the Election of Members to serve in Parliament - - -	73. G.B. & I.
Officers of Prisons Compensation; to provide Compensation to Officers of certain discontinued Prisons - - -	21. E.	— to forbid the Issue of Writs for Members to serve in Parliament for the Boroughs of Totnes, Reigate, Great Yarmouth, and Lancaster -	6. E.
Officers of Revenue. See Revenue Officers, &c.		Partition; to amend the Law relating to Partition - - -	40. E. & I.
Orders in Council; for declaring valid certain Orders of Her Majesty in Council relating to the Ecclesiastical Commissioners for England and to the Deans and Chapters of certain Churches - - -	19. E.	Pay. See Army. Militia. Public Departments.	
Oyster Fishery in the Medway; to continue in force the Act 2 Geo. 2. c. 19., for the better Regulation of the Oyster Fishery in the River Medway -	53. E.	Payments by Public Departments; to empower certain Public Departments to pay otherwise than to Executors or Administrators small Sums due on Account of Pay or Allowances to Persons deceased - - -	90. U.K.
Parishes. See Incumbents of Parishes, &c. United Parishes.		Pensions. See Colonial Governors Pensions.	
Parliamentary Elections; to amend the Representation of the People in Ireland - -	49. I.	Permanent Improvements. See Duchy of Cornwall.	
— to amend the Representation of the People in Scotland -	48. S.	Petit Juries; to amend the Law relating to Petit Juries in Ireland - - -	75. I.
— to amend the Law of Registration so far as relates to the Year 1868 - - -	58. E.	Petitions, Election. See Elections, Parliamentary.	
— to amend the Law of Registration in Ireland - - -	112. I.	Petroleum; to amend the Act 25 & 26 Vict. c. 66., for the safe keeping of - - -	56. G.B. & I.
— to settle and describe the Limits of certain Boroughs and the Divisions of certain Counties in England and Wales, in so far as respects the Elections of Members to serve in Parliament - -	46. E.	Petty Sessions and Lock-up Houses; to amend the Law relating to Places for holding Petty Sessions and to Lock-up Houses for the temporary Confinement of Persons taken into Custody and not yet committed for Trial - - -	22. E.
— for amending the Laws relating to Election Petitions, and providing more effectually for the Prevention of corrupt Practices at Parliamentary Elections - - -	125. G.B. & I.	Pharmacy Act; to regulate the Sale of Poisons, and alter and amend the Pharmacy Act, 1852, (15 & 16 Vict. c. 56.) -	121. G.B.
— to amend the Law relating to the use of Voting Papers		Poisons, Sale of. See Pharmacy Act.	

	Cap.	Relating to		Cap.	Relating to
Police Rates; to amend the Law relating to the Funds provided for defraying the Expenses of the Metropolitan Police -	67.	E.	claimed Shares of Prize Money acquired by Soldiers and Seamen in India -	38.	U.K.
Police and Improvement; to alter the Qualifications of the Electors in Places in Scotland under the Act 25 & 26 Vict. c. 101., or under the Act 13 & 14 Vict. c. 33., and to amend the said Acts in certain other respects -	102.	S.	Procedure. See Court of Justice. Criminal Law.		
Policies of Marine Assurance; to enable Assignees of Marine Policies to sue thereon in their own Names -	86.	U.K.	Promissory Oaths; to amend the Law relating to Promissory Oaths -	72.	G.B. & I.
Poor Relief—Poor Law; to make further Amendments in the Laws for the Relief of the Poor -	122.	E.	Public Departments; to regulate the Disposal of extra Receipts of Public Departments -	9.	U.K.
— to extend the Powers of Poor Law Inspectors and Medical Inspectors in Ireland -	74.	I.	— to empower certain Public Departments to pay otherwise than to Executors or Administrators small Sums due on account of Pay or Allowances to Persons deceased -	90.	U.K.
Portpatrick and Belfast and County Down Railway Companies; to authorize Loans of Public Money to the Portpatrick and the Belfast and County Down Railway Companies, and a Payment to the Portpatrick Company, in consequence of the Abandonment of the Communication between Donaghadee and Portpatrick -	81.	I.	Public Health. See Sanitary Act Amendment.		
Post Office; to enable Her Majesty's Postmaster General to acquire, work, and maintain Electric Telegraphs -	110.	G.B. & I.	Public Schools; to make further Provision for the good Government and Extension of certain Public Schools in England -	118.	E.
— See also Revenue Officers, &c.			Publication of Cotton Statistics; for the Collection and Publication of Cotton Statistics -	33.	G.B. & I.
Practitioners (Medical) in the Colonies; to amend the Law (21 & 22 Vict. c. 90.) relating to -	29.	U.K.	Punishment of Death. See Capital Punishment.		
Prisons; to provide Compensation to Officers of certain discontinued Prisons -	21.	E.	Quoad sacra Parishes. See United Parishes.		
— to amend the Acts 23 & 24 Vict. c. 105. and 28 & 29 Vict. c. 84. for the Administration of Prisons in Scotland in so far as regards the County of Lanark; and for other Purposes -	50.	S.	Railways—Railway Companies; to further amend the Law (30 & 31 Vict. cc. 126, 127) relating to Railway Companies -	79.	G.B. & I.
— to provide for carrying out of Capital Punishment within Prisons -	24.	G.B. & I.	— to amend the Law relating to Railways -	119.	G.B. & I.
— See also Lock-up Houses.			— to give further Time for making certain Railways -	18.	G.B. & I.
Prize Money (India); for the Appropriation of certain un-			— to amend the Railways (Ireland) Acts, 1851, 1860, and 1864 (14 & 15 Vict. c. 70., 23 & 24 Vict. c. 97., and 27 & 28 Vict. c. 71.) as to the Trial of Traverses -	70.	I.
			— to authorize the further Extension of the Period for Repayment of Advances made under the Railway Companies (Ireland) Temporary Advances Act, 1866, (29 & 30 Vict. c. 95.) -	94.	I.
			— to authorize Loans of Public Money to the Portpatrick and the Belfast and County Down Railway Companies, and a Payment to the Portpatrick Company, in consequence of		

Cap. Relating to

- the Abandonment of the Communication between Donaghadee and Portpatrick - 81. I.
- Railways—Railway Companies; to enable certain guaranteed Indian Railway Companies to raise Money on Debenture Stock - 26. U.K.
- Receipts (Extra) of Public Departments. *See* Public Departments.
- Reform Acts. *See* Representation of the People.
- Reformatory Schools; to amend the Law relating to - 59. I.
- Registration of Parliamentary Electors; to amend the Law of Registration so far as relates to the Year 1868, and for other Purposes relating thereto - 58. E.
- to amend the Law of Registration in Ireland - 112. I.
- Registration of Ships; to amend the Law relating to the Registration of Ships in British Possessions - 129. U.K.
- Registration of Writs; to alter some Provisions in the existing Acts as to Registration of Writs in certain Registers in Scotland — to improve the System of Registration of Writs relating to Heritable Property in Scotland - 64. S.
- Regulation of Railways. *See* Railways, &c.
- Reigate, to forbid the Issue of a Writ for a Member to serve in Parliament for the Borough of Relief of the Poor; to make further Amendments in the Laws for the Relief of the Poor - 6. E.
- Relief of Turnpike Trusts. *See* Turnpike Trusts.
- Religious, &c. Buildings; for facilitating the Acquisition and Enjoyment of Sites for Buildings for Religious, Educational, Literary, Scientific, and other Charitable Purposes - 44. E.
- Renewable Leasehold Conversion; to extend the Provisions of "The Renewable Leasehold Conversion (Ireland) Act," (12 & 13 Vict. c. 105.), to certain Leasehold Tenures in Ireland - 62. I.
- Representation of the People; for the Amendment of the Representation of the People in Scotland - 48. S.

Cap. Relating to

- Representation of the People; to amend the Representation of the People in Ireland - 49. I.
- Revenue Officers Disabilities Removal; to relieve certain Officers employed in the Collection and Management of Her Majesty's Revenues from any legal Disability to vote at the Election of Members to serve in Parliament - 73. G.B. & I.
- Reversions, Sales of; to amend the Law relating to Sales of Reversions - 4. G.B. & I.
- Rogue Money; to abolish the Power of levying the Assessment known as "Rogue Money," and in lieu thereof to confer on the Commissioners of Supply of Counties in Scotland the Power of levying a "County General Assessment" - 82. S.
- Royal Marines. *See* Marine Mutiny.
- Rupert's Land; for enabling Her Majesty to accept a Surrender upon Terms of the Lands, Privileges, and Rights of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and for admitting the same into the Dominion of Canada - 105. U.K.
- Saint Mary Somerset's Church; to prevent the Removal of the Tower of the Church of Saint Mary Somerset in the City of London, and for vesting the said Tower and the Site thereof, and a Portion of the Burial Ground attached to the said Church, in the Corporation of the said City - 127. E.
- Salaries (Clerks of the Peace, &c.); to make Provision for the Payment of Salaries to Clerks of the Peace and Clerks of the Crown in certain Boroughs in Ireland - 98. I.
- Salaries (Ecclesiastical); to relieve the Consolidated Fund from the Charge of the Salaries of future Bishops, Archdeacons, Ministers, and other Persons in the West Indies - 120. U.K.
- Sale of Poisons; to regulate the Sale of Poisons, and alter and

	Cap.	Relating to		Cap.	Relating to
amend the Pharmacy Act, 1852, (15 & 16 Vict. c. 56.) -	121.	G.B.	tain Changes in the other Courts thereof -	100.	S.
Sales of Reversions, to amend the Law relating to -	4.	G.B. & I.	Sessions, Petty. See Petty Sessions, &c.		
Salmon Fisheries; to amend the Law relating to Salmon Fisheries in Scotland -	123.	S.	Sewage. See Sanitary Act Amendment.		
Sanitary Act (1866) Amendment	115.	E.	Ships, Registration of. See Colonial Shipping.		
Sapperton. See Frampton Mansel.			Site for the London Museum; to provide for the Acquisition of a Site for a Museum in the East of London -	8.	E.
Schools, Endowed; for annexing Conditions to the Appointment of Persons to Offices in certain Schools -	32.	E.	Sites of Religious, &c. Buildings; for facilitating the Acquisition and Enjoyment of Sites for Buildings for Religious, Educational, Literary, and other Charitable Purposes -	44.	E.
Schools, Industrial; to extend the Industrial Schools Act (29 & 30 Vict. c. 118.) to Ireland -	25.	I.	Soldiers. See Army. Indian Prize Money.		
Schools, Public; to make further Provision for the good Government and Extension of certain Public Schools in England -	118.	E.	Stamp Office. See Revenue Officers, &c.		
Schools, Reformatory; to amend the Law relating to Reformatory Schools -	59.	I.	Statistics (Cotton); for the Collection and Publication of Cotton Statistics -	33.	G.B. & I.
Scotland, Acts relating specially to. See Affirmations. Church in Scotland. County General Assessment. Court of Justiciary. Court of Session. Courts of Law Fees. Edinburgh Municipal Rate. Elections, Parliamentary. Entail, Law of. Fees, &c. Fisheries. General Police and Improvement. Glebes. Heritable Property. Juries. Lanarkshire County Prisons. Land Registers. Land, Titles to. Municipal Elections. Municipal Rate. Prisons. Registration of Writs. Representation of the People. Rogue Money. Salmon Fisheries. Superior Courts. Titles to Land. United Parishes.			Stockbrokers; to amend the Act 39 Geo. 3. (I.) for the better Regulation of Stockbrokers -	31.	I.
Sea Fisheries; to carry into effect a Convention between Her Majesty and the Emperor of the French concerning the Fisheries in the Seas adjoining the British Islands and France, and to amend the Laws relating to British Sea Fisheries -	45.	U.K.	Streets (Metropolis); for the Amendment of "The Metropolitan Streets Act, 1867," (30 & 31 Vict. c. 134.) -	5.	E.
Seamen. See Indian Prize Money.			Suits, Admiralty; to amend the Law relating to Proceedings instituted by the Admiralty, and for other Purposes connected therewith -	78.	U.K.
Session, Court of; to amend the Procedure in the Court of Session and the Judicial Arrangements in the Superior Courts of Scotland, and to make cer-			Superior Courts, Scotland; to amend the Procedure in the Court of Session and the Judicial Arrangements in the Superior Courts of Scotland, and to make certain Changes in the other Courts thereof -	100.	S.
			— See also Courts of Law Fees.		
			Supply. See Consolidated Fund. Exchequer Bonds.		
			Suspension of the Habeas Corpus; to further continue the Act 29 & 30 Vict. c. 1. to empower the Lord Lieutenant or other Chief Governor or Governors of Ireland to apprehend, and detain for a limited Time, such Persons as he or they shall suspect of conspiring against Her Majesty's Person and Government -	7.	I.

	Cap. Relating to		Cap. Relating to
Taxes. <i>See</i> Revenue Officers, &c.		Turnpike Trusts, &c.; to continue certain Turnpike Acts in Great Britain, and to repeal certain other Turnpike Acts -	99. G.B.
Telegraphs; to enable Her Majesty's Postmaster General to acquire, work, and maintain Electric Telegraphs -	110. G.B. & I.	Unclaimed Prize Money; for the Appropriation of certain unclaimed Shares of Prize Money acquired by Soldiers and Seamen in India -	38. U.K.
Thames Embankment and Metropolis Improvement; for extending the Provisions of "The Thames Embankment and Metropolis Improvement (Loans) Act, 1864," (27 & 28 Vict. c. 61.) and for amending the Powers of the Metropolitan Board of Works in relation to Loans under that Act -	43. E.	United Parishes; to amend the Act 7 & 8 Vict. c. 44., relating to the Formation of quoad sacra Parishes in Scotland, and to repeal the Act 29 & 30 Vict. c. 77. -	30. S.
Tithe Commutation, &c. Acts Amendment; to alter certain Provisions in the Acts for the Commutation of Tithes, the Copyhold Acts, and the Acts for the Inclosure, Exchange, and Improvement of Land; and to make Provision towards defraying the Expense of the Copyhold, Inclosure, and Tithe Office -	89. E.	Universities Elections; to amend the Law relating to the Use of Voting Papers in Elections for the Universities -	65. E. & I.
Tithes (District Church). <i>See</i> Incumbents of Parishes, &c.		Unlawful Fairs. <i>See</i> Fairs.	
Titles to Land; to consolidate the Statutes relating to the Constitution and Completion of Titles to Heritable Property in Scotland, and to make certain Changes in the Law of Scotland relating to Heritable Rights -	101. S.	Vaccination; to amend the Act 26 & 27 Vict. c. 52., "to further extend and make compulsory the Practice of Vaccination in Ireland" -	87. I.
Totnes, &c. Writs; to forbid the Issue of Writs for Members to serve in this present Parliament for the Boroughs of Totnes, Reigate, Great Yarmouth, and Lancaster -	6. E.	Vagrant Act Amendment; to amend the Act 5 Geo 4. c. 83., for punishing idle and disorderly Persons, and Rogues and Vagabonds, so far as relates to the Use of Instruments of Gaming -	52. E.
Traverses. <i>See</i> Trial of Traverses.		Validity of Marriages. <i>See</i> Legitimacy Declaration. Marriages.	
Trial of Traverses, to amend the Railways (Ireland) Acts, 1851, 1860, and 1864, (14 & 15 Vict. c. 70., 23 & 24 Vict. c. 97., and 27 & 28 Vict. c. 71.) as to -	70. I.	Voters in Disfranchised Boroughs; to make Provision in the Case of Boroughs ceasing to return Members to serve in Parliament respecting Rights of Election which have been vested in Persons entitled to vote for such Members -	41. E.
Trusts, Turnpike. <i>See</i> Turnpike Trusts.		Voting Papers, to amend the Law relating to the Use of, in Elections for the Universities -	65. E. & I.
Turnpike Trusts, &c.; to confirm certain Provisional Orders made under the Act 14 & 15 Vict. c. 38. to facilitate Arrangements for the Relief of Turnpike Trusts -	66. E.	Warrants, to amend the Law relating to the indorsing of, in Scotland, Ireland, and the Channel Islands -	107. G.B. & I.
		West Indies; to relieve the Consolidated Fund from the Charge of the Salaries of future Bishops, Archdeacons, Ministers, and other Persons in the West Indies -	120. U.K.

	Cap. Relating to		Cap. Relating to
Winding-up in Bankruptcy; to facilitate Liquidation in certain Cases of Bankruptcy Arrangement and Winding-up -	68. E.	Writs Registration; to alter some Provisions in the existing Acts as to Registration of Writs in certain Registers in Scotland -	34. S.
Wine Duties; to further continue and appropriate the London Coal and Wine Duties - - - -	17. E.	— to improve the System of Registration of Writs relating to Heritable Property in Scotland - - - -	64. S.
Writs, Parliamentary; to forbid the Issue of Writs for Members to serve in this present Parliament for the Boroughs of Totnes, Reigate, Great Yarmouth, and Lancaster -	6. E.	Yarmouth, Great; to forbid the Issue of a Writ for Members to serve in Parliament for the Borough of Great Yarmouth -	6. E.

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